

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Paperwork Reduction Act Notice.—We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping 2 hr., 4 min.

Learning about the law or the form 1 hr., 49 min.

Preparing the form 50 min.

Copying, assembling, and sending the form to the IRS 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-1060), Washington, DC 20503. **DO NOT** send this form to either of these offices. Instead, see **Where To Send Form 8288-B** below.

Purpose of Form.—Use Form 8288-B to apply for a withholding certificate to reduce or eliminate withholding on dispositions by foreign persons of U.S. real property interests. However, use this form only for applications based on (1) a claim that the transferor is entitled to nonrecognition treatment or is exempt from tax, (2) a calculation solely of the transferor's maximum tax liability, or (3) the special installment sales rules of Rev. Proc. 88-23, 1988-1 C.B. 787.

Do not use this form for applications (1) based on an agreement for the payment of tax with conforming security, (2) for blanket withholding certificates under Rev. Proc. 88-23, or (3) any application other than the three types described in section 3.03 of Rev. Proc. 88-23. Regulations sections 1.1445-3 and 1.1445-6 and Rev. Proc. 88-23 describe procedures for applying for a withholding certificate.

Who Can Apply for a Withholding Certificate.—Either the transferee or the transferor can file this application.

Withholding Certificates.—The IRS can issue a withholding certificate to reduce or eliminate withholding under section 1445. A certificate issued before the

transfer notifies the transferee that no withholding or reduced withholding is required. A certificate issued after the transfer may authorize a normal or an early refund. If, on the date of transfer, an application for a withholding certificate is or has been submitted to the IRS, the applicable withholding is not required to be paid over to the IRS until the 20th day after the day that the IRS mails the withholding certificate or notice of denial.

The IRS will normally act on an application within 90 days of receipt of all information necessary to make a proper determination. The IRS will determine whether withholding should be eliminated or reduced or whether a withholding certificate should not be issued.

Any withholding certificate issued by the IRS applies only for the limited purpose of determining the withholding obligation under section 1445 and does not apply to any substantive issue that may arise in connection with the transfer. The acceptance of any evidence submitted to the IRS in connection with this application is not binding on the IRS for any purpose other than the withholding certificate. However, the information submitted in support of the withholding certificate application may be subject to verification by the IRS prior to issuance of a withholding certificate.

If you receive a withholding certificate from the IRS and withholding is still required, a copy of the withholding certificate must be attached to **Form 8288**, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.

Installment Sales.—A transferee is required to withhold on the full sales price regardless of the amount of the payment. However, if the transferor is not a dealer and will report gain using the installment method under section 453, a withholding certificate allowing reduced withholding may be obtained. Any withholding certificate based on the installment sale method will provide for payment of interest on the deferred tax liability under section 453A(c) when applicable.

For installment sales subject to withholding under section 1445(a) (or 1445(e)), the IRS will consider applications for a withholding certificate based on the transferee's (or entity's or fiduciary's) agreement to:

(1) Withhold and pay over 10% (or the amount the IRS determines to be appropriate under section 1445(e)), or the lower amount determined by the IRS, of the down payment, including any liabilities of the transferor (entity in the

case of section 1445(e)) assumed by the transferee or liabilities to which the U.S. real property interest was subject immediately before and after the transfer.

(2) Withhold 10% (or the amount the IRS determines to be appropriate under section 1445(e)), or the lower amount determined by the IRS, on each subsequent payment and, for withholding under section 1445(a), the interest on the deferred tax liability.

(3) Pay over all amounts withheld with Forms 8288 and 8288-A (relating to withholding on dispositions by foreign persons of U.S. real property interests) and include the transferor's (interest holder subject to withholding under section 1445(e)) identification number.

(4) Notify the IRS before the disposition or encumbrance of the U.S. real property interest (of the installment obligation under section 1445(e)), and when it occurs, pay over the remaining amount to be withheld.

(5) Continue to withhold under a reduced withholding certificate until an amended certificate is issued even if the transferor pledges the installment obligation in exchange for all or part of the proceeds due on the obligation and includes in gross income under section 453A(d) the net proceeds of the secured indebtedness.

Where To Send Form 8288-B.—Form 8288-B must be sent to the Director, Philadelphia Service Center, P.O. Box 21086, Philadelphia, PA 19114. Applications for which Form 8288-B cannot be used, as described earlier under **Purpose of Form**, must be sent to Internal Revenue Service, Attn: IN:C:E:669:FIRPTA, Mercantile Plaza Building, Avenida Ponce de Leon 27½, Hato Rey, PR 00918.

Required Attachments to Form 8288-B.—See the **Specific instructions** below to find out what information is required to be attached to this form. Failure to include all the required information and documents on the application will cause it to be considered incomplete and may delay the issuance of the withholding certificate.

Specific Instructions

Read the following instructions carefully. In certain cases, attachments to this form are required.

Line 2.—Enter the name, address, and identification number of the transferor. If you are filing this application as the transferor, enter "Same as line 1" unless you are entering another address. If you entered an address on line 1 that is not your actual address, enter your actual address on line 2. If there are multiple

transferors, attach additional sheets giving the required information about each one.

For a transaction under section 1445(e), enter information about each foreign person, for whom adjusted withholding is sought, who will bear substantive income tax liability because of the transaction subject to withholding under section 1445(e).

