

having an individual broker's license (see § 111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and § 111.45(a) before the next scheduled examination, CBP may authorize a special examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. CBP may also authorize a special examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special examination for an individual may also be authorized by CBP if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b) before the next scheduled examination. A request for a special examination must be submitted to the Executive Assistant Commissioner, Office of Trade, in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted, the Executive Assistant Commissioner, Office of Trade or his/her designee, will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special examination, the application for the license may be submitted in accordance with § 111.12. The examinee will be responsible for all additional costs incurred by CBP in preparing and administering the special examination that exceed the \$390 examination fee prescribed in § 111.96(a), and those additional costs must be reimbursed to CBP before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, electronically in a manner specified by CBP at least 2 working days prior to the date of a regularly scheduled examination that he will not appear for the examination, CBP will refund the \$390 examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section,

the examinee may challenge that result by filing a written appeal with the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. CBP will provide to the examinee written notice of the decision on the appeal. If the CBP decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection, within 60 calendar days after the date of the notice on that decision.

§ 111.96 [Amended]

■ 5. In § 111.96:

- a. Paragraph (a) is amended by removing the word "written" from the second sentence and removing the phrase "\$200 examination fee" in the second sentence and adding in its place the phrase "\$390 examination fee"; and
- b. Paragraph (e) is amended by removing the words "United States Customs Service" and adding in their place the words "U.S. Customs and Border Protection, or paid by other CBP-approved payment method".

Dated: June 27, 2017.

Elaine C. Duke,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9808]

RIN 1545-BL17

RIN 1545-BN74

Regulations Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9808), which were published in the **Federal Register** on Friday, January 6, 2017 (82 FR 2046). These regulations are related to

withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, and portfolio interest paid to nonresident alien individuals and foreign corporations.

DATES:

Effective Date: These corrections are effective June 30, 2017.

Applicability Date: The corrections to §§ 1.1441-0; 1.1441-1(b)(7)(ii)(B), (e)(3)(iv)(B) and (C), (e)(4)(ii)(B)(1), (e)(4)(ix)(D), (e)(5)(ii) through (e)(5)(ii)(B), (e)(5)(ii)(D) through (e)(5)(v)(B)(3), (e)(5)(v)(B)(5) through (e)(5)(v)(D), and (f) through (f)(4); 1.1441-1T; 1.1441-3(d)(1); 1.1441-4; 1.6045-1(m)(2)(ii) and (n)(12)(ii); and 1.6049-5(c)(1) through (c)(4) are applicable on January 6, 2017.

FOR FURTHER INFORMATION CONTACT:

Nancy Lee, (202) 317-6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are §§ 1.1441-0, 1.1441-1, 1.1441-1T, 1.1441-3, 1.1441-4, 1.6045-1, and 1.6049-5, promulgated under sections 1441, 6045, 6049, and 7805 of the Internal Revenue Code. These regulations affect persons making payments of U.S. source income to foreign persons and persons making payments to certain U.S. persons subject to reporting and backup withholding.

Need for Correction

As published, the final regulations contain a number of items that need to be corrected or clarified. Several portions of TD 9808 could not be incorporated due to inaccurate amendatory instructions. Most of the correcting amendments to TD 9808 are needed to clarify or correct the results of these inaccurate amendatory instructions. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes, specifically to make a conforming change to the entry in the table of contents (§ 1.1441-0) for § 1.1441-1(e)(4)(ix); to correct typographical errors in §§ 1.1441-1(e)(4)(ix)(D), 1.1441-1T(c)(3)(ii), and 1.1441-3(d)(1); to clarify that allowances for electronic signatures in § 1.1441-1T(e)(4)(i)(B) and use of third party repository in § 1.1441-1T(e)(4)(iv)(E) are limited to Forms W-8; to remove an obsolete cross-reference

to § 1.1441-4(h); and to return § 1.6045-1(m)(2)(ii) and (n)(12)(ii) to the way those provisions read prior to unnecessary revisions in TD 9808.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ Par. 2. Section 1.1441-0 is amended by adding an entry for § 1.1441-1(e)(4)(viii)(C); revising the entries for § 1.1441-1(e)(4)(ix), (e)(5)(v)(A), (f), and (f)(2); and removing the entries for § 1.1441-1(f)(2)(i) and (ii).

The addition and revisions read as follows:

§ 1.1441-0 Outline of regulation provisions for section 1441.

* * * * *

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

- (e) * * *
(4) * * *
(viii) * * *

(C) Reliance on a prior version of a withholding certificate.

(ix) Certificates to be furnished to withholding agent for each obligation unless exception applies.

* * * * *

- (5) * * *
(v) * * *
(A) In general.

* * * * *

- (f) Effective/applicability date.

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(2) Lack of documentation for past years.

* * * * *

■ Par. 3. Section 1.1441-1 is amended by:

- 1. Adding paragraph (b)(7)(ii)(B);
■ 2. Adding paragraphs (e)(3)(iv)(B) and (C);
■ 3. Revising paragraph (e)(4)(ii)(B)(11);
■ 4. Revising the last sentence of paragraph (e)(4)(ix)(D);
■ 5. Revising paragraphs (e)(5)(ii) introductory text through (e)(5)(ii)(B);
■ 6. Removing paragraph (e)(5)(ii)(C) and redesignating paragraph (e)(5)(ii)(D) as new paragraph (e)(5)(ii)(C);

- 7. Adding new paragraph (e)(5)(ii)(D) and removing paragraph (e)(5)(ii)(E);
■ 8. Revising paragraphs (e)(5)(iii) through (e)(5)(v)(B)(3);
■ 9. Adding paragraph (e)(5)(v)(B)(5) through (e)(5)(v)(D); and
■ 10. Revising the heading of paragraph (f), and paragraphs (f)(1) through (4).

