

§ 1.1442-2 Exemption under a tax treaty.

For regulations providing for a claim of reduced withholding tax under section 1442 by certain foreign corporations pursuant to the provisions of an income tax treaty, see § 1.1441-6.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

§ 1.1442-3 Tax exempt income of a foreign tax-exempt corporation.

For regulations providing for a claim of exemption for income exempt from tax under section 501(a) of a foreign tax-exempt corporation, see § 1.1441-9. See § 1.1443-1 for withholding rules applicable to foreign private foundations and to the unrelated business income of foreign tax-exempt organizations.

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§ 1.1443-1 Foreign tax-exempt organizations.

(a) *Income includible under section 512 in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid to the organization includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441-1, 1.1441-4, and 1.1441-6 in the same manner as payments of the same amounts to any foreign person that is not a tax-exempt organization. Therefore, a foreign organization receiving amounts includible under section 512 in computing the organization's unrelated business taxable income may claim an exemption from withholding or a reduced rate of withholding with respect to that income in the same manner as a foreign person that is not a tax-exempt organization. See § 1.1441-9(b)(3) for presumption that amounts are includible under section 512 in computing the organization's unrelated business taxable income in the absence of a reliable certification.

(b) *Income subject to tax under section 4948—(1) In general.* The gross investment income (as defined in section 4940(c)(2)) of a foreign private foundation is subject to withholding under section 1443(b) at the rate of 4 percent to the extent that the income is from sources within the United States and is subject to the tax imposed by section

4948(a) and the regulations under that section. Withholding under this paragraph (b) is required irrespective of the fact that the income may be effectively connected with the conduct of a trade or business in the United States by the foreign organization. See § 1.1441-9(b)(3) for applicable presumptions that amounts are subject to tax under section 4948. The withholding imposed under this paragraph (b)(1) does not obviate a private foundation's obligation to file any return required by law with respect to such organization, such as the form that the foundation is required to file under section 6033 for the taxable year.

(2) *Reliance on a foreign organization's claim of foreign private foundation status.* For reliance by a withholding agent on a foreign organization's claim of foreign private foundation status, see § 1.1441-9 (b) and (c).

(3) *Applicable procedures.* A withholding agent withholding the 4-percent amount pursuant to paragraph (b)(1) of this section shall treat such withholding as withholding under section 1441(a) or 1442(a) for all purposes, including reporting of the payment on a Form 1042 and a Form 1042-S pursuant to § 1.1461-1 (b) and (c). Similarly, the foreign private foundation shall treat the 4-percent withholding as withholding under section 1441(a) or 1442(a), including for purposes of claims for refunds and credits.

(4) *Claim of benefits under an income tax treaty.* The withholding procedures applicable to claims of a reduced rate under an income tax treaty are governed solely by the provisions of § 1.1441-6 and not by this section.

(c) *Effective date—(1) In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of an affidavit or opinion of counsel described in § 1.1443-1(b)(4)(i) in effect prior to January 1, 2001 (see § 1.1443-1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1999) is extended until December 31, 2000. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January

1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

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

(a) *Purpose and scope of regulations.* These regulations set forth rules relating to the withholding requirements of section 1445. In general, section 1445(a) provides that any person who acquires a U.S. real property interest from a foreign person must withhold a tax of 10 percent from the amount realized by the transferor foreign person (or a lesser amount established by agreement with the Internal Revenue Service). Section 1445(e) provides special rules requiring withholding on distributions and certain other transactions by corporations, partnerships, trusts, and estates. This § 1.1445-1 provides general rules concerning the withholding requirement of sections 1445(a), as well as definitions applicable under both section 1445(a) and 1445(e). Section 1.1445-2 provides for various situations in which withholding is not required under section 1445(a). Section 1.1445-3 provides for adjustments to the amount required to be withheld by transferees under section 1445(a). Section 1.1445-4 prescribes the duties of agents in transactions subject to withholding under either section 1445(a) or 1445(e). Section 1.1445-5 provides rules concerning the withholding required under section 1445(e), while § 1.1445-6 provides for adjustments to the amount required to be withheld under section 1445(e). Finally, § 1.1445-7 provides rules concerning the treatment of a foreign corporation that has made an

election under section 897(i) to be treated as a domestic corporation.

(b) *Duty to withhold—(1) In general.* Transferees of U.S. real property interests are required to deduct and withhold a tax equal to 10 percent of the amount realized by the transferor, if the transferor is a foreign person and the disposition takes place on or after January 1, 1985. Neither the transferee's duty to withhold nor the amount required to be withheld is affected by the amount of cash to be paid by the transferee. Amounts withheld must be reported and paid over in accordance with the requirements of paragraph (c) of this section. Failures to withhold and pay over are subject to the liabilities set forth in paragraph (e) of this section. If two or more persons are joint transferees of a U.S. real property interest, each such person is subject to the obligation to withhold. That obligation is fulfilled with respect to each such person if any one of them withholds and pays over the required amount in accordance with the rules of this section. If the amount realized (as defined in paragraph (g)(5) of this section) by the transferor is zero, then no withholding is required. For example, if a real property interest is transferred as a gift (i.e., the recipient does not assume any liabilities or furnish any other consideration to the transferor) then no withholding is required. Withholding is not required with respect to dispositions that takes place before January 1, 1985, even if the first payment of consideration is made after December 31, 1984.

(2) *U.S. real property interest owned jointly by foreign and non-foreign transferors.* The amount subject to withholding under paragraph (b)(1) of this section with respect to the transfer of a U.S. real property interest owned by one or more foreign persons (as defined in § 1.897-1(k)) and one or more non-foreign persons shall be determined by allocating the amount realized from the transfer between (or among) such transferors based upon the capital contribution of each transferor with respect to the property and by aggregating the amounts allocated to any foreign person (or persons). For this purpose, a husband and wife will each