

§ 1.1445-7

26 CFR Ch. I (4-1-04 Edition)

failure to receive Form 8288-A, as provided in § 1.1445-5(b)(7)); and

(4) Amount to be refunded to the relevant taxpayer.

An application for an early refund cannot be processed unless the required copy of Form 8288-A or substantial evidence of the amount withheld in the case of a failure to receive Form 8288-A (as provided in § 1.1445-5(b)(7)) is attached to the application. If an application for a withholding certificate is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund within the time limits set forth in § 1.1445-6(a)(1).

(h) *Effective date for taxpayer identification numbers.* The requirement in paragraphs (b)(3), (f)(3)(i), and (g)(1) of this section that taxpayer identification numbers be provided (in all cases) is applicable for dispositions of U.S. real property interests occurring after November 3, 2003.

[T.D. 8113, 51 FR 46648, Dec. 24, 1986; 52 FR 3796, 3917, Feb. 6, 1987; T.D. 9082, 68 FR 46086, Aug. 5, 2003]

§ 1.1445-7 Treatment of foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation.

(a) *In general.* Pursuant to section 897(i) a foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 6039C. A foreign corporation that has made such an election shall also be treated as a domestic corporation for purposes of the withholding required under section 1445, in accordance with the provisions of this section.

(b) *Withholding under section 1445(a)—*

(1) *Dispositions by corporation.* A foreign corporation that has made an election under section 897(i) may provide a transferee with a certification of non-foreign status in connection with the corporation's disposition of a U.S. real property interest. However, in accordance with the provisions of §§ 1.1445-2(b)(2)(ii) and 1.1445-5(b)(3)(ii)(C), such an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to

§ 1.897-3(d)(4) which states that the information required by § 1.897-3 has been determined to be complete.

(2) *Dispositions of interests in corporation.* Dispositions of interests in electing foreign corporations shall be subject to the withholding requirements of section 1445(a) and the rules of §§ 1.1445-1 through 1.1445-4. Therefore, if a foreign person disposes of an interest in such a corporation, and that interest is a U.S. real property interest under the provisions of section 897 and regulations thereunder, then the transferee is required to withhold under section 1445(a).

(c) *Withholding under section 1445(e).* Because a foreign corporation that has made an election under section 897(i) is treated as a domestic corporation for purposes of determining withholding obligations under section 1445, such a corporation is not subject to the requirement of section 1445(e)(2) that a foreign corporation withhold at the corporate capital gain rate from the gain recognized upon the distribution of a U.S. real property interest. Such a corporation is subject to the provisions of section 1445(e)(3). Thus, if interests in an electing corporation constitute U.S. real property interests, then the corporation is required to withhold with respect to the non-dividend distribution of any property to an interest-holder that is a foreign person. See § 1.1445-5(e). Dividend distributions (distributions that are described in section 301) shall be treated as provided in sections 897(f), 1441 and 1442. In addition, if interests in an electing foreign corporation do not constitute U.S. real property interests, then distributions by such corporation shall be treated as provided in sections 897(f) (if applicable), 1441 and 1442.

(Approved by the Office of Management and Budget under control number 545-0902)

[T.D. 8113, 51 FR 46650, Dec. 24, 1986; 52 FR 3796, Feb. 6, 1987]

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

(a) *Entities to which this section applies.* The rules of this section apply to—