The addition and revisions read as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

- (b) * * *
(7) * * *
(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(ii)(B).

* * * * *

- (e) * * *
(3) * * *
(iv) * * *

(B) General requirements. A withholding statement must be provided prior to the payment of a reportable amount and must contain the information specified in paragraph (e)(3)(iv)(C) of this section. The statement must be updated as often as required to keep the information in the withholding statement correct prior to each subsequent payment. The withholding statement forms an integral part of the withholding certificate provided under paragraph (e)(3)(iii) of this section, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement. The withholding statement may be provided in any manner the nonqualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically as part of a system established by the withholding agent or nonqualified intermediary to provide the statement, however, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the nonqualified intermediary and all occasions of user access that result in the submission or modification of the withholding statement information must be recorded. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the nonqualified intermediary. A withholding statement may otherwise be transmitted by a nonqualified intermediary via email or facsimile to a withholding agent under the requirements specified in paragraph (e)(4)(iv)(D) of this section (substituting the term withholding statement for the term Form W-8 or the term document,

as applicable). A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section or §§ 1.1441-5(d) and (e)(6), and 1.6049-5(d) for any payment of a reportable amount, or portion thereof, for which it does not have a valid withholding statement prior to making a payment. A withholding agent may not treat as valid an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees described in paragraph (e)(3)(iv)(A) of this section or an allocation of a payment to a chapter 4 withholding rate pool of recalcitrant account holders described in paragraph (e)(3)(iv)(C)(2) of this section unless the withholding agent identifies the nonqualified intermediary maintaining the account (as described in § 1.1471-5(b)(5)) as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules of § 1.1471-3(d)(4). Additionally, in the case of a withholdable payment that is an amount subject to withholding made on or after April 1, 2017, a withholding agent may not treat as valid an allocation of the payment to a chapter 4 withholding rate pool of U.S. payees unless the nonqualified intermediary identifies the pool of U.S. payees as one described in § 1.1471-3(c)(3)(iii)(B)(2)(iii) (or by describing such payees consistent with the description provided in § 1.1471-3(c)(3)(ii)(B)(2)(iii)).

(C) Content of withholding statement. The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(1) In general. Except as otherwise provided by paragraph (e)(3)(iv)(C)(2) and (3) of this section, the withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C)(1).

(i) Except as otherwise provided in (e)(3)(iv)(A) of this section (which excludes reporting of information with respect to certain U.S. persons on the withholding statement), the withholding statement must contain the name, address, TIN (if any), and the type of documentation (documentary evidence, Form W-9, or type of Form W-8) for every person from whom documentation has been received by the nonqualified intermediary and provided to the withholding agent and whether that person is a U.S. exempt recipient, a U.S. non-exempt recipient, or a foreign person. See paragraphs (c)(2), (20), and

(21) of this section for the definitions of foreign person, U.S. exempt recipient, and U.S. non-exempt recipient. In the case of a foreign person, the statement must indicate whether the foreign person is a beneficial owner or an intermediary, flow-through entity, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section and include the type of recipient, based on recipient codes applicable for chapter 3 purposes used for filing Forms 1042-S, if the foreign person is a recipient as defined in § 1.1461-1(c)(1)(ii).

(ii) The withholding statement must allocate each payment, by income type, to every payee required to be reported on the withholding statement for whom documentation has been provided (including U.S. exempt recipients except as provided in paragraph (e)(3)(iv)(A) of this section). Any payment that cannot be reliably associated with valid documentation from a payee shall be treated as made to an unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d). For this purpose, a type of income is determined by the types of income required to be reported on Forms 1042-S or 1099, as appropriate. Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is only required to be allocated to the extent it is required to be reported on Form 1099 or Form 1042-S. See § 1.6049-8 (regarding reporting of bank deposit interest to certain foreign persons). If a payee receives income through another nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution described in paragraph (e)(2)(iv) of this section (other than a U.S. branch or territory financial institution treated as a U.S. person), the withholding statement must also state, with respect to the payee, the name, address, and TIN, if known, of the other nonqualified intermediary or U.S. branch from which the payee directly receives the payment or the flow-through entity in which the payee has a direct ownership interest. If another nonqualified intermediary, flow-through entity, or U.S. branch fails to allocate a payment, the name of the nonqualified intermediary, flow-through entity, or U.S. branch that failed to allocate the payment shall be provided with respect to such payment.

(iii) If a payee is identified as a foreign person, the nonqualified intermediary must specify the rate of withholding to which the payee is subject, the payee's country of residence and, if a reduced rate of withholding is claimed, the basis for that reduced rate (e.g., treaty benefit, portfolio interest, exempt under section 501(c)(3), 892, or 895). The allocation statement must also include the TINs of those foreign persons for whom such a number is required under paragraph (e)(4)(vii) of this section or § 1.1441-6(b)(1) (regarding claims for treaty benefits for which a TIN is provided unless a foreign tax identifying number described in § 1.1441-6(b)(1) is provided). In the case of a claim of treaty benefits, the nonqualified intermediary's withholding statement must also state whether the limitation on benefits and section 894 statements required by § 1.1441-6(c)(5) have been provided, if required, in the beneficial owner's Form W-8 or associated with such owner's documentary evidence.

(iv) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 3 and chapter 61 of the Code, and section 3406.

