

FOR FURTHER INFORMATION  
CONTACT: Gwendolyn A. Stanley  
(202) 622-3860 (not a toll free-call).

SUPPLEMENTARY INFORMATION:

*Background*

This document contains final regulations reflecting changes made by the Omnibus Budget Reconciliation Act of 1993 to the withholding rates on certain distributions and dispositions of U.S. real property interests. These regulations were not preceded by a Notice of Proposed Rulemaking because the withholding rates were changed by the Act. This document also updates the address of the Assistant Commissioner (International) to whom various forms must be sent.

*Explanation of Provisions*

The rate of withholding under section 1445(e)(1) and (2) of the Internal Revenue Code was increased from 34% to 35% by the Omnibus Budget Reconciliation Act of 1993. The existing regulations reflect the prior 34% withholding rate. These regulations reflect the increase in withholding to 35% (or the highest rate specified in section 1445(e)(1) or (2)) for dispositions occurring on or after August 10, 1993.

*Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations were submitted to the Small Business Administration for comment on their impact on small business.

*Drafting Information*

The principal author of these regulations is Gwendolyn Stanley, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

---

**Section 1445.—Withholding of Tax on Dispositions of United States Real Property Interests**

*26 CFR 1.1445-1: Withholding on dispositions of U.S. real property interests by foreign persons; in general.*

T.D. 8647

DEPARTMENT OF TREASURY  
Internal Revenue Service  
26 CFR Part 1

**Withholding of Tax on Dispositions of U.S. Real Property Interests by Foreign Persons.**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding upon certain distributions or dispositions of U.S. real property interests. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 and affect withholding agents required to withhold tax due on certain dispositions and distributions of U.S. real property interests.

DATES: These final regulations are effective January 22, 1996. These regulations are applicable to transactions occurring after August 9, 1993.

*Adoption of Amendments to the Regulations*

Accordingly, 26 CFR part 1 is amended as follows:

**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. \* \* \*

Section 1.1445-5 also issued under 26 U.S.C. 1445(e)(6).

Section 1.1445-8 also issued under 26 U.S.C. 1445(e)(6). \* \* \*

Par. 2. In section 1.1445-1, the section heading and paragraph (g)(10) are revised to read as follows:

*§1.1445-1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.*

\* \* \* \* \*

(g) \* \* \*

(10) *Address of the Assistant Commissioner International.* Any written communication directed to the Assistant Commissioner (International) is to be addressed as follows: Director, Philadelphia Service Center; 11601 Roosevelt Blvd.; Philadelphia, PA 19255; ATTN: Drop Point 543X.

Par. 3. Section 1.1445-5 is amended as follows:

1. Paragraph (c)(1)(ii) is revised.
2. The third sentence and the last sentence of paragraph (c)(1)(iii)(A) are revised.
3. Paragraph (c)(1)(iii)(B) is removed.
4. Paragraph (c)(1)(iii)(C) is redesignated as (c)(1)(iii)(B) and revised.
5. Paragraph (c)(1)(iv) is revised.
6. Paragraph (c)(3)(ii) is revised.
7. The first sentence of paragraph (d)(1) is revised.
8. The second sentence of paragraph (d)(1) is removed.

The revisions read as follows:

*§1.1445-5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.*

\* \* \* \* \*

(c)(1) \* \* \*

(ii) *Disposition by partnership.* A partnership must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real property interest. Such distributive share of the gain must be determined

pursuant to the principles of section 704 and the regulations thereunder. For the rules applicable to partnerships, interests in which are regularly traded on an established securities market, see §1.1445-8.

(iii) *Disposition by trust or estate—*  
 (A) *In general.* \* \* \* The fiduciary must withhold 35 percent (or the highest rate specified in section 1445(e)(1)) of any distribution to a foreign beneficiary that is attributable to the balance in the U.S. real property interest account on the day of the distribution. \* \* \* For rules applicable to trusts, interests in which are regularly traded on an established securities market and real estate investment trusts, see §1.1445-8.

(B) *Example.* The following example illustrates the rules of paragraph (c)(1)(iii)(A) of this section.

On January 1, 1994, A establishes a domestic trust (which has as its taxable year, the calendar year) for the benefit of B, a nonresident alien, and C, a U.S. citizen. The trust is not a trust subject to sections 671 through 679. Under the terms of the trust, the trustee, T, is given discretion to distribute income and corpus of the trust to provide for the reasonable needs of B and C. During the trust's 1994 tax year, T disposes of three parcels of vacant land located in the United States. The following chart illustrates the computation of the amount subject to withholding under section 1445 with respect to distributions made by T to B and C during 1994.

<i>Date</i>	<i>Parcel sold</i>	<i>Gains or (loss) realized</i>	<i>Distributions to C</i>	<i>Distributions to B (before withholding)</i>	<i>Section 1445 withholding 35% rate</i>	<i>U.S. real property interest account</i>
1/01/94						-0-
3/01/94	Parcel 1	140,000				140,000
3/05/94			5,000	10,000	3,500	125,000
3/15/94			10,000	5,000	1,750	110,000
5/01/94	Parcel 2	300,000				410,000
5/15/94	Parcel 3	(50,000)				360,000
12/01/94			170,000	170,000	59,500	20,000
1/01/95						-0-

(iv) *Disposition by grantor trust.* The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part I of subchapter J (sections 671 through 679) must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the gain realized from each disposition of a U.S. real property interest to the extent such gain is allocable to a portion of the trust treated

as owned by a foreign person under subpart E of part I of subchapter J.

\* \* \* \* \*

(3) \* \* \*

(ii) *Amount to be withheld.* A partnership or trust electing to withhold under this §1.1445-5(c)(3) shall withhold from each distribution to a foreign person an amount equal to 35 percent (or the highest rate specified in section

1445(e)(1)) of the amount attributable to section 1445(e)(1) transfers.

\* \* \* \* \*

(d) *Distributions of U.S. real property interests by foreign corporations—*  
 (1) *In general.* A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 35 percent (or the rate specified in section 1445(e)(2)) of the

amount of gain recognized by the corporation on the distribution. \* \* \*

\* \* \* \* \*

Par. 4. Section 1.1445-8(c)(2)(i) is revised to read as follows:

*§ 1.1445-8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITS).*

\* \* \* \* \*

(c) \* \* \*

(2) *REITS*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT, under this section shall be equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount described in paragraph (c)(2)(ii) of this section.

\* \* \* \* \*

Margaret Milner Richardson,  
*Commissioner of  
Internal Revenue.*

Approved November 28, 1995.

Leslie Samuels,  
*Assistant Secretary of  
the Treasury.*

(Filed by the Office of the Federal Register on December 20, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1995, 60 F.R. 66076)