Line 3.—Enter the name, address, and identification number of the transferee. If you are filing this application as the transferee, enter "Same as line 1" unless you are entering another address. If you entered an address on line 1 that is not your actual address, enter your actual address on line 3. If there are multiple transferees, attach additional sheets giving the required information about each one.

Line 4.— On line 4a, the month, day, and year for the "Date of transfer" must be completed. On 4c, "Associated personal property" means property such as furniture sold with a building. See Regulations section 1.897-1. For 4d, if you check "Other" because the property was used for both personal and rental use, attach an explanation. On 4f, enter the address and description of the property, such as "10-story, 100-unit luxury apartment building." For the class or type and amount of an interest, enter information such as "10,000 shares Class A Preferred Stock XYZ Corporation."

Line 5.—If 5a is checked, attach to Form 8288-B a brief description of the transfer, a brief summary of the law and facts supporting the claim of nonrecognition or exemption, evidence that the transferor has no unsatisfied withholding liability, and the most recent assessed value for state or local property tax purposes of the interest to be transferred, or other estimate of its fair market value. You need not submit supporting evidence of the value of the property.

A nonresident alien or foreign corporation must also attach a statement of the adjusted basis of the property immediately before the distribution or transfer. If you are claiming nonrecognition under section 1034, relating to the rollover of the gain on the sale of a personal residence, and another principal residence in the United States has not been purchased as of the date of sale, you must also attach either (1) a copy of the transferor's binding contract to buy a principal residence in the United States having a purchase price greater than the adjusted sales price of the old principal residence, or (2) the transferor's affidavit, signed under penalties of perjury, stating that the transferor intends to buy another

principal residence in the United States having a purchase price greater than the adjusted sales price of the old residence by April 15 of the year following the year of sale of the old residence, and that the transferor expects to be employed or stationed in the United States for at least 2 years from the date of sale of the old residence. Or you may attach a copy of the notice required by Temporary Regulations section 1.1445-9T(b).

Evidence that the transferor has no unsatisfied withholding liability.—You must provide a calculation of the transferor's unsatisfied withholding liability or evidence that it does not exist. That liability is the amount of any tax that the transferor was required to, but did not, withhold and pay over under section 1445 when the U.S. real property interest now being transferred was acquired or upon a prior acquisition. The transferor's unsatisfied withholding liability is included in the calculation of maximum tax liability so that it can be satisfied by the withholding on the current transfer.

Evidence that there is no unsatisfied withholding liability includes any of the following: (1) evidence that the transferor acquired the subject or prior real property interest before 1985; (2) a copy of Form 8288 filed and proof of payment; (3) a copy of a withholding certificate issued by the IRS plus a copy of Form 8288 and proof of payment of any amount required by that certificate; (4) a copy of the nonforeign certificate furnished by the person from whom the U.S. real property interest was acquired, executed at the time of that acquisition; (5) evidence that the transferor purchased the subject or prior real property interest for \$300,000 or less, and a statement, signed by the transferor under penalties of perjury, that the transferor purchased the property for use as a residence within the meaning of Regulations section 1.1445-2(d)(1); (6) evidence that the person from whom the transferor acquired the subject or prior U.S. real property interest fully paid any tax imposed on that transaction under section 897; (7) a copy of a notice of nonrecognition treatment provided to the transferor under Regulations section 1.1445-2(d)(2) by the person from whom the transferor acquired the subject or prior U.S. real property interest; or (8) a statement, signed by the transferor under penalties of perjury, explaining why the transferor was not required to withhold under section 1445(a) with respect to the transferor's acquisition of the subject or prior real property interest.

If 5b is checked, attach to Form 8288-B a calculation of the maximum tax that can be imposed on the disposition and evidence of the

transferor's unsatisfied withholding liability as explained above. You must also include a statement that the calculation and all supporting evidence is true and correct to the best knowledge of the transferor signed by the transferor under penalties of perjury. The calculation of the maximum tax must include: (1) evidence of the amount to be realized by the transferor, such as a copy of the signed contract of transfer; (2) evidence of the adjusted basis of the property, such as closing statements, invoices for improvements, and depreciation schedules, or if no depreciation schedules are submitted, a statement of the nature of the use of the property and why depreciation was not allowed; (3) amounts to be recaptured for accelerated depreciation, investment credit, or other items subject to recapture; (4) the maximum capital gain and/or ordinary income tax rates applicable to the transfer; (5) the tentative tax owed; and (6) evidence showing the amount of any increase or reduction of tax to which the transferor is subject, including any reduction to which the transferor is entitled under a U.S. income tax treaty. If you have a net operating loss, see section 4.06 of Rev. Proc. 88-23 for special rules about the maximum tax calculation.

If the purchase price includes personal property not subject to taxation under section 897, for the calculation of maximum tax, the transferor must also include a statement listing each item of personal property transferred that is not subject to section 897 and the fair market value attributable to each item. The fair market value claimed for such personal property should be supported by an independent appraisal or other similar documentation.

If 5c is checked, see **Installment Sales** on page 3.

Line 6.—See **Evidence that the transferor has no unsatisfied withholding liability** above.

Line 7.—If the transaction is subject to withholding under section 1445(e), check the box to indicate which provision of section 1445(e) applies. Also indicate whether the applicant is the taxpayer or the person required to withhold and in what capacity that person is required to withhold.

Signature.—The application must be signed by an individual, a responsible corporate officer, a general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate. In addition, the application may be signed by an authorized agent with a power of attorney. **Form 2848**, Power of Attorney and Declaration of Representative, can be used for this purpose.