(2) *Nonqualified intermediary withholding statement for withholdable payments.* This paragraph (e)(3)(iv)(C)(2) modifies the requirements of a withholding statement described in paragraph (e)(3)(iv)(C)(1) of this section that is provided by a nonqualified intermediary with respect to a reportable amount that is a withholdable payment. For such a payment, the requirements applicable to a withholding statement described in paragraph (e)(3)(iv)(A) through (e)(3)(iv)(C)(1) of this section shall apply, except that—

(i) The withholding statement must include the chapter 4 status (using the applicable status code used for filing Form 1042-S) and GIIN (when required for chapter 4 purposes under § 1.1471-3(d)) of each other intermediary or flow-through entity that is a foreign person and that receives the payment, excluding an intermediary or flow-through entity that is an account holder of or interest holder in a withholding foreign partnership, withholding foreign trust, or intermediary acting as a qualified intermediary for the payment;

(ii) If the nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with

respect to the portions of the payment allocated to nonparticipating FFIs and recalcitrant account holders (to the extent permitted on an FFI withholding statement described in that paragraph) in lieu of providing specific payee information with respect to such persons on the statement (including persons subject to chapter 4 withholding) as described in paragraph (e)(3)(iv)(C)(1) of this section;

(iii) If the nonqualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs; and

(iv) For a payment allocated to a payee that is a foreign person (other than a person included in a chapter 4 withholding rate pool described in paragraphs (e)(3)(iv)(C)(2)(ii) and (iii) of this section) that is reported on a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) or (3), the withholding statement must include the chapter 4 status of the payee (unless an exception applies for purposes of providing such status under chapter 4) and, for a payee other than an individual, the recipient code for chapter 4 purposes used for filing Form 1042-S; and

(v) To the extent that a withholdable payment is not reportable on a Form 1042-S, Form 1099 under the rules of chapter 61, or Form 8966 "FATCA Report," no allocation of the payment is required on the withholding statement.

(3) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(C)(3).

(4) *Example.* This example illustrates the principles of paragraph (e)(3)(iv)(C) of this section. WA makes a withholdable payment of U.S. source dividends to NQI, a nonqualified intermediary. NQI provides WA with a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section that includes NQI's certification of its status for chapter 4 purposes as a participating FFI. NQI provides a withholding statement on which NQI allocates 20% of the payment to a chapter 4 withholding rate pool of recalcitrant account holders of NQI for purposes of chapter 4 and allocates 80% of the payment equally to A and B, individuals that are account holders of NQI. NQI also provides WA with valid beneficial owner withholding certificates from A and B establishing their status as foreign persons entitled to a 15% rate of withholding under an applicable income tax treaty. Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required with respect to NQI. See § 1.1471-2(a)(4). Based on the documentation NQI provided to WA with respect to A and B, WA can reliably associate

the payment with valid documentation on the portion of the payment allocated to them and, because the payment is a withholdable payment, may rely on the allocation of the payment for NQI's recalcitrant account holders in a chapter 4 withholding rate pool in lieu of payee information with respect to such account holders. See paragraph (e)(3)(iv)(C)(2) of this section for the special rules for a withholding statement provided by a nonqualified intermediary for a withholdable payment. Also see § 1.1471-2(a) for WA's withholding requirements under chapter 4 with respect to the portion of the payment allocated to NQI's recalcitrant account holders and § 1.1441-3(a)(2) for coordinating withholding under chapter 3 for payments to which withholding is applied under chapter 4.

* * * * *

- (4) * * *
 (ii) * * *
 (B) * * *

(11) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation).

* * * * *

- (ix) * * *

(D) * * * See § 1.1471-3(c)(9)(v) for a similar reliance rule that applies for purposes of chapter 4.

- (5) * * *

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term qualified intermediary means a person that is a party to a withholding agreement with the IRS where such person is—

(A) A foreign financial institution that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI), an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1), excluding a U.S. branch of any of the foregoing entities, or any other category of FFI identified in a qualified intermediary withholding agreement as eligible to act as a qualified intermediary;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization that is either a reporting Model 1 FFI or agrees to the reporting requirements applicable to a participating FFI with respect to its U.S. accounts;

* * * * *

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement—(A) In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such

procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a qualified intermediary shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3, 4, and 61 of the Code, section 3406, the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement.

(B) *Terms of the withholding agreement.* The withholding agreement shall specify the obligations of the qualified intermediary under chapters 3 and 4 including, for a qualified intermediary that is an FFI, the documentation, withholding, and reporting obligations required of a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI as defined in § 1.1471-1(b)(114)) with respect to each branch of the qualified intermediary other than a U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section. The withholding agreement will specify the type of certifications and documentation upon which the qualified intermediary may rely to ascertain the classification (e.g., corporation or partnership), status (i.e., U.S. or foreign and chapter 4 status) of beneficial owners and payees who receive reportable amounts, reportable payments, and withholdable payments collected by the qualified intermediary for purposes of chapters 3, 4, and 61, section 3406, and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. The withholding agreement shall specify if, and to what extent, the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall also specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of beneficial owners and payees. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the withholding agreement for purposes of verifying entitlement to such benefits, particularly under an applicable limitation on benefits provision. Under the withholding agreement, a qualified intermediary may agree to act as an

acceptance agent to perform the duties described in § 301.6109-1(d)(3)(iv)(A) of this chapter. The withholding agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to qualified intermediaries and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts. In addition, the withholding agreement shall specify the manner in which the IRS will verify compliance with the agreement, including the time and manner for which a qualified intermediary will be required to certify to the IRS regarding its compliance with the withholding agreement (including its performance of a periodic review) and the types of information required to be disclosed as part of the certification. In appropriate cases, the IRS may require review procedures be performed by an approved reviewer (in addition to those performed as part of the periodic review) and may conduct a review of the reviewer's findings. The withholding agreement may include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the withholding agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the withholding agreement may specify the procedures by which amounts withheld are to be deposited, if different from the deposit procedures under the Code and applicable regulations. To determine whether to enter a withholding agreement and the terms of any particular withholding agreement, the IRS will consider the type of local know-your-customer laws and practices to which the entity is subject (if the entity is an FFI), as well as the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign entity.

