

A Change To Note

Rev. Proc. 2000-35, 2000-35 I.R.B. 211, made changes to the Form 8288-B and instructions. These changes include the addition of line 6g, which requests information relating to U.S. income tax returns filed and taxes paid for the 3 preceding tax years on any U.S. real property income.

General Instructions

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

Purpose of form. Use Form 8288-B to apply for a withholding certificate to reduce or eliminate withholding on dispositions of U.S. real property interests by foreign persons, but **only** if the application is based on:

1. A claim that the transferor is entitled to nonrecognition treatment or is exempt from tax,
2. A claim solely on a calculation that shows the transferor's maximum tax liability is less than the tax otherwise required to be withheld, or
3. A claim that the special installment sales rules described in section 7 of Rev. Proc. 2000-35 allowed reduced withholding.

Do not use this form for applications:

- Based on an agreement for the payment of tax with conforming security,
- For blanket withholding certificates under Rev. Proc. 2000-35, or
- Other than the three types described above.

See Regulations sections 1.1445-3 and 1.1445-6 and Rev. Proc. 2000-35 for information and procedures for applying for a withholding certificate.

Who can apply for a withholding certificate. Either the transferee or the transferor (or other authorized person) can file this application.

Withholding certificate. 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 reduced withholding or no withholding is required. A certificate issued after the transfer may authorize an early or a normal 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 reduced or eliminated or whether a withholding certificate should not be issued.

Identification number. The transferee, transferor, and agent (if applicable) must provide a Federal identification number (a TIN) on any application for a withholding certificate accompanied by a request for

early refund filed with the IRS. For U.S. individuals, the TIN is a social security number (SSN). For all other entities, it is an employer identification number (EIN). If you are a nonresident alien individual who is required to have a TIN, but is not eligible to obtain an SSN, you must apply for an IRS individual taxpayer identification number (ITIN). Get **Form W-7**, Application for IRS Individual Taxpayer Identification Number, for more information.

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 by the IRS of any evidence submitted in connection with this application is not binding on the IRS for any purpose other than issuing the withholding certificate. The information submitted in support of the 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 (e), the IRS will consider applications for a withholding certificate based on the transferee's (or entity's or fiduciary's) agreement to all of the following:

1. Withhold and pay over 10% or lower amount determined by the IRS (or the amount the IRS determines to be appropriate under section 1445(e)) of the down payment. The amount paid over must include 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 lower amount determined by the IRS (or the amount the IRS determines to be appropriate under section 1445(e)) on each subsequent payment and, for withholding under section 1445(a), the interest on the deferred tax liability.
3. Use Forms 8288 and 8288-A (relating to withholding on dispositions by foreign persons of U.S. real property interests) to pay over all amounts withheld. The identification number of the transferor (or interest holder subject to withholding under section 1445(e)) must be included on Forms 8288 and 8288-A.

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 applications for a withholding certificate. Form 8288-B and other applications for a withholding certificate must be sent to the Internal Revenue Service Center, P.O. Box 21086, DP 8731 FIRPTA Unit, Philadelphia, PA 19114-0586.

Specific Instructions

Caution: Complete all information for each line. An application that is not substantially complete when submitted will be rejected. For example, an application without a specific or estimated date of transfer will not be considered to be substantially complete.

Line 1. Enter the name, street address, and identification number of the transferor. If there are multiple transferors, attach additional sheets giving the required information about each one. For a transaction under section 1445(e), enter the required information for each foreign person for whom you are requesting reduced withholding.

Line 2. Enter the name, street address, and identification number of the transferee. If there are multiple transferees, attach additional sheets giving the required information about each one.

Line 4a. The withholding agent will normally be the buyer or other transferee as described in section 1445(d)(4). For distributions under section 1445(e), the withholding agent also includes a trustee, executor, or other authorized person.

Line 4b. If you are not applying for this withholding certificate in your personal capacity, enter your SSN or ITIN (see **Identification number** above for more information).

Line 4c. If you are acting on behalf of an estate or trust, or are signing as an authorized person for an entity other than an individual (e.g., a corporation or partnership), enter the name of the estate, trust, or entity.

Line 4d. Enter the EIN of the estate, trust, or entity.

Line 5. Enter the address you want the IRS to use for purposes of returning the withholding certificate.

Line 6a. Enter the year as a four-digit number (e.g., "2001").

Line 6c. "Associated personal property" means property (e.g., furniture) sold with a building. See Regulations section 1.897-1.

Line 6d. Check "Other" if the property was used for both personal and rental use and attach an explanation.

Line 6f. Enter the address and description of the property (e.g., "10-story, 100-unit luxury apartment building"). For a real estate holding corporation interest transferred, enter the class or type and amount of the interest (e.g., "10,000 shares Class A Preferred Stock XYZ Corporation"). You may attach additional sheets. Be sure to include your name and TIN on each sheet you attach.

Line 7a. If you checked 7a, attach:

1. A brief description of the transfer,
2. A summary of the law,
3. Facts supporting the claim of nonrecognition or exemption,
4. Evidence that the transferor has no unsatisfied withholding liability, **and**
5. 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.

Line 7b. If you checked 7b, attach a calculation of the maximum tax that can be imposed on the disposition. You must also include a statement signed by the transferor under penalties of perjury that the calculation and all supporting evidence is true and correct to the best knowledge of the transferor.

The calculation of the maximum tax that can be imposed 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. 2000-35 for special rules about the maximum tax calculation.

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

Line 7c. If you checked 7c, see **Installment sales** on page 2.

Line 8. You must provide a calculation of the transferor's unsatisfied withholding liability or evidence that it does not exist. This liability is the amount of any tax 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. (The certificate must be executed at the time of 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 regard to the transferor's acquisition of the subject or prior real property interest.

Line 9a. If the transaction is subject to withholding under section 1445(e), check the box to indicate which provision of section 1445(e) applies.

Line 9b. 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. The application may also 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.

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.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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., 48 min.
Preparing the form	53 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 simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send this form to this office. Instead, see **Where to send applications for a withholding certificate** on page 2.

