Section 1441.—Withholding of Tax on Nonresident Aliens

26 CFR 1.1441–1: Requirement for the deduction and withholding of tax on payments to foreign persons.

T.D. 8734

DEPARTMENT OF THE TREASURY
Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the withholding of income tax under sections 1441, 1442, and 1443 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related requirements governing collection, refunds, and credits of withheld amounts under sections 1461 through 1463 and sections 6402 and 6413. Additionally, this document contains final regulations relating to the statutory exemption under sections 871(h) and 881(c) for portfolio interest. This document removes temporary employment tax regulations under the Interest and Dividend Compliance Act of 1983 and amends existing regulations under sections 6041A and 6050N. This document finalizes changes to the proposed regulations contained in project number INTL–52–86 [1988–1 C.B. 892], published on February 29, 1988, under sections 6041, 6042, 6044, 6045, and 6049. This document also finalizes proposed regulations contained in project number IA–33–95 [1996–1 C.B. 772], published on December 21, 1995 , relating to the effective date of certain temporary employment tax regulations. This document finalizes related changes to the regulations under sections 163(f), 165(j), 3401, 3406, 6109, 6114, 6413, and 6724. This document removes certain regulations under income tax treaties.

EFFECTIVE DATES: These regulations are effective January 1, 1999, except the addition of §31.9999–0, the removal of §35a.9999–0T and the addition of §35a.9999–0, which are effective October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Lilo Hester or Teresa Burridge Hughes, telephone (202) 622-3840 (not a toll-free number), for questions on the regulations generally; Carl Cooper, telephone (202) 622-3840 (not a toll-free number), for questions on portfolio interest and qualified intermediary agreements; Renay France, telephone (202) 622-4940 (not a toll-free number), for questions on the regulations relating to chapter 61 of the Internal Revenue Code or section 3406.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1484. Responses to these collections of information are required to obtain a benefit (to claim an exemption to, or a reduction in, the withholding tax), and to facilitate tax compliance (to verify entitlement to an exemption or a reduced rate).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The estimate of the reporting burden in these final regulations will be reflected in the burdens of Forms W–8, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Income Tax Regulations (CFR parts 1, 31, 35a and 301) under sections 163(f), 165(j), 871, 881, 1441, 1442, 1443, 1461, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Internal Revenue Code (Code). This document also removes certain regulations under income tax treaties.

On April 15, 1996, (61 FR 17614) the IRS and Treasury published a notice of proposed rulemaking under a number of sections of the Code, dealing with the withholding of tax under section 1441, 1442, or 1443 on amounts paid to foreign persons, procedures for claiming foreign status to avoid backup withholding under section 3406 on certain payments, and the reporting to the IRS of payments to foreign persons. Reporting to the IRS may be required under sections 6011 and 1461 or under the reporting provisions of chapter 61 of the Code, such as sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, or 6050N, (the Form 1099 reporting provisions). Comments responding to the notice were received and a public hearing was held on July 24, 1996. After considering the comments submitted in writing and at the hearings, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Payments to domestic and foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under various provisions of the Code. These procedures are important to the operation of IRS matching systems. Those systems are part of a compliance program that allows the IRS to match information provided by payors with income reported on a payee's income tax return and help detect U.S. taxpayers that fail to file returns or underreport income. The withholding of tax at source and the reporting of payments to foreign persons are also important to insure that foreign persons comply with their U.S. tax obligations. The final regulations contained in this document deal mostly with payments to foreign persons, and the U.S. income tax liability resulting from such payments.

Under sections 871(a) and 881(a) of the Code, nonresident alien individuals and foreign corporations are subject to a 30-percent tax on most items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Income taxable under these provisions includes interest, dividends, royalties, compensation, other fixed or determinable annual or periodical (FDAP) income and certain gains. The tax liability imposed under sections 871(a) and 881(a) is generally collected by way of withholding at source under chapter 3 of the Code pursuant to section 1441(a) (for payments to nonresident alien individuals and foreign partnerships), section 1442(a) (for payments to foreign corporations), or section 1443(a) (for payments of certain income to foreign tax-exempt entities). Other special withholding provisions apply under section 1443(b) (dealing with the withholding of the 4-percent tax imposed under section 4948), section 1445 (dealing with gains from the disposition of U.S. real property) and section 1446 (dealing with effectively connected income of foreign partners in a partnership). The tax liability imposed under sections 871, 881, 1441, 1442, and 1443 also extends to payments to other foreign persons, including foreign trusts and estates.

The 30-percent rate is often reduced under the Code or an income tax treaty. Under current regulations, a withholding agent may generally rely on a statement furnished by, or for, the beneficial owner certifying eligibility for a reduced rate. The procedural requirements for claiming a reduced rate of withholding may vary depending upon the type of income, the status of the taxpayer, or whether an income tax treaty applies. For example, the portfolio interest exception under sections 871(h) and 881(c) for U.S. interest on an obligation in registered form is conditioned upon the beneficial owner of the interest providing a statement of foreign status to the U.S. withholding agent, which can be provided on a Form W–8. See §35a.9999–5(b), A–9. If a reduction is claimed under an income tax treaty, the withholding agent may generally rely on a Form 1001 provided by, or for, the beneficial owner claiming residence in a treaty country. For dividends, however, the current rules do not require certification of foreign status in order to obtain a reduced rate of withholding at source under an income tax treaty. Instead, the withholding agent may generally rely on the address of the payee and grant a reduced rate of withholding at source if the recipient's address is in a treaty country.

A withholding agent is generally required to file an annual income tax return on Form 1042 to report amounts upon which an amount was actually withheld under chapter 3 of the Code or would have been required to be withheld but for an exemption under the regulations, or an income tax treaty. An information return on a Form 1042–S must be attached to the Form 1042 and must report each recipient's name and address, amounts paid, and amounts withheld, if any. See §1.1461–2(b) and (c).

A payor making payments to foreign persons must also be aware of the information reporting provisions under chapter 61 of the Code and of other withholding regimes, such as section 3406 (backup withholding), section 3402 (wage withholding), and section 3405 (withholding on pensions, annuities, etc.). Payors subject to these reporting and withholding rules include both U.S. persons and foreign persons, subject to certain exceptions. Under chapter 61 of the Code, many types of payments, such as interest, dividends, royalties, broker proceeds, etc. (reportable payments) must be reported on a Form 1099 if paid to certain U.S. persons. The form is filed with the IRS and a copy is furnished to the recipient of the payment. In addition, section 3406 requires those same U.S. payees to furnish a taxpayer identifying number (TIN) to the payor, generally on a Form W–9, and, for reportable interest and dividends, a certification that the payee is not subject to notified payee underreporting. Failure to provide a TIN would generally require the payor to backup withhold on the payment at the rate of 31-percent. A payor that fails to obtain a TIN or other required information in the manner required or to backup withhold when required under section 3406 may also be liable, under section 3403, for interest and penalties, in addition to any amount that should have been withheld under section 3406.

Payments to foreign persons are exempt from Form 1099 information reporting and backup withholding. However, the exemption is generally conditioned upon the recipient furnishing a certificate supporting its foreign status. The existing regulations under the information reporting provisions of chapter 61 contain guidance to help payors determine when payments are made to a foreign person. Generally, depending upon the type of payment involved, a payor may rely on a certification of foreign status made on Form W–8, Form 1001, Form 4224, or, in the case of certain payments outside the United States, on alternative evidence of foreign status. See, for example, §35a.9999–3, A–34. Therefore, even if an amount paid to a foreign person is exempt from withholding under chapter 3 of the Code (e.g., gain from the sale of securities), a payor must nevertheless comply with specified certification procedures in order to avoid being subject to penalties for failure to comply with the information reporting and the backup withholding procedures (only amounts subject to reporting under the Form 1099 reporting provisions are subject to backup withholding under section 3406; see section 3406(b) and §31.3406(a)–1(a) and, for example, §31.3406(b)(2)–1(a)).

As explained in the preamble to the proposed regulations, the IRS and Treasury have reviewed the current withholding and reporting procedures applicable to cross-border payment flows and have concluded that changes are necessary to accommodate the size and growth of in-

ternational financial markets. The IRS and Treasury have concluded that allowing the benefit of the reduced rate at source, rather than through a refund procedure, continues to be desirable. A regime based on reduction of withholding at source avoids the administrative costs and delays that can occur when applying for a refund of overwithheld amounts. This regime, however, depends on withholding agents performing important compliance functions. They must obtain documentation substantiating claims of foreign status and of reduced rates of withholding and must provide information to the IRS.

One of the important objectives of the revisions is to eliminate unnecessary burdens that the lack of standardization and coordination of current procedures may impose on withholding agents. While it is unavoidable that different information be required for different types of income or recipients, the forms currently in use apply different standards of proof and are not uniform in the manner in which the information is furnished to withholding agents. The final regulations unify the documentation requirements and seek to facilitate compliance by clarifying uncertainties that may exist under current rules (e.g., the scope of due diligence standards imposed on withholding agents).

These regulations also address important issues relating to payments to intermediaries (e.g., nominees, agents, etc.), including whether intermediaries should certify status on behalf of beneficial owners and, if so, how. Intermediary procedures under current rules have proved difficult to implement in a number of cases. In particular, U.S. source interest on obligations in registered form do not qualify as portfolio interest under sections 871(h) and 881(c) unless the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person (see section 871(h)(2)-(B)(ii)). When the payment is made to a foreign person acting as an intermediary on behalf of the beneficial owner or of other intermediaries, the current regulations require that the beneficial owner certification be passed up through the chain of intermediaries to the U.S. withholding agent. See §35a.9999–5(b), A–9. The final regulations offer alternative procedures and respond to the concerns expressed by various representatives of the financial community regarding compliance costs.

The final regulations are also responsive to the Congressional mandate in section 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) that Treasury consider a range of options for replacing the address/self-certification method of administering income tax treaty benefits. The IRS and Treasury have studied several options for improving the withholding procedures to respond to this mandate, including a system of certification of residence in a treaty country and refund systems. At hearings held in February of 1985 on proposed regulations issued in 1984 under section 1441, comments from the public and several U.S. treaty partners made it apparent that certification requirements, as proposed, would create too many administrative problems for payments made through nominees. The final regulations reflect these comments. The procedures adopted for documenting eligibility for benefits under tax treaties are similar to those applicable to portfolio interest on obligations in registered form.

Streamlining the current procedures and implementing workable intermediary certification procedures represent a substantial simplification and reduction of burden. The IRS and Treasury expect that this, in turn, should result in greater compliance and improve the ability of withholding agents and the IRS to detect abusive claims of foreign status or of benefits under U.S. income tax treaties or under the Code.

On December 21, 1995, at 60 FR 66243, a notice of proposed rulemaking (IA–33–95) was published proposing to add §31.9999–0. This document finalizes the proposed regulations. The effective date of this addition is October 14, 1997.

Explanation of Provisions and Revisions

A. *Comments and Changes to §1.871–14 and Related Reporting Requirements Under Section 6049*

Consistent with the proposed regulations, the final regulations incorporate without substantive changes the relevant provisions from the existing temporary regulations implementing the repeal of the 30-percent tax on portfolio interest (Questions and Answers Relating to the Repeal of 30-percent Withholding by Section 127 of the Tax Reform Act of 1984 and to the Application of Information Reporting and Backup Withholding in Light of such Repeal). These provisions deal with bearer obligations, convertible obligations, and pass-through certificates. Section 1.871–14(b)(1) incorporates the provisions in §35a.9999–5(a), A–1 and the rules in §5f.103–1(c) defining a bearer obligation. It also reflects the rules in §5f.103–1(c) regarding obligations in registered form that are convertible into bearer form. At the request of commentators, the definition of an *obligation in registered form* contained in §5f.103–1(c) is restated in §1.871–14(c)(1)(i). The definition restates the rules in §35a.9999–5(c), A–18, regarding the effect of convertibility features on the status of an obligation as an obligation in bearer or registered form. Further, at the request of commentators, the provisions in §35a.9999–5(b), A–12 through 15 regarding obligations issued in registered form and targeted to foreign markets are retained without substantive changes. Comments received from U.S. agencies and instrumentalities indicate that they have relied on these procedures in the past and that they plan to do so again.

One commentator requested additional clarifications under §1.165–12(c). In response to these comments, the $1 million minimum denomination requirement under §1.165–12(c)(1)(ii) is eliminated in order to conform that provision to §1.165–12(c)(3)(iii). In addition, in §1.165–12(c), the term *United States* is replaced with the term *United States and its possessions* to coordinate the provisions with §1.163–5(c)(2)(i)(C) and (D). In §1.165–12(c)(1)(iii), a provision was added to explain that a holder delivering a bearer obligation to a financial institution or exempt organization may rely on a written statement furnished by the institution or organization. Further, although the commentator suggested adding a sentence to §1.165–12(c)(1) to clarify that each of paragraphs (i) through (iii) must be satisfied in order to avoid holder sanctions, this change is unnecessary because the need to meet all of the requirements in each of these clauses is sufficiently clear. The commentator proposed various

changes to the rules governing the foreign targeting of bearer obligations on original issuance. However, the final regulations do not address these changes which are outside the scope of this project.

The proposed regulations regarding the certification requirements for obligations in registered form are finalized without substantive changes. As in the proposed regulations, a TIN is not required to be stated on a Form W–8 used to claim the benefit of the portfolio interest exemption, regardless of whether the debt obligation is publicly traded.