(iv) *Assignment of primary withholding responsibility.* Any person (whether a U.S. person or a foreign person) who meets the definition of a withholding agent under § 1.1441-7(a) (for payments subject to chapter 3 withholding) and § 1.1473-1(d) (for withholdable payments) is required to withhold and deposit any amount withheld under §§ 1.1461-1(a) and 1.1474-1(b) and to make the returns prescribed by §§ 1.1461-1(b) and (c), and by 1.1474-1(c), and (d). Under its qualified intermediary withholding

agreement, a qualified intermediary may, however, inform a withholding agent from which it receives a payment that it will assume the primary obligation to withhold, deposit, and report amounts under chapters 3 and 4 of the Code and/or under chapter 61 and section 3406 of the Code. For assuming withholding obligations as described in the previous sentence, a qualified intermediary that assumes primary withholding responsibility for payments made to an account under chapter 3 is also required to assume primary withholding responsibility under chapter 4 for payments made to the account that are withholdable payments. Additionally, a qualified intermediary may represent that it assumes chapter 61 reporting and section 3406 obligations for a payment when the qualified intermediary meets the requirements of § 1.6049-4(c)(4)(i) or (ii) for the payment. If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment. The withholding agent is not required to determine that the qualified intermediary actually performs its primary withholding responsibilities. A qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 or primary reporting and backup withholding responsibility under chapter 61 and section 3406 is not required to assume primary withholding responsibility for all accounts it has with a withholding agent but must assume primary withholding responsibility for all payments made to any one account that it has with the withholding agent.

(v) *Withholding statement*—(A) *In general.* A qualified intermediary must provide each withholding agent from which it receives reportable amounts as a qualified intermediary with a written statement (the withholding statement) containing the information specified in paragraph (e)(5)(v)(B) of this section. A withholding statement is not required, however, if all of the information a withholding agent needs to fulfill its withholding and reporting requirements is contained in the withholding certificate. The qualified intermediary withholding agreement will require the qualified intermediary to include information in its withholding statement relating to withholdable

payments for purposes of withholding under chapter 4 as described in paragraph (e)(5)(v)(C)(2) of this section. The withholding statement forms an integral part of the qualified intermediary's qualified intermediary withholding certificate, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which qualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, the statement must satisfy the requirements described in paragraph (e)(3)(iv) of this section (applicable to a withholding statement provided by a nonqualified intermediary). The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406. For purposes of this section, a withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section, §§ 1.1441-5(d) and (e)(6), and 1.6049-5(d) for a payment, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

(B) *Content of withholding statement.* The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments from the accounts identified on the statement and to properly report such payments on Forms 1042-S and Forms 1099, as applicable. The withholding statement must—

(1) Designate those accounts for which the qualified intermediary acts as a qualified intermediary;

(2) Designate those accounts for which qualified intermediary assumes primary withholding responsibility under chapter 3 and chapter 4 of the Code and/or primary reporting and backup withholding responsibility under chapter 61 and section 3406;

(3) If applicable, designate those accounts for which the qualified intermediary is acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction;

* * * * *

(5) Provide information regarding withholding rate pools, as described in paragraph (e)(5)(v)(C) of this section.

(C) *Withholding rate pools*—(1) *In general.* Except to the extent it has

assumed both primary withholding responsibility under chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 with respect to a payment, a qualified intermediary shall provide as part of its withholding statement the chapter 3 withholding rate pool information that is required for the withholding agent to meet its withholding and reporting obligations under chapters 3 and 61 of the Code and section 3406. See, however, paragraph (e)(5)(v)(C)(2) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool (as described in paragraph (c)(48) of this section) with respect to a payment that is a withholdable payment. A chapter 3 withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S, that is subject to a single rate of withholding paid to a payee that is a foreign person and for which withholding under chapter 4 does not apply. A chapter 3 withholding rate pool may be established by any reasonable method on which the qualified intermediary and a withholding agent agree (e.g., by establishing a separate account for a single chapter 3 withholding rate pool, or by dividing a payment made to a single account into portions allocable to each chapter 3 withholding rate pool). A qualified intermediary may include a separate pool for account holders that are U.S. exempt recipients or may include such accounts in a chapter 3 withholding rate pool to which withholding does not apply. The withholding statement must identify the chapter 4 exemption code (as provided in the instructions to Form 1042-S) applicable to the chapter 3 withholding rate pools contained on the withholding statement. To the extent a qualified intermediary does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406, a qualified intermediary's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that the qualified intermediary has disclosed to the withholding agent unless the qualified intermediary uses the alternative procedures in paragraph (e)(5)(v)(C)(3) of this section or the account holder is a payee that the qualified intermediary is permitted to include in a chapter 4 withholding rate pool of U.S. payees. A qualified intermediary that is a participating FFI or registered deemed-compliant FFI

may include a chapter 4 withholding rate pool of U.S. payees on a withholding statement by applying the rules under paragraph (e)(3)(iv)(A) of this section (by substituting “qualified intermediary” for “nonqualified intermediary”) with respect to an account that it maintains (as described in § 1.1471-5(b)(5)) for the payee of the payment. A qualified intermediary shall determine withholding rate pools based on valid documentation that it obtains under its withholding agreement with the IRS, or if a payment cannot be reliably associated with valid documentation, under the applicable presumption rules. If a qualified intermediary has an account holder that is another intermediary (whether a qualified intermediary or a nonqualified intermediary) or a flow-through entity, the qualified intermediary may combine the account holder information provided by the other intermediary or flow-through entity with the qualified intermediary’s direct account holder information to determine the qualified intermediary’s chapter 3 withholding rate pools and each of the qualified intermediary’s chapter 4 withholding rate pools to the extent provided in its withholding agreement with the IRS.

(2) *Withholding rate pool requirements for a withholdable payment.* This paragraph (e)(5)(v)(C)(2) modifies the requirements of a withholding statement described in paragraph (e)(5)(v)(C)(1) of this section provided by a qualified intermediary with respect to a withholdable payment (including a reportable amount that is a withholdable payment). For such a payment, the regulations applicable to a withholding statement described in paragraph (e)(5)(v)(C)(1) of this section shall apply, except that—

(i) If the qualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to a single pool of recalcitrant account holders (without the need to subdivide into the pools described in § 1.1471-4(d)(6)), including both account holders of the qualified intermediary and of any participating FFI, registered deemed-compliant FFI, or other qualified intermediary for whom the first-mentioned qualified intermediary receives the payment, and nonparticipating FFIs (to the extent permitted) in lieu of reporting chapter 3 withholding rate pools with respect to such persons as described in paragraph (e)(5)(v)(C)(1) of this section); or

(ii) If the qualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to nonparticipating FFIs.

(3) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its withholding agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single zero withholding rate pool that includes U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W-9 prior to the withholding agent paying any reportable payments, as defined in the qualified intermediary withholding agreement, and foreign persons for which no withholding is required under chapters 3 and 4, and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees. In such a case, the qualified intermediary may also establish a separate withholding rate pool (subject to 28-percent withholding, or other applicable statutory back-up withholding tax rate) that includes only U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W-9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(3), the qualified intermediary must provide the information required by its withholding agreement to the withholding agent no later than January 15 of the year following the year in which the payments are paid. Failure to provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary’s withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(3), with respect to U.S. non-exempt recipients, the withholding agent shall report the unallocated amount paid from the withholding rate pool to an unknown recipient, or otherwise in accordance with the

appropriate Form 1099 and the instructions accompanying the form.

(D) *Example.* The following example illustrates the application of paragraph (e)(5)(v)(C) of this section for a qualified intermediary providing chapter 4 withholding rate pools on an FFI withholding statement provided to a withholding agent. WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an FFI and a non-U.S. payor (as defined in § 1.6049-5(c)(5)), and A and B are account holders of QI (as defined under § 1.1471-5(a)) and are both U.S. non-exempt recipients (as defined in paragraph (c)(21) of this section). Ten percent of the payment is attributable to both A and B. A has provided WA with a Form W-9, but B has not provided WA with a Form W-9. QI assumes primary withholding responsibility under chapters 3 and 4 with respect to the payment, 80 percent of which is allocable to foreign payees who are account holders other than A and B. As a participating FFI, QI is required to report with respect to its U.S. accounts under § 1.1471-4(d) (as incorporated into its qualified intermediary agreement). Provided that QI reports A’s account as a U.S. account under the requirements referenced in the preceding sentence, QI is not required to provide WA with a Form W-9 from A and may instead include A in a chapter 4 withholding rate pool of U.S. payees, allocating 10% of the payment to this pool. See § 1.6049-4(c)(4)(iii) concerning when reporting under section 6049 for a payment of interest is not required when an FFI that is a non-U.S. payor reports an account holder receiving the payment under its chapter 4 requirements. With respect to B, the interest payment is subject to backup withholding under section 3406. Because B is a recalcitrant account holder of QI for withholdable payments and because QI assumes primary chapter 4 withholding responsibility, however, QI may include the portion of the payment allocated to B with the remaining 80% of the payment for which QI assumes primary withholding responsibility. WA can reliably associate the full amount of the payment based on the withholding statement and does so regardless of whether WA knows B is a U.S. non-exempt recipient that is receiving a portion of the payment. See § 31.3406(g)-1(e) (providing exemption to backup withholding when withholding was applied under chapter 4).

* * * * *

(f) *Effective/applicability date—(1) In general.* Except as otherwise provided in paragraphs (e)(4)(ix)(D), (f)(2), and (f)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (e)(4)(ix)(D) applies, in which case, substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after

December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(2) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 2000.

(3) *Section 871(m) transactions.* Paragraphs (b)(4)(xxi), (b)(4)(xxiii), (e)(3)(ii)(E), and (e)(6) of this section apply to payments made on or after September 18, 2015.

(4) [Reserved]. For further guidance, see § 1.1441-1T(f)(4).

* * * * *

■ **Par. 4.** Section 1.1441-1T is revised to read as follows:

§ 1.1441-1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

(a) through (b)(7)(ii)(A) [Reserved]. For further guidance, see § 1.1441-1(a) through (b)(7)(ii)(A).

(B) *Special rules for establishing that income is effectively connected with the conduct of a U.S. trade or business.* A withholding certificate received after the date of payment to claim under § 1.1441-4(a)(1) that income is effectively connected with the conduct of a U.S. trade or business will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. The signed affidavit must also state that the beneficial owner has included the income on its U.S. income tax return for the taxable year in which it is required to report the income or, alternatively, that the beneficial owner intends to include the income on a U.S. income tax return for the taxable year in which it is required to report the income and the due date for filing such return (including any applicable extensions) is after the date on which the affidavit is signed. A certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentences.

(b)(7)(iii) through (c)(2)(i) [Reserved]. For further guidance, see § 1.1441-1(b)(7)(iii) through (c)(2)(i).