Several commentators have asked that, in the case of portfolio interest on obligations in registered form, the provisions dealing with late-received documentation be conformed to similar provisions under proposed §1.1441–1(f)(5). Under proposed §§1.871–14(c)(3) and 1.1441–1(f)(5), the failure to timely receive appropriate documentation (i.e., in most cases, a Form W–8) may be cured by obtaining the documentation later. Under the proposed regulations, the cure procedures apply for purposes of withholding under section 1441 and for purposes of meeting the requirement under sections 871(h) and 881(d) that the U.S. withholding agent receive a statement. However, proposed §1.871–14(c)(3) requires that the documentation be received before the expiration of the limitations period of the *beneficial owner*. In contrast, proposed §1.1441–1(f)(5) requires that the documentation be received before the expiration of the limitations period of the *withholding agent*. Commentators have asked that the relevant limitations period for qualifying interest as portfolio interest under sections 871(h) and 881(d) be that of the withholding agent and not of the beneficial owner. This comment is not adopted because of the special conditions for interest to qualify as portfolio interest. Under section 871(h)(2)(B)(ii), interest on an obligation in registered form is portfolio interest only if the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person. The legislative history to the amended provisions (see section 1810(d)(3)(B) of the Tax Reform Act of 1986 (Public Law 99–514)) specifies that the statement may be received late, but no later than the expiration of the beneficial owner's statute of limitation. This indicates that, if the required statement is received after the beneficial owner's statute of limitation has expired, the interest can no longer qualify as portfolio interest. Although the withholding agent is permitted to receive documentation at any time within its own limitations period and establish an applicable reduction in the withholding rate after the fact (e.g., under an income tax treaty), such cure procedure is not effective to confer portfolio interest status to the interest if it occurs after the beneficial owner's statute of limitations has expired. A cross-reference to §1.1441–1(b)(7) (i.e., proposed §1.1441–1(f)(5) as renumbered under the final regulations) is included in §1.871–14(c)(3) to clarify the difference between the two cure procedures.

B. *Comments and Changes to §1.1441–1*

1. Coordination With Other Withholding and Information Reporting Provisions

Commentators noted that withholding and information reporting requirements applicable to payments to foreign persons are governed by a complex web of statutory provisions and that the relationship of these provisions among themselves may be difficult to understand. In response to these comments, a number of changes have been made to help payors and their advisers locate relevant guidance.

As suggested, the table of contents in §1.1441–0 has been expanded. Section 1.1441–1(b)(4) and (5) has been added to provide an overview of how the withholding and reporting procedures under chapter 3 of the Code relate to the information reporting provisions under chapter 61 of the Code and other withholding regimes under sections 3402 (wage withholding), 3405 (withholding on pensions, annuities, etc.), and 3406 (backup withholding). Provisions explaining the interaction of applicable withholding and reporting provisions in the case of payments to foreign intermediaries or foreign partnerships have been added also. See explanation of those rules, under the heading "Clarification of Reporting and Withholding Obligations for Payments to and by Foreign Intermediaries" of this preamble. Where appropriate, additional cross references to chapter 61 and to sections 3402, 3405, and 3406 have been added in §1.1441–1 and cross-references in regulations under sections 3402, 3405 and 3406 have also been added.

As a general matter, a withholding agent (whether U.S. or foreign) must ascertain whether the payee is a U.S. or a foreign person. If the payee is a U.S. person, the withholding provisions under chapter 3 of the Code do not apply; however, information reporting under chapter 61 of the Code may apply; further, if a TIN is not furnished in the manner required under section 3406, backup withholding may also apply. If the payee is a foreign person, however, the withholding provisions under chapter 3 of the Code apply instead. To the extent withholding is required under chapter 3 of the Code, or is excused based on documentation that must be provided, none of the information reporting provisions under chapter 61 of the Code apply, nor do the provisions under section 3406. If, however, withholding under chapter 3 of the Code does not apply irrespective of documentation (e.g., in the case of foreign source income or gross proceeds dealt with under section 6045), documentation may nevertheless have to be furnished to the withholding agent under the provisions of chapter 61 of the Code in order to be excused from Form 1099 information reporting and, possibly, from backup withholding under section 3406. Determinations of payee's status are generally made at each level of the chain of payment, until, ultimately, the payment is made to the beneficial owner. The following example illustrates how these rules interact under the final regulations.

For example, assume that a U.S. bank acting as a paying agent of a U.S. issuer of an obligation pays interest to a U.S. brokerage firm. Chapter 3 withholding does not apply to that payment because the payee is a U.S. person. Form 1099 information reporting under section 6049 is not required because the brokerage firm is an exempt recipient (i.e., a securities dealer), meaning that it is exempt from having the payment reported on a Form 1099. See §1.6049–4(c)(1)(i). The U.S. brokerage firm may or may not have to provide a Form W–9 to the U.S. bank to establish its exempt recipient status depending on whether it meets one of the "eyeball" tests under §1.6049–4(c)(1)(ii). Assume further that the U.S. brokerage

firm credits the interest to the account of a customer. If the brokerage firm does not hold a Form W–9 (or a Form W–8) and cannot otherwise ascertain the exempt recipient status of the customer under §1.6049–4(c)(1)(ii), it is required to backup withhold 31-percent under section 3406. See §31.3406(a)–1(b). If it determines that the customer is a U.S. person (e.g., the firm holds a Form W–9 for the customer), then chapter 3 does not govern the payment. Instead, the payment is governed by sections 3406 and 6049. If, however, the U.S. brokerage firm determines that the customer is a foreign person (e.g., it holds a valid Form W–8), then chapter 3 governs the payment and the payment is not reportable for purposes of section 6049, meaning that it is also not subject to backup withholding under section 3406. Thus, Form 1042 reporting and withholding at a 30-percent rate are required unless the income is exempt under the Code or an income tax treaty. For example, if the interest is of a kind that may qualify as portfolio interest, then withholding is excused if the brokerage firm holds a valid Form W–8 from the customer (but would still be reportable on Form 1042–S).

If the payment to the customer is an amount exempt from withholding under chapter 3 of the Code without the need to furnish documentation (e.g., foreign source interest income), documentation may nevertheless be required for purposes of chapter 61 of the Code. In this example, the U.S. brokerage firm must report the payment of foreign source interest on a Form 1099 unless the customer is an exempt recipient or is a foreign person. If the customer's status as an exempt recipient cannot be ascertained on an "eyeball" basis under §1.6049–4(c)(1)(ii), the brokerage firm must obtain a Form W–9 or a Form W–8 from the customer. If the documentation that the brokerage firm receives reliably indicates an exempt recipient or foreign status, no information reporting or withholding is required. If documentation is not obtained or is not reliable, Form 1099 information reporting is required under section 6049 and backup withholding is required under section 3406.

Assume, however, that the customer is not the beneficial owner of the payment of U.S. and foreign source interest income. Instead, it is a foreign bank acting on behalf of the beneficial owner. With respect to the payment that is U.S. source interest, the brokerage firm would be permitted to pay the interest free of withholding (assuming it would qualify as portfolio interest if appropriate documentation were received) if it held a Form W–8 (or alternative documentary evidence) from the ultimate beneficial owner that is transmitted by the foreign bank or if it held a Form W–8 from the foreign bank as a qualified intermediary who, under the final regulations, is permitted to certify on behalf of its own customer. See §1.1441–1(e)(5). In either case, the brokerage firm must report the payment on a Form 1042 and must also make an information return on Form 1042–S. The Form 1042–S must state the name of the beneficial owner as shown on the Form W–8 (or alternative documentary evidence) or the name of the foreign bank if the bank is a qualified intermediary.

Continuing with the same example, the foreign bank also has obligations under sections 1441, 6049, and 3406 when it, in turn, makes a payment to its own customer. However, to the extent it received a valid Form W–8 (or alternative documentary evidence) from the beneficial owner and furnished a copy to the U.S. brokerage firm (or complied with the documentation requirements as a qualified intermediary), it would meet its obligation under applicable withholding and reporting provisions and, accordingly, would be exempt from withholding any amount from the payment and from reporting the payment. See §§1.1441–1(b)(6) and 1.6049–5(b)(14).

With respect to the foreign source interest paid to the foreign bank acting as an intermediary, the only requirement imposed on the U.S. brokerage firm is to obtain the Form W–8 of the foreign bank (and not of the beneficial owner). Because the exemption sought by the foreign bank is an exemption from Form 1099 information reporting and backup withholding, the foreign bank may do so by establishing its foreign status with a Form W–8 or by establishing its status as an exempt recipient. Under the final regulations, a foreign bank's status as an exempt recipient can be established on an "eyeball" test basis if the bank's name reasonably indicates that it is a bank. However, as is the case for U.S. income subject to chapter 3 withholding, the foreign bank, acting as an agent for its own customer, may be required to report the foreign source payment under section 6049 and to backup withhold under 3406 when it, in turn, pays the amount to its customer if the foreign bank is a U.S. payor (e.g., it is a controlled foreign corporation). If it is not a U.S. payor or a U.S. middleman, it has no withholding or reporting obligations under chapter 3 of the Code due to the nature of the payment (i.e., foreign source income), unless it makes the payment in the United States. If the foreign bank makes a payment to its customer in the United States, then the payment is reportable under section 6049 and the bank must obtain a Form W–8 or a Form W–9 from its customer, unless the exempt status of the customer can be established on an "eyeball" basis. If the customer is a U.S. person who is not an exempt recipient, the bank must report the payment on a Form 1099 and, if the customer has not provided a Form W–9 as required under section 3406, backup withholding is required. The provisions of §1.6049–5(b)(14) do not apply to exempt the foreign bank from its reporting and withholding obligations because it has not provided the required documentation to the U.S. withholding agent or certified on behalf of the beneficial owner.

These examples are illustrative only. Different rules may apply depending upon a number of factors, the most significant being the nature of the payment (FDAP or not FDAP, U.S. source or foreign source), the status of the payor (U.S. or foreign), the status of the payee (U.S. or foreign, beneficial owner or intermediary), where the payment is made (in the U.S. or outside the U.S.), and where the account is held (on-shore or offshore).

2. U.S. Agent of Foreign Person

Under the proposed regulations, a payment to a U.S. person gives rise to withholding liability if the payor has actual knowledge that the U.S. person is acting as an agent for a foreign person. Commentators suggested that the withholding liability should be imposed on the last U.S. person who makes the payment to a foreign person. At a minimum, commentators asked that the final regulations limit the obligation to withhold to situations

where the withholding would seem jeopardized. This comment is accepted. Under the final regulations, a U.S. person making a payment to a U.S. financial institution is not required to withhold even if it knows that the payee is collecting the payment for a foreign person, if the U.S. person has no reason to believe that the financial institution will not comply with its obligation to withhold when it makes the payment to the foreign person. See §1.1441–1(b)(2)(ii).

3. Payments to Wholly-owned Entities

The final regulations under §1.1441–1(b)(2)(iii) provide guidance on applicable withholding procedures for payments to a domestic or foreign wholly-owned entity that is disregarded for federal tax purposes (i.e., treated as a branch of its single owner) under §301.7701–1(c)(2). As a general rule, a payment to a disregarded wholly-owned entity is treated as a payment to its owner. Thus, for example, if a foreign person owns a domestic disregarded entity, a person making a payment to the disregarded entity is treated as the withholding agent because the owner is a foreign person. However, because the fact that the entity is disregarded for tax purposes generally may not be apparent to a person making a payment to the entity, the person making the payment can rely on documentation received from the recipient to determine its withholding and reporting obligations. Thus, if the person receives a Form W–9 from the entity representing that the recipient is a domestic corporation, the person may rely on the form to treat the entity as a U.S. person unless it has actual knowledge or reason to know that the representation is incorrect. If the entity is a wholly-owned entity disregarded for federal tax purposes, then it must furnish documentation representing the status of its owner. For example, if the disregarded domestic entity is owned by a foreign person, it must furnish a Form W–8 from its single owner. In that case, a person making a payment to the entity may rely on the Form W–8 that the entity provides for its foreign owner and comply with withholding and reporting requirements accordingly. A domestic disregarded entity that does not furnish a certificate is subject to Form 1099 information reporting on payments that are reportable and subject to backup withholding under section 3406 because, lacking the words "inc.", "incorporated", "corp." or "corporation" in its name, it could not be treated as an exempt recipient on an "eyeball" basis. If the entity had one of these words in its name, it would be a per se corporation for U.S. tax purposes because any of these words would indicate that the entity is organized under a corporate statute; thus, it could not be a disregarded entity. The TIN to be stated on the Form W–9 or the Form W–8, if required, is that of the single owner and not that of the disregarded entity.

Different documentation procedures apply if the benefit of a reduced rate is claimed under an income tax treaty and the entity is not treated as fiscally transparent in the applicable treaty jurisdiction. See §§1.1441–6(b)(4) and 1.894–1T(d).

4. Payments to U.S. Branches of Foreign Institutions

Commentators also suggested that a payment to a U.S. branch of a foreign bank or other financial institution should not be subject to withholding. Instead, the U.S. branch should be responsible for withholding when it makes the payment to the foreign person. In addition, commentators have asked that the regulations eliminate the requirement for a U.S. branch to furnish a certificate representing that the payment it receives is effectively connected with the conduct of a U.S. trade or business. In response to these comments, the rules governing payments to the U.S. branch of certain foreign financial institutions have been modified to alleviate the certification burden for those U.S. branches that operate in a manner equivalent to U.S. companies.