(ii) *Dual residents.* Individuals will not be treated as U.S. persons for purposes of this section for a taxable year or any portion of a taxable year for which they are a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)-7(a)(1) of this chapter for purposes of computing their U.S. tax liability.

(c)(3) through (c)(3)(i) [Reserved]. For further guidance, see § 1.1441-1(c)(3) through (c)(3)(i).

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means persons described in section 7701(b)(1)(B), alien individuals who are treated as nonresident aliens pursuant to § 301.7701(b)-7 of this chapter for purposes of computing their U.S. tax liability, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)-1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(c)(4) through (c)(38)(i) [Reserved]. For further guidance, see § 1.1441-1(c)(4) through (c)(38)(i).

(ii) *Hold mail instruction.* Notwithstanding the provisions of paragraph (i) of this section, an address that is subject to a hold mail instruction can be used as a permanent residence address if the person has also provided the withholding agent with documentary evidence establishing residence in the country in which the person claims to be a resident for tax purposes. If, after a withholding certificate is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, this is a change in circumstances requiring the person to provide the documentary evidence described in this paragraph (c)(38)(ii) in order to use the address as a permanent residence address.

(c)(39) through (e)(2)(ii)(A) [Reserved]. For further guidance, see § 1.1441-1(c)(39) through (e)(2)(ii)(A).

(B) *Requirement to collect foreign TIN and date of birth beginning January 1, 2017.* Beginning January 1, 2017, a beneficial owner withholding certificate provided to document an account that is

maintained at a U.S. branch or office of a financial institution is required to contain the account holder's foreign TIN and, in the case of an individual account holder, the account holder's date of birth in order for the withholding agent to treat such withholding certificate as valid under paragraph (e)(2) of this section. For withholding certificates associated with payments made on or after January 1, 2018, if an account holder does not have a foreign TIN, the account holder is required to provide a reasonable explanation for its absence (e.g., the country of residence does not provide TINs) in order for the withholding certificate not to be considered invalid as a result of the application of this paragraph (e)(2)(ii)(B). A withholding certificate that does not contain the account holder's date of birth will not be considered invalid as a result of the application of this paragraph (e)(2)(ii)(B) if the withholding agent has the account holder's date of birth information in its files.

(e)(3) through (e)(3)(iv)(C)(2) [Reserved]. For further guidance, see § 1.1441-1(e)(3) through (e)(3)(iv)(C)(2).

(3) *Alternative withholding statement.* In lieu of a withholding statement containing all of the information described in paragraph (e)(3)(iv)(C)(1) of this section, a withholding agent may accept from a nonqualified intermediary a withholding statement that meets all of the requirements of this paragraph (e)(3)(iv)(C)(3) with respect to a payment. This alternative withholding statement may only be provided by a nonqualified intermediary that provides the withholding agent with the withholding certificates from the beneficial owners (i.e., not documentary evidence) before the payment is made.

(i) The withholding statement is not required to contain information that is also included on a withholding certificate (e.g., name, address, TIN (if any), chapter 4 status, GIIN (if any)). The withholding statement is also not required to specify the rate of withholding to which each foreign payee is subject, provided that all of the information necessary to make such determination is provided on the withholding certificate. A withholding agent that uses an alternative withholding statement may not apply a different rate from that which the withholding agent may reasonably conclude from the information on the withholding certificate.

(ii) The withholding statement must allocate the payment to every payee required to be reported as described in paragraph (e)(3)(iv)(C)(1)(ii) of this section.

(iii) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapters 3, 4, and 61 of the Code, and section 3406.

(iv) The withholding statement must contain a representation from the nonqualified intermediary that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee.

(e)(3)(iv)(C)(4) through (e)(4)(i)(A) [Reserved]. For further guidance, see § 1.1441-1(e)(3)(iv)(C)(4) through (e)(4)(i)(A).

(B) *Electronic signatures.* A withholding agent, regardless of whether the withholding agent has established an electronic system pursuant to paragraph (e)(4)(iv)(A) or (e)(4)(iv)(C) of this section, may accept a withholding certificate (other than a Form W-9) with an electronic signature, provided the electronic signature meets the requirements of paragraph (e)(4)(iv)(B)(3)(ii) of this section. In addition, the withholding certificate must reasonably demonstrate to the withholding agent that the form has been electronically signed by the recipient identified on the form (or a person authorized to sign for the person identified on the form). For example, a withholding agent may treat as validly signed a withholding certificate that has, in the signature block, the name of the person authorized to sign, a time and date stamp, and a statement that the certificate has been electronically signed. However, a withholding agent may not treat a withholding certificate with a typed name in the signature line and no other information as validly signed.

(e)(4)(ii) through (e)(4)(ii)(A)(1) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(ii) through (e)(4)(ii)(A)(1).

(2) *Documentary evidence for treaty claims and treaty statements.*

Documentary evidence described in § 1.1441-6(c)(3) or (4) and a statement regarding entitlement to treaty benefits described in § 1.1441-6(c)(5)(i) (treaty statement) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section. Notwithstanding the validity period prescribed in this paragraph (e)(4)(ii)(A)(2), a treaty statement will cease to be valid if a

change in circumstances makes the information on the statement unreliable or incorrect. For accounts opened and treaty statements obtained prior to January 6, 2017, the treaty statement will expire January 1, 2019.

(e)(4)(ii)(B) through (e)(4)(iv)(B)(4) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(ii)(B) through (e)(4)(iv)(B)(4).

(C) *Form 8233.* A withholding agent may establish a system for a beneficial owner or payee to provide Form 8233 electronically, provided the system meets the requirements of paragraph (e)(4)(iv)(B)(1) through (4) of this section (replacing “Form W-8” with “Form 8233” each place it appears).