Therefore, §1.1441–4(a)(2)(ii) of the final regulations provides that a payment to a U.S. branch of either a foreign financial institution that is registered with the Federal Reserve Board or of a foreign insurance company that is required to file an annual "NAIC" statement with a State Insurance Commissioner is presumed to be a payment of effectively connected income for withholding purposes. Section 1.1441–1(b)(2)(iv) has been added to provide that a U.S. branch may rebut this presumption by furnishing a Form W–8 to the withholding agent certifying that the payment that it receives is not effectively connected with its conduct of a U.S. trade or business. For a description of the form that a U.S. branch must furnish, see §1.1441–1(e)(3)(v). Under the final regulations, the U.S. branch that furnishes a Form W–8 may agree with the withholding agent to assume responsibility for all withholding and reporting obligations for the payments it receives from the withholding agent. In the absence of such an agreement, the withholding agent remains responsible for the withholding and reporting obligations associated with the payment. This means, for example, that, if the U.S. branch receives the payment on behalf of its home office and the home office is covered by a qualified intermediary agreement that the IRS has concluded with the foreign financial institution, the U.S. branch must give to the withholding agent the home office's Form W–8. If the branch receives the payment for its own customers, it must give to the withholding agent all of the required certificates for its customers.

Similar withholding procedures are available to other U.S. branches to the extent permitted by the district director or the Assistant Commissioner (International). Procedures for obtaining such permission existed under prior regulations under §1.1441–4(f). These provisions are restated in §1.1441–1(b)(2)(iv)(E) of the final regulations.

The final regulations do not eliminate the requirement to report on a Form 1042 or 1042–S payments to these branches, including payments for which the branch has assumed withholding and reporting responsibility. In such a case, however, the reporting is made to the branch as recipient of the amount for which it has assumed withholding responsibility rather than to the beneficial owner. See §1.1461–1(b)(2)(vi) and (c)(4)(v). Although commentators asked that these reporting requirements be eliminated for payments of effectively connected income, the IRS and Treasury believe that the reporting serves an important compliance function.

5. Beneficial Owner

The definition of the term *beneficial owner* is clarified to indicate that ownership is determined on the basis of existing principles governing the determination of tax ownership, including substance-over-

form principles, such as those reflected in section 7701(l) dealing with conduit transactions. The special definition of beneficial owner in proposed §1.1441–1(c)(6)(ii)(B) for purposes of tax treaties has been eliminated. See the explanation below under §1.1441–6 for claims of tax treaty-reduced rates for payments to entities that are treated as fiscally transparent in the U.S. or in the applicable treaty jurisdiction, or both.

6. Forms

a. Format and Design

Many comments were received regarding the format and design of the revised Form W–8. In particular, several commentators suggested that the IRS retain separate forms for effectively connected income and payments to foreign governments. The IRS is considering these comments and agrees that it may be more convenient to keep certain forms separate from the basic beneficial owner Form W–8. The revised forms will be released for public comments before they are finalized.

b. Content of Forms

The final regulations are modified in several respects regarding the Form W–8. A Form W–8 furnished by the beneficial owner is generally payee-specific and applies to all income received from the withholding agent to whom furnished, except to the extent provided in forms and instructions (e.g., effectively connected income). See §1.1441–1(e)(2)(i). Entitlement to different types of reduced rates may require different types of information or representations on a Form W–8. For example, entitlement to exemption from withholding on portfolio interest requires only proof of foreign status. Claims of treaty benefits may require a certified TIN (that is, a TIN that the IRS has certified as belonging to a person who is a resident of a country with which the U.S. has an income tax treaty in effect; see §1.1441–6(c) for procedures to have a TIN certified by the IRS). A withholding agent is responsible for making sure that the information or representations relevant to a particular type of income or applicable rate appear on the form and for requesting a new form where an existing form fails to support a claim of reduced rate for a different type of income. For example, a beneficial owner who furnishes a Form W–8 for portfolio interest (and therefore, does not complete the information on the form relating to claims of treaty benefits) would be required to furnish a new form to the withholding agent if it receives from the same withholding agent other income for which it claims a reduced rate of withholding under a tax treaty. The new form could serve both for portfolio interest and the other income for which treaty benefits are claimed.

In response to comments, the final regulations clarify that, where a person, other than an individual, does not have a tax residence in any country, the required permanent residence address is the address of the person's principal office, even though the principal office is not in its country of incorporation (as was required in the proposed regulations). Because of this change, the final regulations require that the entity's country of organization or incorporation be stated on the form. See §1.1441–1(e)(2)(ii).

c. Signature of Forms under Power of Attorney

Some commentators have asked that custodians be permitted to execute the Form W–8 on behalf of their customers, based upon a power of attorney. This suggestion is not adopted. Like a tax return, a Form W–8 must be signed under penalties of perjury. As such, the IRS and Treasury view the signature of a Form W–8 as governed by the same rules that govern the signature of a tax return. Therefore, the final regulations clarify in §1.1441–1(e)(4)(i) that a withholding certificate may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person issuing the certificate as provided under section 6061 (for individuals), 6062 (for corporations), or 6063 (for partnerships).

d. Facsimile and Electronic Transmission

Commentators have asked that withholding agents be allowed to rely on a faxed copy or electronically transmitted Form W–8 as if they were original forms. The proposed regulations permit a faxed Form W–8 to indicate foreign status for purposes of the grace period under proposed §1.1441–1(f)(2)(i)(B), but do not allow it to be used for other purposes. The question of whether and to what extent a faxed certificate ought to be allowed instead of an original certificate arises because, under current law, a faxed document (like a photocopy) has weaker evidentiary value than an original document. This question is not unique to the Form W–8 and is currently under study by the IRS. Pending completion of the study, the final regulations allow a withholding agent to rely on a faxed form only for purposes of presuming foreign status in order to reduce the rate of withholding during a 90-day grace period. However, an original form must be provided before the grace period expires.

On the other hand, the proposed regulations provide general authority for the electronic transmission of Forms W–8, subject to procedures issued by the IRS. The final regulations retain this rule and, regulations issued together with these final regulation propose to amend §1.1441–1(e)(4)(iv) of the final regulations by prescribing the standards that electronic systems must meet in order to effect an acceptable transmission of Forms W–8. The IRS believes that the evidentiary value of documents transmitted with electronic systems meeting these standards would equate with that of an original document. See project REG–107872–97, published elsewhere in this issue of the **Federal Register.** The option to use electronic transmission systems should help alleviate the burden of having to mail original Forms W–8 in paper form.

e. Single Form for Related Withholding Agents

Commentators have asked that several withholding agents be allowed to rely on a single Form W–8. In response to this comment, a number of changes were made to the final regulations. First, under §1.1441–1(e)(4)(ix)(A), a withholding agent may rely on the Form W–8 furnished for another account at the same branch location, at a different branch location of the same entity, or at a different branch location of a related person if the entity or group of entities uses a universal account system or uses another type of coordinated account information system that allows the withholding agent to easily access information regarding the nature of the certificate furnished, the information

on the certificate, and its validity status. In addition, the system must allow the withholding agent to keep a record of how and when it accesses the information and, if applicable, of how and when it communicates relevant facts affecting the reliability of the certificate to the location where the certificate is kept. Second, the rule in proposed §1.1441–1(e)(2)(i) allowing the beneficial owner to provide a single Form W–8 with respect to a family of mutual funds is extended to investors in affiliated partnerships and corporations under §1.1441–1(e)(4)(ix)(B) of the final regulations. Further, the final regulations also adopt a suggestion that a withholding agent be able to rely on representations from a broker that it holds a valid withholding certificate from a beneficial owner. See §1.1441–1(e)(4)(ix)(C). The final regulations clarify that a withholding agent has knowledge of all information in the system. See §1.1441–7(b)(3).

f. Forms from Foreign Partnerships

In response to comments, the provisions under proposed §1.1441–1(e)(3)(iii) dealing with withholding certificates furnished by a foreign partnership have been moved to §1.1441–5(c), which contains most of the withholding provisions governing payments to foreign partnerships (see explanation of the changes under §1.1441–5).

g. Forms from Non-Qualified Intermediaries

In response to comments, provisions have been added to clarify the manner in which a non-QI must transmit documentation to the withholding agent and the information that it must contain. Proposed §1.1441–1(e)(3)(iv) (renumbered as §1.1441–1(e)(3)(iii) in the final regulations) is expanded to explain the manner in which withholding certificates or other appropriate documentation is passed up a chain of non-QIs. The final regulations allow the intermediary to furnish copies of an original Form W–8 so as to avoid requesting multiple originals for different accounts that the intermediary may hold on behalf of the same beneficial owner. See §1.1441–1(e)(3)(iii).

Also, proposed §1.1441–1(e)(3)(iv)(C) and (D) (renumbered as §1.1441–1(e)-(3)(iii)(C) and (D) in the final regulations) has been modified and paragraph (e)(3)-(iv) has been added in response to comments that the regulations should explain the information required from a non-qualified intermediary to insure proper withholding by a withholding agent making a payment to a non-qualified intermediary. In particular, if different withholding rates apply to different owners of the payment flowing through an intermediary, the withholding agent must know which rate applies to each portion of the payment. Where such information is necessary, the final regulations provide that the intermediary must, in a statement attached to the withholding certificate from the non-qualified intermediary, provide (and update as often as is necessary) sufficient information for the withholding agent or payor to determine the proportion of each payment subject to withholding that is attributable to each person to whom the intermediary certificate relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. Such statement is not necessary, however, if the allocation information is known to the withholding agent due to the account structure that it uses (for example, the withholding agent uses separate accounts for different categories of income and applicable withholding rates).

h. Validity Period

Comments were received under §1.1441–1(e)(4)(ii) regarding the period of validity of a properly executed Form W–8. Commentators requested that, irrespective of whether a Form W–8 includes a TIN, all forms should be valid indefinitely, or at least those furnished for a claim of effectively connected income. Some commentators suggested that a Form W–8 should not expire where a payor continues to send all correspondence to a mailing address that is also the permanent address on a Form W–8. These suggestions are not adopted because the IRS and Treasury believe that it is important for taxpayers to re-certify status periodically. Similar re-certification is also important for effectively connected income, since income may cease to be effectively connected due to a change in the taxpayer's business structure, without the withholding agent becoming aware of such changes. However, the final regulations provide relief by presuming that payments made to certain U.S. branches are effectively connected income, thereby avoiding the need to provide a certificate in such a case. See §1.1441–4(a)(2)(ii).

Also, §1.1441–1(e)(4)(ii)(B) is modified to make all intermediary certificates and certificates for non-withholding foreign partnerships valid indefinitely. (The indefinite validity period does not apply to the withholding certificates or documentary evidence required to be attached to a certificate from a non-qualified intermediary, a U.S. branch of a foreign institution, or a foreign non-withholding partnership.) In addition, Forms W–8 furnished by an integral part of a foreign government, a foreign central bank of issue, or the Bank for International Settlements are valid indefinitely. For these certificates, the information required is likely to change only infrequently. What may change more frequently is the withholding rate information that an intermediary or foreign partnership may have to furnish to a withholding agent on a separate statement, which the intermediary or partnership must update as often as is necessary to insure that the withholding agent withholds at the proper rates. See §1.1441–1(e)(3)(iv) and (5)(v) for a description of the statement and §1.1441–1(e)(4)(ii)(D) for related validity rules.

i. Effect of Changes in Circumstances

Proposed §1.1441–1(e)(4)(ii)(D), dealing with changes in circumstances affecting the validity of a Form W–8, is revised to clarify the due diligence imposed on a non-qualified intermediary who becomes aware of a change in the circumstances affecting the validity of a withholding certificate that it has received and transmitted to the U.S. withholding agent or another intermediary. The final regulations provide that, in such a case, the non-qualified intermediary must inform the person to whom it provided the affected withholding certificate (i.e., the U.S. withholding agent or the other intermediary). It must also obtain a new withholding certificate or other documentation to replace the certificate or documentation that is no longer valid due to changes in circumstances. The same rules apply to foreign partnerships that are not withholding foreign partnerships and to a U.S. branch that passes through documentation to a U.S. withholding agent.

The final regulations also clarify that a withholding agent does not have a duty to inquire into possible changes of circumstances. In other words, a withholding agent may assume that circumstances have not changed unless it knows of facts suggesting that changes in circumstances have occurred that may affect the validity of documentation. Changes in circumstances relevant to the information and certification provided on a withholding certificate, a statement, or in documentary evidence affect the validity of the certificate, statement, or documentary evidence as of the date that the withholding agent has actual knowledge or reason to know of the changes. The final regulations are revised to clarify that point and give withholding agents the same 90-day period as is given for a new account for perfecting documentation (i.e., inquire into the change of circumstances and obtain a new certificate, if necessary). See §§1.1441–1(b)(3)(iv) and 1.6049-5(d)(2)(ii).

j. Acceptable Substitute Form

In addition, proposed §1.1441–1(e)-(4)(vi) is modified in response to comments that asked that the meaning of the cross-reference to §31.3406(h)-3(c)(1) defining an *acceptable substitute* form be clarified. The revised provisions enumerate the type of information and certifications that must appear on any substitute form for purposes of the regulations under chapter 3 of the Code. The rules are similar to the rules contained in §31.3406(h)–3(c)(1). Under the final regulations, a withholding agent must provide a copy of the instructions to the recipient only to the extent specified in the form and in the instructions to the official form. As is the case for the Form W–9, the IRS expects that the form instructions will waive the obligation to furnish the official Form W–8 instructions to customers. Further, withholding agents are also authorized to develop customized substitute Forms W–8 and incorporate them as part of account opening documents.

k. Guidance Regarding Reliance on Withholding Certificates

Several commentators asked for clearer guidance on the extent to which withholding agents may rely on forms and the extent of their duty to inquire into the truthfulness of information stated on forms. In response to these comments, the final regulations contain a number of clarifications. Section 1.1441–1(e)(4)(viii) has been added to provide that a withholding agent may rely on a foreign entity's certification of corporate (or other) status on a Form W–8. In the case of a withholding certificate by or for a foreign entity whose name is on the list of per se foreign corporations described in §301.7701–2(b)(8)(i) that claims to be a partnership, the certificate must represent that the entity's partnership status was grandfathered under the regulations and has not been terminated. Further, a withholding agent that receives a beneficial owner certificate from a foreign financial institution may rely on such certificate to treat the institution as the beneficial owner unless it has information in its records that would indicate otherwise, or unless the certificate contains information that would contradict such claim (e.g., sub-account numbers or names). If a foreign intermediary receives payments both in its capacity as an intermediary and for its own account, it must furnish two certificates in order to allow the withholding agent to apply the proper withholding rate and report the amounts accordingly. Additional reliance guidance has been added regarding claims of benefits under a tax treaty (see explanation under §1.1441–6, below). Further, the provisions dealing with a withholding agent's due diligence are also expanded and clarified (see explanation under §1.1441–7, below).

7. Non-qualified Intermediaries

Some commentators requested that the regulations eliminate the requirement that non-qualified intermediaries (non-QIs) pass through Forms W–8 to the U.S. withholding agent because investors and intermediaries will not disclose customer information to third parties. In particular, some commentators recommended that the regulations eliminate any reference to the intermediary procedures currently applicable under §35a.9999–5(b), A–9, dealing with certification required in order for interest to qualify as portfolio interest. These suggestions are not adopted. The qualified intermediary regime is designed to provide these benefits, but only where the intermediary follows procedures to insure adequate withholding compliance. In addition, as explained in the preamble to the proposed regulations, the intermediary procedures provided in §35a.9999–5(b), A–9 are retained because, if the qualified intermediary regime does not apply to the intermediary, these procedures may be useful.

The final regulations also do not adopt a suggestion that, for income for which no TIN needs to be provided, the intermediary only reports the aggregate amount on Form 1042 without having to report individual amounts for each beneficial owner on a Form 1042–S. Commentators have suggested that a financial institution acting as an intermediary should be required to indicate only the proportion of a payment subject to withholding and the applicable rate. Should the proportion change, the certificate furnished by the intermediary would have to be modified to reflect the change in circumstances. This suggestion is not adopted because permission to report aggregate amounts is limited to payments made to qualified intermediaries. In the case of a qualified intermediary, the IRS may rely on audit procedures in the qualified intermediary agreement described in §1.1441–1(e)(5)(iii) to determine whether the intermediary has properly advised the U.S. withholding agent regarding each portion of a payment to which different withholding rates should apply. The IRS' ability to check the representations made by a non-QI is limited, particularly if the non-QI is not owned by U.S. persons. In that case, it must rely on reconciling the amounts paid as reported on Forms 1042–S, disclosure of the identity of beneficial owners (or further intermediaries), and exchanges of information under tax treaties. In that context, disclosure of the exact amounts allocated to each beneficial owner (or further intermediary) is important to the compliance regime applicable to non-QIs.

8. Qualified Intermediaries

a. Scope of Qualified Intermediary Provisions

Under the proposed regulations, a withholding agent may rely on the certification of a foreign person made on behalf of others to reduce the rate of withholding. If the foreign person has a qualified intermediary agreement with the IRS, the intermediary may certify without having to furnish the certificates or other documen-

tation of the persons for whom it acts. Many comments were received regarding the proposal, which are discussed below.

In response to comments, the final regulations are modified to allow a foreign branch of a U.S. financial institution to be a qualified intermediary (QI) in the same manner as a foreign financial institution. However, U.S. branches of U.S. or foreign financial institutions are not permitted to obtain QI status. Such difference in treatment conforms to the distinction in the final regulations between accounts maintained outside the United States and accounts maintained on-shore. See §1.1441–1(e)(5)(ii)(A) and (B). This distinction is appropriate because it reflects the policy that the Form W–8 (signed under penalties of perjury) is the preferred means of establishing foreign status for transactions in the United States. On the other hand, documentary evidence provides appropriate evidence of foreign status for transactions outside the United States, especially in those countries where financial institutions must document the identity of customers opening new accounts or for whom they process certain transactions.

At the request of commentators, the definition of a clearing organization for purposes of §1.1441–1(e)(5)(ii)(A) is revised so that clearing organizations that, as members of other clearing organizations, do not hold physical securities, are nevertheless considered to hold obligations for members and, therefore, qualify for QI status. Further, the final regulations allow QI status for foreign corporations that receive U.S. income for which the benefit of a reduced rate is claimed under an income tax treaty by their shareholders (because the shareholders derive the income as residents of an applicable treaty jurisdiction within the meaning of §1.894–1T(d)(1)). By allowing these corporate entities to be QIs, the regulations intend to facilitate the processing of treaty benefits claims by reverse hybrid entities with large shareholdings. See discussion under §1.1441–6, below. Also at the request of commentators, a transition rule is added to §1.1441–1(e)(5)(i) whereby institutions that are otherwise eligible for QI status and that satisfy certain criteria (as will be published by the IRS) are permitted to act as QIs while awaiting confirmation of their QI status.

Commentators were divided on whether the regulations should allow a QI to assume primary withholding responsibility as proposed in §1.1441–1(e)(5)(iv). In view of these comments, the final regulations retain the provisions that permit the shifting of primary responsibility for withholding and reporting under chapter 3 of the Code. However, because of IRS concerns regarding compliance and comments received from foreign institutions, the final regulations provide that the responsibility for Form 1099 information reporting and related backup withholding under section 3406 may not be assigned to a QI, unless the QI is a foreign branch of a U.S. bank or another U.S. person or establishes that the obligations related to information reporting and backup withholding can adequately be carried out by a U.S. branch of the QI (even though the branch itself cannot be a QI). Some commentators suggested that, if a QI is allowed to assume primary withholding responsibility, it should be allowed to do so only for all the payments that it receives from a payor with respect to a particular account. Permitting a QI to assume withholding responsibility with respect to some but not all payments to an account would make it difficult for payors to determine the correct amount of withholding on payments to a single account. This comment has been adopted and the final regulations are modified accordingly to provide that if a QI assumes primary withholding responsibility for an account, it must do so for all payments to the account. The decision to assume or not assume withholding responsibility may be made on an account-by-account basis. See §1.1441–1(e)(5)(iv).

As is the case for non-QIs, the regulations describe in greater detail the information that must be provided by a QI in order for the withholding agent or payor to comply with applicable reporting and withholding obligations. Section 1.1441–1(e)(3)(ii)(C) requires an allocation statement to be attached to the intermediary withholding certificate, if necessary to provide sufficient information to allow the withholding agent to determine the applicable withholding rate or rates on payments to the QI. Such a statement may not be necessary if the withholding agent allocates the assets among separate accounts for each type of income and applicable withholding rates, as directed by the intermediary at the time that the assets are acquired. The assets with respect to which payments of reportable amounts are received must be allocated to one of the three categories described below. If the withholding agent maintains a system of separate accounts to keep track of different withholding rates for different classes of income or payees, it would maintain at least three separate accounts corresponding to the three categories of assets. For this purpose, a reportable amount is defined in §1.1441–1(e)(3)(vi) as income subject to withholding under chapter 3 of the Code. For reasons explained under the heading "U.S. Source Bank Deposit Interest and Short-term OID" of this preamble, U.S. bank deposit interest and U.S. short-term OID amounts are also included in the definition of reportable amount. However, reportable amounts do not otherwise include amounts that are not subject to chapter 3 withholding (e.g., foreign source income, broker proceeds).

The three categories of assets are described in §1.1441–1(e)(5)(v). They are (1) assets related to documented non-U.S. payees; (2) assets related to documented U.S. payees (whether or not exempt recipients); and (3) assets related to undocumented payees (i.e., payees for whom the QI holds no documentation or holds documentation that is unreliable). Reportable amounts paid with respect to assets in category 1 (documented non-U.S. payees) may benefit from a reduced rate of withholding under the Code (e.g., portfolio interest) or under a treaty (i.e., to the extent the QI further indicates subcategories of assets associated with different withholding rates under an applicable treaty).

Reportable amounts paid with respect to category 2 (documented U.S. payees) are not subject to withholding or reporting under chapter 3 of the Code. However, the payor must report the payment on a Form 1099 by treating the payment of a reportable amount as made directly to any U.S. person for whom it receives a Form W–9 to the extent the U.S. person is not an exempt recipient. The final regulations clarify that a QI must agree to disclose the identity of these U.S. persons, regardless of local secrecy laws. The identity of U.S. payees that are exempt recipients under an applicable provision of the regu-

lations under chapter 61 of the Code need not be disclosed to the withholding agent. If a Form W–9 furnished by the QI to the payor on behalf of a U.S. payee that is not an exempt recipient is not reliable (e.g., missing information or obviously incorrect TIN), the U.S. payor must backup withhold under section 3406.

Reportable amounts paid with respect to assets in category 3 (undocumented owners) are treated as amounts paid to a foreign person if the payment is an amount subject to chapter 3 withholding. See §1.1441–1(b)(2)(v) and (3)(v)(B). Therefore, withholding applies at the unreduced 30-percent rate. Reportable amounts that are U.S. bank deposit interest or U.S. short-term original issue discount paid with respect to asserts in category 3 are treated as paid to a U.S. person who is not an exempt recipient. Therefore, 31-percent backup withholding applies to those amounts and reporting on Form 1099 is required. See §1.6049–5-(d)(3)(iii) and explanation below under paragraph 10 (U.S. source bank deposit interest and short-term OID).

If a QI assumes primary withholding responsibility, it must also attach a statement to its withholding certificate if necessary for the U.S. withholding agent to determine how much of each payment is allocable to U.S. payees. All assets are presumed allocable to foreign persons unless the QI indicates that it is acting for U.S. persons. The QI must provide the same information about U.S. payees that are not exempt recipients as is required in the case of a QI that has not assumed primary withholding responsibility.

b. Agreements with Qualified Intermediaries

The IRS intends to finalize the revenue procedure published in Announcement 96–3 (1996–18 I.R.B. 7) dealing with agreements between the IRS and certain institutions that wish to be a qualified intermediary for purposes of the U.S. tax withholding and reporting provisions (including the provisions of the Announcement regarding the documentation of beneficial ownership or foreign payee status (section 4.03)). A preliminary review of applicable know-your-customer procedures in several countries indicates that these procedures will generally provide adequate information regarding the nationality and residence status of account holders and their status as owners or intermediaries. The IRS intends that the documentation requirements imposed on QIs under their agreements with the IRS will not be more burdensome than those imposed on withholding agents, payors, or middlemen under applicable withholding and reporting regulations.

The Announcement provides that a QI would generally be subject to the same Form 1042 and 1042–S reporting requirements as apply to withholding agents under §1.1461–1(b) and (c). After further review, the IRS intends to finalize the rules so that a QI will be required to file an annual Form 1042 return with the IRS. Generally, a Form 1042–S will not be required if a schedule in the form described below is attached to the Form 1042.

Reporting on a Form 1042 would consist of providing the following information to the IRS: the amount of reportable U.S. source income received by the QI during the calendar year, identified by pool, listing each payor's name, address, EIN, income type and rate of withholding; information regarding overpayments or balance due; a statement regarding the audit conducted by the QI's internal auditor, providing a description of the audit conducted and including the auditor's opinion and summary of findings. The audit statement should define the scope and objective of the audit and report on the QI's compliance with the terms of the QI agreement.

In addition, the Form 1042 must attach a schedule providing information on payments of reportable U.S. source income made by the QI and allocated to specified pools. Under a pool reporting system, separate pools would generally be required for each type of income (e.g., interest, dividends, etc.). These pools may have to be further subdivided into pools consisting of income allocable to one of the three assets categories identified in the regulations under §1.1441–1(e)(5)(v)(B). Additional pools may be required for other purposes, including differentiating among applicable withholding rates. For example, assume that a QI pays portfolio interest and U.S. source dividends in a calendar year. The rates applicable to portfolio interest are zero (interest allocable to pool of documented foreign owners), zero (interest allocable to pool of U.S. owners who are exempt recipients), and 30% (interest allocable to pool of undocumented owners), and the rates applicable to dividends are 30% (dividends allocable to pool of residents in non-treaty countries), 15% (dividends allocable to pool of residents in treaty country eligible for this rate), zero (dividends allocable to pool of U.S. owners that are exempt recipients), and zero (dividends allocable to pool of foreign pension fund owners claiming an exemption under a tax treaty). In such a case, the QI may have to report the interest and dividend income in seven different pools.

The IRS will not require a QI to report beneficial ownership information if this information is otherwise reasonably available in appropriate cases, either under exchange of information provisions, under income tax treaties or under other procedures stated in the agreement to verify compliance with conditions for benefits claimed under income tax treaties. Appropriate cases for which the IRS may require beneficial ownership information include cases in which the IRS needs to verify compliance with conditions under an applicable tax treaty for reduced rates. This includes, for example, whether an entity claiming benefits under a tax treaty is a resident of the applicable treaty country, derives the income (within the meaning of the regulations under §1.894–1T(d)), and meets any applicable conditions imposed under limitation on benefits provisions in the treaty. The IRS intends to limit requests for beneficial owner's identity to cases where compliance concerns are significant due to the size of investments involved or the extent of bank secrecy laws in effect in the local jurisdiction.

The QI will not be required to provide a Form 1042–S to its account holders. In fact, providing such a form would not be consistent with the collective-type refund procedures which the IRS intends to develop. These procedures will allow QIs to request refunds of overwithheld amounts on behalf of their customers. In such a system, a Form 1042–S, which can also serve as proof of tax withheld at source, would have to be monitored by the IRS in order to insure that refunds are not claimed twice for the same amount. Collective-type refund procedures are intended to be the exclusive means by

which taxpayers can obtain refund of overwithheld amounts that they have received through a QI. Special procedures will have to be developed in order to reconcile this regime with regular refund procedures applicable to U.S. taxpayers that receive U.S. source investment income in an account with a QI.