(D) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(iv)(D).

(E) *Third party repositories.* A withholding certificate (other than a Form W-9) will be considered furnished for purposes of this section (including paragraph (e)(1)(ii)(A)(1) of this section) by the person providing the certificate, and a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third party repository, if the withholding certificate was uploaded or provided to a third party repository and there are processes in place to ensure that the withholding certificate can be reliably associated with a specific request from the withholding agent and a specific authorization from the person providing the certificate (or an agent of the person providing the certificate) for the withholding agent making the request to receive the withholding certificate. Each request and authorization must be associated with a specific payment, and, as applicable, a specific obligation maintained by a withholding agent. A third party repository may also be used for withholding statements, and a withholding agent may also rely on an otherwise valid withholding statement, if the intermediary providing the withholding certificates and withholding statement through the repository provides an updated withholding statement in the event of any change in the information previously provided (e.g., a change in the composition of a partnership or a change in the allocation of payments to the partners) and ensures there are processes in place to update withholding agents when there is a new withholding statement (and withholding certificates, as necessary) in the event of any change that would affect the validity of the prior withholding certificates or withholding statement. A third party repository, for purposes of this paragraph, is an entity that maintains withholding certificates

(including certificates accompanied by withholding statements) but is not an agent of the applicable withholding agent or the person providing the certificate. The following examples illustrate the provisions of this paragraph (e)(4)(iv)(E):

Example 1. A, a foreign corporation, completes a Form W-8BEN-E and a Form W-8ECI and uploads the forms to X, a third party repository (X is an entity that maintains withholding certificates on an electronic data aggregation site). WA, a withholding agent, enters into a contract with A under which it will make payments to A of U.S. source FDAP that are not effectively connected with A's conduct of a trade or business in the United States. X is not an agent of WA or A. Prior to receiving a payment, A sends WA an email with a link that authorizes WA to access A's Form W-8BEN-E on X's system. The link does not authorize WA to access A's Form W-8ECI. X's system meets the requirements of a third party repository, and WA can treat the Form W-8BEN-E as furnished by A.

Example 2. The facts are the same as *Example 1* of this paragraph (e)(4)(iv)(E), and WA and A enter into a second contract under which WA will make payments to A that are effectively connected with A's conduct of a trade or business in the United States. A sends WA an email with a link that gives WA access to A's Form W-8ECI on X's system. The link in this second email does not give WA access to A's Form W-8BEN-E. A's email also clearly indicates that the link is associated with payments received under the second contract. X's system meets the requirements of a third party repository, and WA can treat the Form W-8ECI as furnished by A.

Example 3. FP is a foreign partnership that is acting on behalf of its partners, A and B, who are both foreign individuals. FP completes a Form W-8IMY and uploads it to X, a third party repository. FP also uploads Forms W-8BEN from both A and B and a valid withholding statement allocating 50% of the payment to A and 50% to B. WA is a withholding agent that makes payments to FP as an intermediary for A and B. FP sends WA an email with a link to its Form W-8IMY on X's system. The link also provides WA access to FP's withholding statement and A's and B's Forms W-8BEN. FP also has processes in place that ensure it will provide a new withholding statement or withholding certificate to X's repository in the event of a change in the information previously provided that affects the validity of the withholding statement and that ensure it will update WA if there is a new withholding statement. X's system meets the requirements of a third party repository, and WA can treat the Form W-8IMY (and withholding statement) as furnished by FP. In addition, because FP is acting as an agent of A and B, the beneficial owners, WA can treat the Forms W-8BEN for A and B as furnished by A and B.

(e)(4)(v) through (f)(3) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(v) through (f)(3).

(4) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017.

(g) *Expiration date.* The applicability of this section expires on December 30, 2019.

§ 1.1441-3 [Amended]

■ **Par. 5.** Section 1.1441-3 is amended by removing the second instance of the word “is” in the last sentence of paragraph (d)(1).

§ 1.1441-4 [Amended]

■ **Par. 6.** Section 1.1441-4 is amended by removing and reserving paragraph (h).

■ **Par. 7.** Section 1.6045-1 is amended by revising paragraphs (m)(2)(ii) and (n)(12)(ii) to read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(m) * * *

(2) * * *

(ii) *Delayed effective date for certain options*—(A) Notwithstanding paragraph (m)(2)(i) of this section, if an option, stock right, or warrant is issued as part of an investment unit described in § 1.1273-2(h), paragraph (m) of this section applies to the option, stock right, or warrant if it is acquired on or after January 1, 2016.

(B) Notwithstanding paragraph (m)(2)(i) of this section, if the property referenced by an option (that is, the property underlying the option) is a debt instrument that is issued by a non-U.S. person or that provides for one or more payments denominated in, or determined by reference to, a currency other than the U.S. dollar, paragraph (m) of this section applies to the option if it is granted or acquired on or after January 1, 2016.

* * * * *

(n) * * *

(12) * * *

(ii) *Effective/applicability date.* Paragraph (n)(12)(i) of this section applies to a debt instrument described in paragraph (n)(12)(i)(A) or (B) of this section that is acquired on or after February 18, 2016. However, a broker may rely on paragraph (n)(12)(i) of this section for a debt instrument described in paragraph (n)(12)(i)(A) or (B) of this section acquired before February 18, 2016.