With respect to audits, the proposed regulations provide that the IRS may, in appropriate cases, agree to rely on an audit of a QI performed by an approved auditor where, for example, under an income tax treaty or local laws, the IRS would be given access to appropriate auditors' records to verify compliance. Records may include workpapers of, reports prepared by, and methodology employed by, the approved external auditors. An auditor is approved if it is subject to regulatory supervision under the laws of the country in which a significant part of the QI's activities are expected to occur, its internal procedures must require it to verify that the financial institution complies with the terms of the QI agreement and to report non-compliance findings under the QI agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its relevant records (i.e., workpapers and reports) must be available to the IRS.

Several comments were received asking that audits be performed solely by internal auditors. The IRS, however, does not believe that it is appropriate to rely solely on internal auditors to perform compliance checks. The IRS intends to permit internal auditors to certify that appropriate procedures, internal controls, and systems are in effect and are sufficient to insure the QI's compliance with the agreement, such as procedures to obtain documentation upon opening of accounts, to monitor that the address on an account does not change to a U.S. address or to an address outside the treaty country (if treaty benefits are claimed), to organize and process such information in a way relevant to U.S. tax withholding and reporting, to communicate the information to withholding agents timely and updating the pool information when necessary; procedures by which underwithholding and overwithholding are identified and addressed; and the existence of adequate manuals and programs for training and advising appropriate personnel in standard operating procedures. However, it is important that compliance with these procedures be verified periodically by persons who are not also employed by the QI. The IRS does not believe that internal auditors provide sufficient assurances that audits will be performed with required impartiality, even if internal auditors are required to operate independently and to report exclusively to the QI's board of directors. However, the IRS intends to use external audits only periodically, either when it becomes aware (e.g., based on a Form 1042 or an internal audit report) that there may be compliance problems or as part of its regular audit program.

In addition, with respect to collection of taxes due, the IRS intends to waive the requirement of a bond in appropriate cases, particularly where the QI has assets in the United States from which tax can be collected or where occurrences of underwithholding are expected to be minimal due to the nature of the QI's established procedures.

In QI agreements, the IRS intends to address the manner in which a QI may pay to, or receive a payment from, another intermediary. A QI making a payment to another intermediary must normally obtain the underlying beneficial owner information from the intermediary, unless the intermediary is itself a QI. In the alternative, the QI may agree to a private arrangement with the intermediary that would be identical to a QI agreement, except that it would not be concluded with the IRS and the intermediary would have no reporting obligations to the IRS. Under this regime, similar to that described for authorized foreign agents in §1.1441–7(c)(2), the QI assumes responsibility for failures by the intermediary to comply with the documentation and withholding procedures. The intermediary would agree, under its private arrangement with the QI, to be audited in the same manner as if it were a QI. Auditors reports would be furnished to the QI and be available for inspection by the IRS. A QI would normally obtain an indemnification from the intermediary as a protection against its own U.S. tax liability arising from failures by the intermediary.

Further, the IRS will permit QIs that assume primary withholding responsibility to be combined in a chain of payment with QIs that do not assume primary withholding responsibility. For example, a U.S. withholding agent may pay to a QI that assumes primary withholding responsibility (QI1) and withhold no amount. QI1 may, in turn, pay a customer that is a QI that does not assume primary withholding responsibility (QI2). In such a case, QI1 must withhold on payments to QI2 in the same manner that a U.S. withholding agent would have had to withhold if it were paying the amount to QI2. QI2 may also be dealing with a third tier, QI3, that assumes primary withholding responsibility. In such a case, QI2 would inform QI1 that the portion of the payment allocable to QI3 (without having to disclose QI3's identity to QI1) is allocable to a QI that has assumed primary withholding responsibility. Accordingly, neither QI1 nor QI2 would withhold on the portion of the payment allocable to QI3.

9. Clarification of Reporting and Withholding Obligations for Payments to and by Foreign Intermediaries

Commentators have asked for clarification of how the procedures applicable to payments to foreign intermediaries relate to the exempt recipient rules under chapter 61 and to a foreign intermediary's reporting and withholding obligations under chapter 61 of the Code and section 3406.

Under chapter 61 of the Code and section 3406, the reporting and backup withholding requirements depend, in part, upon the status of the payee as an exempt recipient. Generally, exempt recipients include corporations and financial institutions. See §1.6049–4(c)(1)(ii). The category of persons treated as exempt recipients may vary depending upon the type of income being paid. For this purpose, the payee is generally identified as the person to whom the payment is actually made. This person is not necessarily the beneficial owner of the income. For example, a custodian receiving a payment may be a payee for purposes of chapter 61 of the Code, even though it is not the beneficial owner of the amounts that it receives on behalf of a customer. Under the final regulations, a payment to a nominee or agent is treated as a payment to an exempt recipient, which, as a result, is exempt from information reporting and backup withholding. See §1.6049–4(c)(1)(ii)(O). Treating a U.S. intermediary as an exempt

recipient avoids multiple information reporting and insures that the liability for information reporting and, if applicable, backup withholding, falls upon the last person in a chain of intermediaries, that is the intermediary that has the direct relationship with the customer.

When a payment is made to a foreign intermediary, however, the IRS may not be able to obtain information and, thus, collect the tax that may be due from the ultimate owner if the payment to the foreign intermediary is exempt from information reporting (assuming that the intermediary is an exempt recipient). If the payment to the foreign intermediary involves amounts subject to withholding under chapter 3 of the Code (e.g., U.S. source dividends, U.S. source interest on obligations in registered form, or U.S. source royalties), a U.S. tax is collected at source at a 30-percent rate (assuming that the intermediary has furnished no reliable information concerning the beneficial owners of those payments; see applicable presumptions rules, as revised). If, however, the payment is not subject to chapter 3 withholding (e.g., broker proceeds or foreign source income) and the beneficial owner is a U.S. person, the lack of information regarding the beneficial owner is of greater concern to the IRS.

The regulations proposed in 1988 and in 1996 set forth procedures for payments to intermediaries that are, in part, designed to address some of these concerns (see, for example, the 1996 proposal to apply 30-percent withholding to U.S. source bank deposit interest unless beneficial owner documentation is obtained). The final regulations clarify how withholding and reporting under chapter 3 of the Code interacts with Form 1099 reporting and backup withholding.

Under §1.1441–1(b)(2)(v)(A), a payment to a foreign intermediary (if reliably identified as such by the payor) that has not assumed primary withholding responsibility, is treated as a payment made directly to the person or persons for whom the intermediary (whether or not a QI) collects the payment. If that person is undocumented (i.e., has not furnished a reliable withholding certificate or other appropriate documentation), the person is presumed to be foreign under §1.1441–1(b)(3)(v)(B) to the extent the payment consists of an amount subject to chapter 3 withholding. Therefore, for example, if a U.S. source dividend is paid to a foreign intermediary that furnishes a Form W–9 for another person and such U.S. person is not an exempt recipient, the payor must treat the U.S. person as the payee for purposes of the Form 1099 reporting provisions under section 6042 and backup withholding under section 3406. If the U.S. person is not an exempt recipient, the payment is reportable even though the person who actually receives the payment is the foreign intermediary. The foreign intermediary is an exempt person by virtue of being a foreign person and a nominee. However, as clarified under the final regulations, the fact that the intermediary may be an exempt person is not relevant because, under the final rules, it is not a payee with respect to a payment associated with underlying documentation attached to the certificate. See §§1.6049–5(d)(3)(i) and 1.1441–1(b)(3)(v)(B).

If, however, the amount paid to the person identified as a foreign intermediary is not of a type that is subject to chapter 3 withholding (e.g., foreign source income, broker proceeds), then §1.6049–5(d)-(3)(ii) provides that the amount is treated as paid to an exempt recipient and, as such, exempt from reporting and backup withholding under section 3406. This rule is subject to two exceptions. First, a U.S. payor with actual knowledge that the person for whom the intermediary collects the payment (including broker proceeds and foreign source income) is a U.S. person is required to report the payment (and backup withhold in the absence of a TIN) if the U.S. person is not an exempt recipient. See §1.6049–5(d)(3)(iv), *Example 7.* A second exception is made for U.S. source bank deposit interest and short-term OID. Because these amounts are not subject to withholding, this exception appears under §1.6049–5(d)(3)(iii) and not under section 1441. As explained under the heading "U.S. Source Bank Deposit Interest and Short-term OID" of this preamble, a payment of such amounts to a foreign intermediary (or certain foreign partnerships) is reportable unless the intermediary establishes that the payee (other than an intermediary or a flow-through entity) is a foreign person or an exempt recipient.

Further, provisions have been added to explain how the U.S. withholding and reporting requirements apply to payments made *by* a foreign intermediary, certain U.S. branches, or certain foreign partnerships. A foreign intermediary that furnishes a valid intermediary withholding certificate to the withholding agent is considered to have complied with its own reporting and withholding obligations under chapters 3 and 61 of the Code and sections 3402, 3405, or 3406. See, for example, §1.1441–1(b)(6) applicable to payments of amounts subject to chapter 3 withholding by a foreign intermediary or a U.S. branch and corresponding provisions in §1.6049–5(b)(14) for interest and §1.6042–3(b)(1)(vi) for dividends. Similar provisions are made under §1.1441–5(c)(3)(v) for payments by foreign partnerships that are not withholding foreign partnerships. For example, a foreign custodian bank that is not a qualified intermediary and acts as an agent for a nonresident alien individual who holds U.S. publicly traded obligations in registered form is not required to withhold under section 1441 when it credits the customer's account if it has furnished the individual's Form W–8 (or alternative documentary evidence) to the U.S. withholding agent in compliance with §1.1441–1(e)(3)(iii). If, however, the foreign custodian bank knows that the Form W–8 (or alternative documentary evidence) is not reliable and has not so informed the U.S. withholding agent who, as a result, has not withheld, then the bank is not relieved from its obligation to withhold under section 3406 because it has not acted in compliance with the regulations under section 1441.

These rules apply when the withholding agent/payor holds a valid intermediary withholding certificate. The final regulations add provisions to clarify applicable presumptions when the status of the intermediary is not reliably established or parts of the intermediary withholding certificate are not reliable. See a description of these provisions under the heading "Presumptions—Payments to Foreign Intermediaries" of this preamble.

10. U.S. Source Bank Deposit Interest and Short-Term OID

Some commentators objected to the requirement that eligibility for the exemption from U.S. tax on U.S. source bank deposit interest be subject to the same

beneficial ownership documentation requirements that apply to portfolio interest, suggesting lack of statutory authority and an increase in burden in the context of interbank financing transactions.

In view of these comments, the final regulations do not require a withholding agent to withhold 30-percent on bank deposit interest under section 1441 in the absence of beneficial owner documentation. Instead, documentation regarding the beneficial owner is required under sections 6049 and 3406 for purposes of avoiding information reporting and backup withholding. This documentation requirement also applies to short-term OID. See §1.6049–5(d)(3)(iii). Therefore, the final regulations provide that a payment to a foreign intermediary of U.S. source short-term OID or of U.S. source interest on deposits with U.S. banks and other financial institutions described in sections 871(i)(2)(A) and 881(d) is treated as made to a foreign payee or an exempt recipient only to the extent that the payor can treat the payment as made to a foreign beneficial owner under §1.1441–1(d)(4) or (e)(1)(ii) or if the payment is made to a qualified intermediary that has assumed primary withholding responsibility or to a withholding foreign partnership. In all other cases, the foreign intermediary is not treated as an exempt recipient and its certification that it is a foreign person is not sufficient to make the payment non-reportable under §1.6049–5(b)(12). Under §1.6049–5(d)(3)(iii), the payment is treated as made directly to the unidentified owners for whom the intermediary receives the payment and, as such, is treated as made to a U.S. payee who is not an exempt recipient.

The regulations provide special rules to help a payor determine whether the person to whom it makes the payment is a foreign or a U.S. person, and, if presumed to be a foreign person under these rules, whether it is an intermediary or is acting for its own account. These presumptions are helpful if the payment is to a foreign person that qualifies as an exempt recipient on an "eyeball" basis (e.g., a foreign bank with the word "bank" in its name). In such a case, no documentation is required to be provided by such person and the payor may have no ability to determine whether the person is U.S. or foreign and whether it is acting as an intermediary or for its own account. A person receiving a payment is presumed to be a foreign person for the purpose of these rules if the payor has actual knowledge of the payee's employer identification number and that number begins with the two digits "98," if the payor's communications with the payee are mailed to an address in a foreign country, or if the name indicates that the payee is a per se corporation under §301–7701–2(b)(8)(i), or the payment is made outside the United States. The final regulations under §1.6049–5(d)(4)(iii) presume that a person receiving a payment of U.S. bank deposit interest or U.S. short-term OID is *not* acting for its own account (note that this presumption is different form the general presumption under §1.1441–1(b)(3)(v)(A) that presumes a foreign person to be acting for its own account unless it furnishes certain documentation establishing its status as an intermediary). Thus, in the absence of documentation and any evidence that the foreign person is acting for its own account, a payor would presume that the payment is made to unidentified owners for whom the person receives the payment, required to be reported under section 6049 and subject to 31-percent backup withholding under section 3406.

A payee may rebut this presumption by furnishing an indication of beneficial ownership to the payor. Such indication may be provided in any manner as the parties may choose, but must be reflected in the payor's records. An indication by a foreign person that it is not an intermediary does not have to be made under penalties of perjury.

In order to minimize disruptions to high-volume wholesale banking transactions and to the sale and repurchase (repo) market, the final regulations exempt from these documentation requirements deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, and amounts of original issue discount arising from any repo transaction that is completed within a period of two weeks or less. Further, amounts paid with respect to certain bearer obligations are also exempt.