* * * * *

■ **Par. 8.** Section 1.6049-5 is amended by revising paragraphs (c)(1) through (c)(4) to read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(c) * * *

(1) *Documentary evidence for offshore obligations and certain other obligations*—

(i) A payor may rely on documentary evidence described in § 1.1471-3(c)(5)(i) instead of a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) in the case of an amount paid outside the United States (as described in paragraph (e) of this section) with respect to an offshore obligation, or, in the case of broker proceeds described in § 1.6045-1(c)(2), to the extent provided in § 1.6045-1(g)(1)(i). For purposes of this section, the term *offshore obligation* means—

(A) An account maintained at an office or branch of a bank or other financial institution located outside the United States; or

(B) An obligation as defined in § 1.6049-4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in § 1.1471-5(e)) that engages in significant activities at an office or branch located outside the United States. For purposes of the preceding sentence, an office or branch of such payor shall be considered to engage in significant activities with respect to an obligation when it participates materially and actively in negotiating the obligation under the principles described in § 1.864-4(c)(5)(iii) (substituting the term “obligation” for the term “stock or security”).

(ii) A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person; and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed for purposes of this paragraph (c)(1) by retaining an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the documents reviewed for as long as it may be relevant to the determination of the payor’s obligation to report under § 1.6049-4 and this section and noting in its records the date on which the document was received and reviewed. Documentary evidence furnished for a payment of an amount subject to

withholding under chapter 3 of the Code or that is a chapter 4 reportable amount under § 1.1474-1(d)(2) must contain all of the information that is necessary to complete a Form 1042-S for that payment. See §§ 1.1471-3(c) and 1.1471-4(c) for additional documentation requirements to identify a payee or account holder for chapter 4 purposes that may apply in addition to the requirements under paragraph (c) of this section.

(iii) Even if an account or obligation (as defined in § 1.6049-4(f)(3)) is not maintained outside the United States (maintained in the United States), a payor may rely on documentary evidence associated with a withholding certificate described in § 1.1441-1(e)(3)(iii) with respect to the persons for whom an entity acting as an intermediary collects the payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441-1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441-1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441-1(c)(26), even though the partnership or trust account is an obligation maintained in the United States.

(iv) For accounts opened on or after July 1, 2014, and before January 1, 2015, and for obligations entered into on or after July 1, 2014, and before January 1, 2015, a payor may continue to apply the rules of § 1.6049-5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, rather than this paragraph (c)(1) and paragraph (c)(4) of this section. A payor that applies the rules of § 1.6049-5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, to an account or obligation must also apply § 1.1441-6(c)(2) (to the extent applicable) and § 1.6049-5(e) both as in effect and contained in 26 CFR part 1 revised April, 2013, with respect to the account or obligation.

(2) *Other applicable rules.* The provisions of § 1.1441-1(e)(4)(i) through (xii) (regarding who may sign a certificate, validity period of certificates and documentary evidence, retention of certificates, reliance rules, etc.) shall apply (by substituting the term “payor” for the term “withholding agent” and disregarding the fact that the provisions under § 1.1441-1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441-1(b)(2)(vii) for provisions

dealing with reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441-7(b)(2) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W-9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)-3(e) of this chapter (see the information and certification described in § 31.3406(h)-3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W-9). The provisions of § 1.1441-7(b)(2) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441-7(b)(2) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). A payor may rely upon documentation in lieu of documentary evidence (as described in paragraph (c)(1) of this section) or a written statement (as defined in § 1.1471-1(b)(150)) or another statement to the extent permitted in paragraphs (c)(4)(i) through (iii) of this section, until the payor knows or has reason to know of a change in circumstance that makes the documentation unreliable or incorrect (as defined in § 1.1441-1(e)) when the payor does not have customer information for the payee that includes any of the U.S. indicia described in

§ 1.1471-3(c)(6)(ii)(C)(1). Further, a payor may maintain such documentation or documentary evidence as required in paragraph (c)(4)(iv) of this section.

(i) *Statement in lieu of documentary evidence with respect to accounts.* If under the local laws, regulations, or practices of a country in which an account is maintained, it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section with respect to the type of account, the payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (c)(4)(i) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. However, see, also § 1.1471-4(c) or an applicable IGA for additional documentation requirements that may apply to a participating FFI (including a reporting Model 2 FFI) for determining the status of its account holders for chapter 4 purposes. The statement referred to in this paragraph (c)(4)(i) must appear near the signature line and must state, "By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days." Additionally, a payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or § 1.1471-3(c)(3)(ii) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on a written statement described in paragraph § 1.1471-1(b)(150) to the extent a payor uses such written statement to establish a payee's chapter 4 status and is permitted to use the written statement under § 1.1471-3(d) (by substituting the term "payor" for the term "withholding agent") without any other documentary evidence.

(ii) *Documentation under IGA.* A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or information establishing a payee's status that is permitted under an applicable IGA for determining whether the account of the payee is other than a U.S. account and

regardless of whether such documentation or certification is described in paragraph (c)(1) of this section or § 1.1441-1(e)(2).

(iii) *Maintenance of documentation and written statement.* A payor maintains documentation if it either maintains the documentary evidence as described in paragraph (c)(1) of this section or retains a record of the documentary evidence reviewed if the payor is not required to retain copies of the documentation pursuant to the payor's AML due diligence (as defined in § 1.1471-1(b)(4)). A payor retains a record of documentary evidence reviewed by noting in its records the type of documentation reviewed, the date the document was reviewed, the document's identification number (if any), and whether such documentation contained any U.S. indicia described in § 1.1441-7(b)(8). Any statement described in paragraph (c)(4)(i) of this section, must be retained in accordance with § 1.1471-3(c)(6)(iii).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

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Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9809) that were published in the **Federal Register** on Friday, January 6, 2017 (82 FR 2124). The final and temporary regulations under chapter 4 of the Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) relate to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and