11. Presumptions—In General

Proposed §1.1441–1(f), dealing with presumptions of U.S. or foreign status in the absence of reliable documentation, is restated with a number of clarifications, in §§1.1441–1(b)(3) and 1.6049–5(d)(2) through (5). The presumptions in §1.1441–1(b)(3) apply to amounts that are subject to chapter 3 withholding. The same presumptions apply under §1.6049-5(d)(2) to payments that are not subject to chapter 3 withholding (e.g., foreign source income, sales proceeds), with a few differences. As under the proposed regulations, payments that a payor or withholding agent cannot reliably associate with documentation are presumed to be made to a U.S. payee who is not an exempt recipient, in which case 31-percent backup withholding applies if the payment is otherwise a reportable payment (within the meaning of the applicable information reporting provisions under chapter 61 of the Code). As an exception to this rule, a payee is presumed to be foreign if it is an exempt recipient for whom indicia of foreign status exist. Special rules are also provided for scholarships and pensions, for which no backup withholding applies under section 3406, and for certain payments to offshore accounts. See §1.1441–1(b)(3)(iii).

In determining the extent to which the withholding agent can consider that it can rely on documentation to determine the extent of its withholding obligations, the final regulations rely on a concept of "reliable association" of a payment with withholding certificates or other documentation. This concept replaces the requirement under §1.1441–1(f)(1)(ii) of the proposed regulations that the withholding agent hold required documentation. The definition of "reliable association" is set forth in §1.1441–1(b)(2)(vii). As in the proposed regulations, a withholding agent cannot reliably associate a payment with documentation if the documentation is lacking or is unreliable. These provisions apply regardless of whether documentation is otherwise required. For example, a payment of U.S. source royalties to a corporation with the word "Inc." in its name requires no documentation from the payee under section 6050N because the payee's status as an exempt recipient is inferred from its name (i.e., on an "eyeball" basis) under §1.6049–4(c)(1)(ii)(A)(*1*). In such a case, the payor must consider that there is a per se lack of documentation. Therefore, under §1.1441–1(b)(3)(iii)(A), a payment

to such an exempt recipient is presumed made to a foreign person if certain indicia of foreign status are present. If these indicia are present, the payor, if also a withholding agent, must withhold 30-percent from the payment under section 1441.

The final regulations modify the presumptions for certain payments to offshore accounts. Under the proposed regulations, a payment to a foreign account is presumed to be made to a U.S. person. Thus, the payor must file a Form 1099 for the payee, but the payment is not subject to backup withholding. See proposed §§1.1441– 1(f)-(2)(ii) and 31.3406(g)–1(e). The final regulations provide that, in the case of a payment to a foreign account of an amount subject to chapter 3 withholding, the payment is presumed to be made to a foreign person and not to a U.S. person. Thus, the withholding agent must withhold on the payment at a 30-percent rate. In that case, the foreign status presumption insures that a tax is paid on such amounts since, under §31.3406(g)–1(e), no backup withholding would apply to an undocumented account if the account holder were presumed to be a U.S. person. See §1.1441–1(b)(3)(iii)(D). The final regulations adopt the rule in the proposed regulations for payments involving amounts that are not subject to chapter 3 withholding (i.e., payee is presumed to be a U.S. person who is not an exempt recipient, subject to Form 1099 reporting but not to backup withholding). See §§1.1441–1(b)(3)(iii) and 1.6049-5(d)(2)(i).

The final regulations include presumptions regarding the characteristics of a payee so that a payor or withholding agent may determine whether to treat the payee as an owner of an account or as an intermediary (see §1.1441–1(b)(3)-(v)(A)), and as an individual, a trust, an estate, a corporation or a partnership. See §1.1441–1(b)(3)(ii). The final regulations also make a number of clarifications to the presumption provisions in response to comments. First, the revised rules clarify that the presumptions are mandatory. A payor that withholds a lesser amount or does not report a payment contrary to what the presumptions would require may be liable for the amount of the tax in addition to interest and penalties, even if the withholding agent acted on the basis of actual knowledge. Although the liability for the tax may be eliminated if the withholding agent establishes that it withheld the proper amount (based on its actual knowledge or otherwise), liability for interest and penalties may be assessed. This rule is consistent with the requirement under the regulations to provide documentation before a payment is made so that a withholding agent may not rely on actual knowledge to reduce a withholding or reporting obligation. Treating the presumptions as mandatory rather as mere safe harbors is necessary to avoid undermining the requirement that withholding agents obtain documentation prior to the time of a payment.

On the other hand, a withholding agent or payor may not rely on the presumptions if it has actual knowledge (or, in the case of amounts subject to chapter 3 withholding, reason to know) of facts that would require it to withhold an amount greater than would otherwise be required based upon an applicable presumption or to report a payment that would be exempt from reporting under an applicable presumption. See §1.1441–1(b)(3)(ix) and (b)(7).

The final regulations clarify that if, under the rules, a payment is presumed to be made to a U.S. payee, the determination of whether to report on a Form 1099 or backup withhold is governed by the provisions under chapter 61 of the Code and section 3406 and not by chapter 3 of the Code. See §1.1441–1(b)(3)(i). Also, the final regulations clarify that a withholding agent that withholds in accordance with an applicable presumption is not liable under another withholding provision for that payment, even if the payee is subsequently determined to have a status different from its presumed status. See §1.1441–1(b)(3)(ix)(A).

12. Presumptions—Grace Period

Several comments were received regarding the grace period provisions under proposed §1.1441–1(f)(2)(ii). Under the proposed rules, a withholding agent or payor may presume that an account holder for whom specified indicia of foreign status exist at the time that a payment is first credited to the account may be treated as a foreign person, even if no documentation has been received before the account is first credited. This presumption has two consequences: first, backup withholding is deferred until the end of the grace period (and may never be required if foreign status documentation is provided when or before the grace period terminates); second, an amount must be withheld under chapter 3 of the Code without the benefit of a reduced rate under the Code or an income tax treaty if the amount is income subject to chapter 3 withholding. At the expiration of the grace period, the account holder is treated as a U.S. or foreign person, depending upon whether documentation is furnished, and, if so, what type of documentation is furnished.

Commentators argued that a withholding agent should be allowed to rely on the apparent status of the beneficial owner to grant a reduced rate of withholding for payments made during the grace period. They point to the prohibition against depleting the account below 31-percent of the amounts paid and argue that this prohibition protects the government's interest that the proper amount of tax be collected upon expiration of the grace period if entitlement to a reduced rate is not confirmed. This comment is accepted but only if the withholding agent has received a faxed Form W–8. Thus, for example, a reduced rate of withholding for portfolio interest or under a tax treaty can apply to amounts credited during the grace period based on a faxed Form W–8.

Commentators also argued that any backup withholding should not be retroactively imposed after the expiration of the 90-day grace period when documentation is still lacking at that time, because of the difficulty to deduct and deposit a tax after the fact. In response to these comments, the final regulations are revised to impose backup withholding only to payments credited to the account after the expiration of the grace period if, at that time, documentation is still lacking or unreliable. The presumption that the account holder was a foreign person during the grace period is not reversed. Thus, if amounts credited during the grace period were subject to withholding at less than the full 30-percent rate, and, at the end of the grace period, the documentation is still lacking or unreliable, then the payor must make an adjustment in order to correct the underwithholding, so that all amounts credited during the grace period are withheld upon at the full 30-percent rate (to the extent they are amounts subject to chapter 3 withholding). Under the final regulations, amounts credited to the account during the

grace period could be subject to no or reduced withholding if the withholding agent receives a faxed Form W–8. Consistent with the 30-day grace period under §31.3406(d)–3(c), the provisions are revised to treat reinvestment as withdrawals. The grace period is terminated if withdrawals or other events leave a balance in the account that is insufficient to cover potential backup withholding liability. See §1.6049–5(d)(2)(ii) and §1.1441– 1(b)(3)-(iv) of the final regulations, as renumbered.

For purposes of withholding under chapter 3 of the Code, the 90-day grace period applies to all payments that are exempted from the TIN requirement under §1.1441–6(b)(2)(ii). For purposes of information reporting on amounts not subject to withholding, the 90-day grace period applies to all payments reportable as dividends, interest, royalties, and broker proceeds. Although comments were received asking that the grace period be extended to existing accounts, the final regulations do not do so. A grace period should not be necessary for existing accounts where the expiration of withholding certificates is a predictable event for which withholding agents and payors can plan accordingly. On the other hand, the grace period is extended to situations where the validity of documentation expires because of a change of circumstances. In such a case, it is reasonable to allow time to obtain new or corrected documentation to account for changes affecting the validity of documentation in an unexpected manner. The final regulations also extend the availability of a grace period for purposes of payments for which a Form 8233 is required (i.e., claim of treaty benefits for compensation to nonresident alien for personal services). This benefit is intended to facilitate withholding on these payments to beneficial owners who are awaiting their social security number or ITIN. The final regulations clarify that the grace period provisions apply at the option of the payor or withholding agent. Therefore, a payor or withholding agent is not required to implement procedures offering a grace period to its customers.

13. Presumptions—Payments to Foreign Intermediaries

At the request of commentators, the final regulations clarify how the presumptions apply to payments to foreign intermediaries in the absence of reliable documentation both for purposes of chapter 3 and chapter 61 information, and sections 3402, 3405, and 3406. Under §1.1441–1(b)(3)(v)(A), a payee who has not provided a valid intermediary withholding certificate or whose intermediary withholding certificate is defective because, for example, the information on the certificate regarding the intermediary is lacking or unreliable, must generally be treated as an undocumented owner of the payment. Under §1.1441–1(b)(3)(ii), an undocumented owner is presumed to be an individual, a trust, or an estate, if the payee appears to be such a person. In the absence of reliable indication that the payee is an individual, a trust, or an estate, the payee is presumed to be a corporation if it can be treated as a corporation under the "eyeball" test described in §1.6049–4(c)(1)(ii)(A)(1) or is presumed to be one of the persons enumerated under §1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under an "eyeball" test basis. If it cannot be so treated, then it is presumed to be a partnership.

If the payee is presumed to be an individual, a trust, an estate, or a partnership, it is presumed under §1.1441–1(b)(3)(iii) to be a U.S. person who is not an exempt recipient and the information reporting provisions under chapter 61 of the Code and section 3406 would govern the payor's reporting and withholding obligations with respect to the payment. If the payee is presumed to be a corporation or another exempt recipient under §1.6049-4(c)(1)(ii)(B) through (Q), then it is also presumed to be a U.S. person. However, if the amount paid consists of an amount that is subject to withholding under chapter 3 of the Code (e.g., U.S. source interest or dividends), the payee is presumed to be a foreign person if there are indicia of foreign status, in which case withholding at the 30-percent rate is required under chapter 3 of the Code. See §1.1441–1(b)(3)(iii)(A).

If the payment can be treated as made to a foreign intermediary but the intermediary's withholding certificate is unreliable either because the withholding agent or payor has not been given sufficient information to determine the proper amount of withholding or because some or all of the underlying certificates that are required to be attached are lacking or are unreliable, the payment is presumed made to a foreign nominee acting for an undocumented owner. Therefore, the payment is subject to withholding under chapter 3 of the Code at the unreduced 30-percent rate to the extent it consists of income subject to such withholding under chapter 3 of the Code. See §1.1441–1(b)(3)(v)-(B). Additional presumptions are provided under §1.1441–1(b)(3)(v)(C) and (D) to deal with lacking or unreliable information regarding the allocation of a payment among beneficial owners or other payees and lacking or unreliable information regarding whether the intermediary's certificate identifies all of the persons to whom the payment relates. Section 1.6049–5(d)(3)(ii) clarifies, however, that if the payment is not an amount subject to chapter 3 withholding, then the payment is presumed to be made to an exempt recipient not reportable under section 6042, 6045, or 6049 (except for certain payments of U.S. bank deposit interest or U.S. short-term OID under §1.6049–5(d)(3)(iii)).

The lack of reliable information regarding beneficial owners or the allocation of the payments among them raise an issue as to how the amounts should be reported on a Form 1099 (if, for example, the withholding agent has a Form W–9 from a beneficial owner but has no or unreliable information regarding how much the payment is allocable to such person) or on a Form 1042–S. The final regulations under §1.1461–1(c)(4)(iv) provide that payments to an intermediary or foreign partnership for the account of undocumented owners or partners are reportable on a single Form 1042–S made out to the intermediary, and bearing the mention "unknown owners." The final regulations, however, do not contain guidance for situations where the withholding agent or payor is lacking reliable allocation information. This matter is under consideration by the IRS and comments are solicited regarding appropriate procedures before guidance is issued.

The final regulations contain similar provisions for payments to foreign partnerships under §1.1441–5(d). See the explanation under §1.1441–5, below.

15. Late-received Form W–8—Cure Procedures

Generally, a Form W–8 or other applicable documentation must be furnished to

the withholding agent or payor prior to the time of payment. The proposed regulations in §1.1441–1(f)(5) prescribe procedures allowing a Form W–8 or other documentation to be furnished late (i.e., after the 90-day grace period), subject to interest and penalties. They also contemplate the possibility that, upon examination, the IRS might require the withholding agent or payor to furnish additional proof in support of the claim of foreign status or eligibility for a reduced rate of withholding under the Code or a tax treaty. Commentators asked for an exemption from interest and penalties when it is determined that there is no underlying tax liability once the documentation has been provided or, at least, that the liability be abated where the withholding agent has acted in good faith.

The final regulations do not eliminate the possibility that interest and penalties may apply because the liability for those items is clearly contemplated under section 1463. However, several revisions are made to relieve liability in certain cases. See §1.1441–1(b)(7), restating the provisions of proposed §1.1441–1(f)(5). First, in order to eliminate the possibility of a double interest charge when the respective unsatisfied tax liabilities of the withholding agent and of the beneficial owner run concurrently, the regulations are modified to limit collection to one amount of interest only. In that regard, interest will not be assessed against the withholding agent if it otherwise is assessed or collected against the beneficial owner. Next, in order to clarify that the cure rules apply to all cases for which documentation must be provided to the withholding agent, cross references have been added under §§1.1441–4(f), 1.1441-5(f), 1.1441–6(f), 1.1441–8(e), 1.1441–9(c), and 1.1443–1(b)(3). In addition, the final regulations make this relief available on a retroactive basis for all open years. This action is intended to eliminate any ongoing controversy with the IRS regarding an issue that is unclear under current law. The final regulations clarify that the period for calculating penalties and interest is limited to the time that the liability remains outstanding, i.e., starting with the due date for filing the return under section 6601 (i.e., March 15 of the year following the year in which the payment was made) and ending with the date that the tax is considered paid (i.e., the time that the documentation is furnished establishing the proper amount of tax due or that the tax is actually paid, whichever is earlier). Also, commentators asked for a clarification of how late deposit penalties would apply when the withholding agent fails to withhold. This issue remains under consideration.

16. Due diligence with respect to information returns required under chapter 61 of the Code.

The Interest and Dividend Tax Compliance Act of 1983 provided that the penalty for the failure to file an information return, furnish a copy of it to a payee, or supply a TIN can be waived if it is shown that the filer exercised due diligence in filing the return, furnishing it to a payee, or supplying the payee's TIN. The due diligence standard applied to failures on information returns reporting dividends under section 6042, patronage dividends under section 6044, and interest or OID under section 6049. The IRS issued regulations in question and answer form providing the prerequisites to establish due diligence. See §§35a.9999–1 through 35a.9999–5.

The Omnibus Budget Reconciliation Act of 1989, Public. Law 101-239, 103 Stat. 2393, repealed sections 6676 and 6678 with the enactment of uniform information reporting penalties under sections 6721 through 6724 and replaced due diligence with a reasonable cause standard under newly enacted section 6724. However, Congress provided that the separate and higher due diligence waiver standard for returns filed under sections 6042, 6044, and 6049 be considered to meet reasonable cause. H. Rep. No. 247, 101st. Cong., 1st. Sess., at 1385 (1989).

These final regulations remove the Q/As under Part 35a, effective January 1, 1999. Because due diligence will remain in effect, the IRS will retain the relevant Q/As set forth in Part 35a. These final regulations redesignate the relevant Q/As under §301.6724–1(g).

17. Effective Dates

Many comments were received regarding the effective dates of the final regulations. Commentators argued that the January 1, 1998 effective date in the proposed regulations should be extended because of the anticipated time required to complete QI agreements and for withholding agents to make the administrative and operating systems changes that will be necessary to comply with the regulations. However, commentators have argued that provision should also be made for a financial institution to elect earlier adoption of the new requirements where possible.

The final regulations accommodate these concerns. The effective date is changed to January 1, 1999. In view of the later effective date and comments that staggered effective dates make system adjustments more difficult and costly, all special delayed effective dates rules are eliminated. Also, transition rules are modified for existing certificates. Valid withholding certificates that are held on December 31, 1998, remain valid until the earlier of December 31, 1999 or the due date of expiration of the certificate under rules currently in effect (unless otherwise invalidated due to changes in the circumstances of the person whose name is on the certificate). Further, certificates dated prior to January 1, 1998 that are valid as of January 1, 1998, remain valid until the end of 1998, irrespective of the fact that their validity expires during 1998 (other than by reason of changes in the circumstances of the person whose name is on the certificate).

The final regulations do not accelerate the effective date of certain provisions as had been requested by several commentators. Although doing so would provide relief to a number of taxpayers, it would also complicate the many system adjustments that withholding agents, particularly financial institutions with large volume of cross-border payments, must implement before the effective date of these regulations. The IRS and Treasury feel that the benefits of accelerating certain provisions would not sufficiently outweigh the added costs and burdens to many withholding agents.

C. *Comments and Changes to §1.1441–2*

1. Amounts subject to withholding

Under §1.1441–1 of current regulations, an amount is subject to withholding only if it is from sources within the United States. The final regulations under §1.1441–2(a) clarify that an amount can be sourced within the United States irrespective of the fact that the source is un-

determined at the time of payment. This clarification addresses the Tax Court's ruling in *Albert J. Miller v. Commissioner*, T.C. Memo 1997–134, 73 T.C.M. (CCH) 2319, that an amount whose source cannot be determined at the time paid is sourced outside the United States for purposes of sections 871(a) or 881(a) and the withholding provisions of chapter 3 of the Code.

2. Fixed or Determinable Annual or Periodical Income

The definition of the term *fixed or determinable annual or periodical* (FDAP) income under existing regulations under section 1441 is retained in the final regulations and clarified. In particular, §1.1441–2(b)(1)(iii) addresses three types of uncertainties that a withholding agent may encounter: 1) the proportion of the payment that constitutes income cannot be determined when a payment is made (e.g., a payment made on an obligation that may include interest, but the exact amount of interest cannot be determined because the determination is contingent upon future events); 2) the proportion of the payment that constitutes U.S. source income cannot be determined at the time of payment; or 3) the fact that the payment may be income in the future cannot be anticipated at the time of payment. Only in the third case would the payment not constitute FDAP income. In the first two cases, income is actually being paid. The only uncertainty is the amount that the recipient should include in income and this uncertainty does not prevent the payment from constituting fixed or determinable annual or periodical income for purposes of section 871(a) or 881(a) and the withholding provisions of chapter 3 of the Code. See also the additional provisions under §§1.1441–2(b)(1)(iii) and 1.1441–3(d)(1) dealing with determinability and rules of withholding for items whose source cannot be determined at the time of payment.

3. Original Issue Discount

In response to comments, the final regulations regarding withholding on original issue discount (OID) are simplified. As a general principle, withholding is required on a payment that is treated as taxable OID under section 871(a)(1)(C) or 881(a)(3)(A) to the extent the withholding agent knows the amount that is OID. That amount is known to the withholding agent if it knows how long the beneficial owner has held the obligation on which a payment is made, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent has knowledge if the information is obtainable upon exercising reasonable efforts. The information is not considered obtainable in the case of payments with respect to publicly traded securities where the withholding agent, consistent with normal industry practices, does not have a direct customer relationship with the person who has actual knowledge of the relevant information or has no access to this information in the normal course of its business due to the manner in which the obligation is held (e.g., in street name or through intermediaries). In the case of a withholding agent maintaining a direct customer relationship with the beneficial owner, knowledge regarding the owner's holding period and acquisition premium is considered to be reasonably available to the withholding agent. Because of the complexities that may be involved in calculating the amount taxable to the owner and, thus, subject to withholding, withholding agents may rely on the most recently published "List of OID Instruments" or similar list published by the IRS (currently contained in IRS Publication 1212 (available from the IRS Forms Distribution Centers)).

Notwithstanding the rules described in the preceding paragraph, withholding is required with respect to OID that would qualify as portfolio interest except for the fact that documentation required under section 871(h)(5) is not furnished to the withholding agent. In the absence of information regarding the amount of OID, the withholding agent may rely on IRS Publication 1212. The final regulations clarify that no withholding applies to amounts that are not otherwise subject to chapter 3 withholding (e.g., OID on obligations in bearer form that qualifies as portfolio interest).

3. Securities Lending Transactions

The final regulations add paragraph (b)(4) to cross-reference the regulations under sections 871 and 881 dealing with securities lending transactions and equivalent transactions. Thus, the character of the income arising from these transactions applies for purposes of determining the amount of withholding under chapter 3 of the Code. Similar rules apply for purposes of information reporting and backup withholding on interest and dividends. See §§1.6042–3(a)(2) and 1.6049–5(a)(5). See §1.1441–1(b)(4)(i) for documenting interest equivalent amounts for which the beneficial owner claims a portfolio interest exemption.

4. Relief for Deemed Payments of Income

Several comments were received regarding the difficulty for a withholding agent to withhold on an amount of income that is not represented by cash or property (i.e., deemed payments of income). The final regulations in §1.1441–2(d) provide relief in cases in which the withholding agent does not have custody of, or control over, property of the taxpayer who is deemed to receive income under section 871(a) or 881(a) or does not have knowledge of the events that give rise to the deemed payment. Relief, however, does not apply for deemed payments arising between related parties or as part of a prearranged plan to avoid withholding. Therefore, a withholding obligation arising out of a deemed payment resulting from an allocation of income under section 482 is not eliminated because the parties are related. Examples are provided for cancellation of debt and constructive income arising from correcting prior underwithholding by paying the amount of tax due to the IRS. Withholding on deemed distributions with respect to stock is not excused under these rules. For these amounts, the IRS and Treasury believe that an exemption from withholding would be inappropriate in view of the ongoing investment or business relationship between the parties. Under the final regulations, withholding is required at the time of the deemed distribution even if the income from the distribution is prorated over time (such as a redemption premium under section 305(c)). The IRS and Treasury considered comments asking that withholding be deferred until income is includable in the shareholder's income but concluded that the withholding procedures necessary to implement such an exception and insure proper withholding would be too complex.

D. *Comments and Changes to §1.1441–3*

1. Withholding on Interest Payments

No obligation to withhold is imposed under current law on the payment of stated interest on an obligation that was purchased between interest payment dates. Under §1.61–7(c), interest received on the interest payment date is treated as a return of basis to the extent it represents accrued unpaid interest as of the date of purchase as reflected in the new holder's basis for the obligation. Therefore, when the new holder receives a payment of the stated interest, the holder's tax liability is limited to the amount of interest accrued after the date of purchase (subject to additional adjustments reflecting possible acquisition premiums or market discounts). Because of the difficulty for a withholding agent to determine the amount accrued to the holder and other adjustments affecting the actual amount taxable to the holder, withholding on the entire amount of stated interest is permitted under the regulations. Although commentators have asked that the withholding agent be permitted to withhold on the amount that it knows is taxable, the final regulations do not modify the proposed regulations on this point because the IRS and Treasury consider that withholding on the entire amount is justified to the extent that, under existing rules, withholding on sales of obligations between interest payment dates is not required.

This comment is taken into account, however, in regulations that are proposed together with these final regulations to require withholding on sales of obligations between interest payment dates. These proposed regulations are intended to conform the withholding regime for sale of bonds between interest payment dates to that implemented for OID obligations under the final regulations. See project REG–114000–97 published elsewhere in this issue of the **Federal Register.**

2. Withholding on Distributions

The proposed regulations regarding withholding on corporate distributions are expanded and clarified in view of comments. Section 1.1441–3(c)(1) and (2)(i) are revised to clarify that the withholding procedures are elective. In other words, a distributing corporation or the custodian or nominee may choose to withhold on the entire amount distributed and, thus, to not take advantage of the election to limit withholding to the estimated earnings and profits amount. An election by the distributing corporation to determine withholding based on the estimated earnings and profits amount for distributions it makes directly to a foreign person does not mean that a custodian or nominee who receives payments of distributions for the account of foreign investors must do the same when it makes a payment of these distributions to the foreign investors. Instead, the custodian may choose to disregard the estimate of earnings and profits and to withhold on the entire distribution. The revisions reflect the fact that each withholding agent must be able to make this decision independently because of its own potential tax liability under section 1461 in the event of underwithholding. The final regulations clarify that the amounts of tax that the withholding agent pays to satisfy the tax liability under section 1461 if underwithholding has occurred is not subject to withholding even if it constitutes a constructive dividend. This rule applies irrespective of the fact that the satisfaction of the tax liability may be additional income to the shareholder unless the additional payment results from a contractual arrangement between the parties regarding the shareholder's satisfaction of its tax liability by the distributing corporation. With this rule, the final regulations eliminate, for this situation, the question as to whether a taxpayer realizes income when the withholding agent satisfies a tax liability under section 1461.

Further, proposed §1.1441–3(c)(2)(iii) (renumbered as §1.1441–3(c)(2)(ii)(C) in the final regulations) is revised so that an erroneous estimate by the distributing corporation is imputed to an intermediary not only in situations in which the IRS challenges the estimate but also in situations in which the distributing corporation unilaterally determines that its estimate is in error. Some commentators questioned whether a reference to interest in §1.1441–3(c)(3)(ii)(B) regarding consequences in the event of underwithholding had been omitted in error. Interest is not mentioned in the provision because, to the extent underwithholding is corrected by the due date of filing the annual return under §1.1461–1(b), no interest charge applies. On the other hand, if the withholding agent corrects the underwithholding as part of an amended return filed after the due date for filing the annual return, then an interest charge would apply, as reflected in §1.1441–3(c)(3)(ii)-(B)(*2*)(*ii*).

In response to another comment, §1.1441–3(c)(3)(ii) is added to allow custodians and nominees to rely on estimates made by mutual funds regarding their capital gain dividends and exempt interest dividends. Some commentators also asked that §1.1441–3(c)(3)(ii) be revised to provide that an adjustment to the amount of withholding is not a distribution for all purposes and not just for purposes of section 562(c). This comment is not accepted because there are circumstances in which the adjustment may constitute a distribution—such would be the case, if, for example, the adjustment cannot be made by adjusting the withholding on a subsequent distribution because the affected shareholder is no longer a shareholder or the adjustment occurs after the end of the taxable year.

Finally, §1.1441–3(c)(4) has been added to coordinate the general distribution provisions with the regulations under section 1445. Under §1.1445–5(b)(1), no withholding is required under section 1445 on a distribution from a U. S. real property holding corporation (USRPHC) if the distribution is subject to withholding under section 1441 or 1442. Given the change in the withholding procedures applicable to corporate distributions, the exemption from withholding under section 1445 may now lead to underwithholding on distributions from a USRPHC. In order to correct this situation, the final regulations give taxpayers a choice between two withholding regimes. A USRPHC may choose to withhold under section 1441, provided it withholds on the entire amount of the distribution, regardless of estimated earnings or profits. However, the rate of withholding may be reduced under income tax treaty provisions, although not below the 10-percent rate applicable under section 1445 (unless the treaty provides otherwise for distributions from USRPHCs). For purposes of applying the treaty, the entire amount of the distribution is treated as a dividend. Alternatively, the USRPHC may withhold under a mixed regime. Under this regime,

withholding applies under section 1441 on the portion of the distribution that represents estimated earnings and profits and under section 1445 on the remainder of the distribution. The mixed withholding regime is mandatory for distributions from publicly-traded real estate investment trusts (REITs). In other words, a REIT may not, with respect to its distributions, choose to apply the withholding regime of section 1441 to the entire distribution. Instead, the REIT must withhold under section 1441 on the portion of the distribution that is not designated as a capital gain dividend or a return of basis. Withholding under section 1445 is also required on the portion of the distribution that the REIT designates as a capital gain dividend in accordance with §1.1445–8.

3. Withholding on undetermined amounts

The final regulations also address the practical difficulties of withholding on an amount when, at the time of payment, there is not sufficient information to calculate which portion, if any, is taxable or to determine the source of the income. For these purposes, provisions have been added under §1.1441–3(d)(1) that require a withholding agent to withhold on the entire amount when such uncertainties exist. This requirement in part reflects the policy that withholding generally should apply to payments that leave the U.S. taxing jurisdiction. The requirement to withhold in the event of uncertainty is similar to the provisions under existing regulations under §1.1441–3(d)(1) (restated as §1.1441–3(d)(2) of the final regulations) requiring withholding of an amount sufficient to assure that the tax withheld is no less than 30-percent of the recognized gain. In order to minimize overwithholding, the final regulations provide an alternative to withholding on the entire amount when uncertainties exist. Instead, the withholding agent may make a reasonable estimate of the amount from U.S. sources or of the taxable amount and set aside a corresponding portion in escrow until the amount subject to withholding can be determined. Under this alternative, setting aside an amount is not an event of withholding for purposes of §1.1461–1(a) that would give rise to the requirement to pay the tax. Instead, the payment of the tax can be postponed until a determination can be made of the amount of withholding liability under this section. The provisions under §1.1441– 1(d)(1) do not apply to uncertainties that are specifically addressed under other provisions of the regulations, such as lack of information regarding the identity or status of the beneficial owner or payee (see §1.1441–1(b)(3) for applicable presumptions in those cases and the grace period provisions set forth in §1.1441–1(b)(3)(iv)) or withholding on original issue discount amounts (see §1.1441–2(b)(3)).

E. *Comments and Changes to §1.1441–4*

1. Notional Principal Contracts

Commentators have questioned whether it is appropriate to treat income from notional principal contracts as FDAP income, particularly since it is unclear at the outset whether the arrangement will generate any income. The IRS and Treasury believe that the statute contemplates very few exceptions to the concept of FDAP, and the only clear exception is for gain from the disposition of property. Income from notional principal contracts is not gain from the disposition of property, nor is it the equivalent of gain. However, the final regulations minimize the burden associated with characterizing the income as FDAP because the liability for withholding under chapter 3 of the Code is eliminated for such income. See §1.1441–4(a)(3). Reporting under section 1461 or 6041, however, continues to be required under the final regulations. However, in response to comments, the reporting burden has been reduced and clarified (see §§1.1441–4(a)(3), 1.1461–1(c)(2)(i)(C) and (ii)(D), 1.6041–1(d)(5) and 1.6041–4(a)(4) of the final regulations).

Under the final regulations, notional principal contract payments are exempt from withholding. However, if paid to a foreign person, they are presumed effectively connected income and, as such, are required to be reported on a Form 1042–S. The effectively connected income presumption under §1.1441–4(a)(3) can be rebutted by providing to the withholding agent a valid withholding certificate representing that the payments are not effectively connected with the conduct of a U.S. trade or business. In such a case, no reporting is required on a Form 1042–S for these amounts. A financial institution (as defined in §1.165–12(c)-(1)(iv)) may, instead of a withholding certificate, represent in a master agreement that governs the transactions in notional principal contracts between the parties (such as an International Swaps and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction, that the counterparty is a U.S. person or is a non-U.S. office of a foreign person. These representations are not required to be made under penalties of perjury.

In the final regulations, swap payments include payments on notional principal contracts described in §1.988–2(e), dealing with foreign currency swaps. Also, income on notional principal contracts does not, for purposes of these rules, include amounts characterized as embedded interest under §1.446–3(g)(4). Such amounts, if not effectively connected with the conduct of a U.S. trade or business and from U.S. sources, are subject to chapter 3 withholding and are reportable on a Form 1042 and 1042-S.

Under §1.6041–1(d)(5), a payment on a notional principal contract, including embedded interest, is a reportable payment, unless paid to an exempt recipient (i.e., a person described in §1.6049–4(c)(1)(ii)), paid outside the United States (unless the payor has actual knowledge that the payee is a U.S. person), treated as effectively connected with a U.S. trade or business under §1.1441–4(a)(3), or paid by a non-U.S. payor or a non-U.S. middleman. If none of these exceptions applies, and the payor does not hold a Form W–9, then a payment is presumed under §1.6049–5(d)(2)(i) to be made to a U.S. person that is not an exempt recipient, in which case backup withholding would be required under section 3406.

The final regulations under §§1.6041–1(d)(5) and 1.1461–1(c)(2)(i)(C) adopt the suggestion that nonperiodic payments are reportable only at the time that an actual payment is made. The final regulations require reporting of net income rather than gross amounts from notional principal contracts. Further, in response to comments, the final regulations in §§1.1441-4(a)(3) and 1.6041–1(d)(5) specify that the reporting requirements apply only prospectively, i.e., to payments made after December 31, 1998.

2. Form 8233 Procedures

The current regulations prescribe a procedure by which a withholding agent may grant a reduced rate under an income tax treaty on payments to nonresident aliens for services rendered in the U.S., generally in connection with a sporting, cultural, scientific, or artistic event. The procedure involves submitting a Form 8233 to the IRS for review and approval as instructed under §1.1441-4(b)(2). The regulations provide, in effect, that the withholding agent may not grant an exemption from withholding until after a 10-day period beginning with the date that the Form 8233, as reviewed and approved by the withholding agent, is mailed by the withholding agent to the IRS. The proposed regulations extend the 10-day period to 20 days.

Commentators objected to the 20-day period and asked for the retention of the 10-day period. In addition, they suggested that, instead of making the treaty exemption effective only after the submission of Form 8233, the exemption should be retroactive to the date of first payment covered by the certificate if the completed Form 8233 contains the nonresident alien's TIN, and if the withholding agent is not subsequently notified by the IRS within the 20-day period that the exemption is not valid. After further consideration, the comments are adopted. The 10-day waiting period is continued and the approval of the Form 8233 is made retroactive to the date of first payment covered by the certificate. However, the final regulations clarify that the IRS review process does not exonerate the withholding agent from liability for underwithholding. In its review, the IRS simply insures that the form contains all of the requested information, that the country of residence stated on the form is a country with which the U.S. has an income tax treaty, that the reduced rate that the withholding agent plans to apply is the proper rate under the applicable treaty, and that, based solely on information contained on the form, the reduced rate appears applicable. The IRS approval of the form makes no determination regarding whether the withholding agent's reliance on the form is reasonable, based on facts that the withholding agent knows or has reason to know at the time of the payment and that are not disclosed to the IRS as part of the review process. In addition, the final regulations allow the 90-day grace period to apply to payments covered by a Form 8233, in order to allow time for foreign persons who come to the United States for the first time and must complete a Form 8233 shortly after arrival to apply for and obtain an individual taxpayer identifying number. See §1.1441–1(b)(3)(iv).

The final regulations modify the proposed rule under §1.1441–1(b)(6) reducing the amount of certain compensation income by the personal exemption under section 151. The proposed regulations allowed a reduction for the full amount of the exemption. Commentators noted that allowing a reduction for the full amount of the allowable personal exemption may lead to inappropriate claims of multiple exemptions for nonresident aliens who come to the U.S. frequently for short-term events or assignments with different organizations. Commentators were concerned that they would have no ability to keep track of prior claims of the personal exemption. For this reason, the proration rule now currently in effect, is continued in the final regulations.

3. Reimbursed Expenses

Commentators asked that the regulations provide an exemption from withholding for reimbursed expenses paid to a nonresident alien individual in relation to performance of services in the U.S. as an independent contractor. A change to the regulations is not necessary, however. If the payments are exempt from tax under the Code, they are exempt from withholding under §1.1441–4(b)(1)(iv). If, on the other hand, those payments are not exempt under the Code, then it would be inappropriate to provide for an exemption from withholding under section 1441.

F. *Comments and Changes to §1.1441–5*

In response to comments, many partnership provisions have been consolidated in this section. A new paragraph (a) has been added to describe the steps necessary to determine the status of the payee for withholding purposes. The withholding procedures applicable to domestic partnerships are stated in paragraph (b). The withholding procedures applicable to foreign partnerships are stated in paragraph (c). Paragraph (d) describes applicable presumptions in the absence of documentation. Paragraph (e) is reserved for rules applicable to estates and trusts. Paragraph (f) contains the effective date provisions. Corresponding provisions have been added in §1.6049–5(d)(4), dealing with payments of reportable amounts under chapter 61 of the Code to address reporting of payments of amounts that are not subject to chapter 3 withholding.

Paragraph (c)(1) provides guidance for identifying the payee in the case of a payment to a foreign partnership. As a general rule, a payment to a foreign partnership is treated as a payment directly to the partners, whether or not documentation has been provided for the partners, with two exceptions: a payment to a "withholding foreign partnership" and a payment to a foreign partnership that has furnished a certificate upon which the withholding agent can rely to treat the payment as effectively connected with the conduct of a U.S. trade or business are treated as a payment to the foreign partnership and not to the partners.

Paragraph (c)(2) restates the rule proposed under §1.1441–1(e)(5), dealing with qualified intermediaries, for foreign partnerships that are withholding foreign partnerships. In order to avoid confusion, a withholding foreign partnership is no longer named a qualified intermediary.

Paragraph (c)(3) deals with foreign partnerships that are not withholding partnerships. Paragraph (c)(3)(iii) incorporates the withholding certificate provisions that were in proposed §1.1441–1(e)-(3)(iii). Those rules parallel the rules applicable to non-QIs under §1.1441–1(e)-(3)(iii) of the final regulations. In particular, the regulations require that a statement be attached to the withholding certificate if necessary to provide information sufficient for the withholding agent to determine each partner's distributive share of income subject to withholding. The rules governing the statement are stated in paragraph (c)(3)(iv) and parallel similar rules in §1.1441–1(e)(3)(iv) of the final regulations applicable to non-QIs. At the request of commentators, paragraph (c)(3)(iii) clarifies that a foreign partnership receiving income that is effectively connected with the conduct of a U.S. trade or business is not required to furnish separate certificates for each of its partners. Instead, it may furnish one single withholding certificate, even though

the partnership is not a withholding foreign partnership. See also paragraph (c)(1)(ii)(C). This procedure is reasonable because, in such a case, the partnership is subject to withholding procedures under section 1446.

Paragraph (d) describes the presumptions upon which a withholding agent can rely when making payments to a partnership for which certain documentation is lacking or unreliable. First, under paragraph (d)(2), a recipient that is presumed to be a partnership (based on presumptions set forth in §1.1441–1(b)(3)(ii)) is presumed to be a foreign partnership if certain indicia of foreign status are present. If, based on such a presumption, the withholding agent has determined that the payment is made to a foreign partnership (presumably acting for the account of its partners since intermediary status generally cannot be presumed in the absence of valid documentation), uncertainties may remain regarding the status of the partners, the allocation of a payment among them, or whether all the partners have been accounted for. Under the final regulations, a payment that cannot be reliably associated with a withholding certificate from a partner is presumed made to a foreign payee. As a result, the withholding agent is required to withhold 30-percent from the payment, without a reduction. Also, any part of a payment that it is not reliably allocated to a partner is presumed allocable to the partner with the highest withholding rate or the highest U.S. tax liability (as the withholding agent can best estimate) if the withholding rates are equal. Third, if the withholding agent does not have a reliable certification that all the partners are accounted for, and, as a result, the withholding agent cannot reliably determine the distributive share of any one or more partners, then none of the payment can be reliably associated with any one partner and the entire payment is presumed made to a foreign payee.

These procedures parallel those applicable to foreign intermediaries under §1.1441–1(b)(3)(v). They differ from the presumptions stated in the proposed regulations under §1.1441–1(f)(4)(ii) which provided that the amounts were paid to a U.S. payee that is not an exempt recipient. Thus, the final regulations, by presuming that the amounts are paid to a foreign payee, require that a 30-percent amount be withheld on amounts subject to withholding under chapter 3 of the Code rather than a 31-percent amount under the backup withholding provisions of section 3406. However, for amounts that are not subject to chapter 3 withholding, §1.16049–5(d)(4) retains the provisions in the proposed regulations that the payments are presumed made to a non-exempt recipient U.S. payee. In such a case, 31-percent backup withholding applies instead of 30-percent withholding.

The final regulations under §1.1441–5(d)(3)(iv) clarify that a foreign partnership that is a withholding foreign partnership determines who the payee is and the status of the payee, based on the provisions of §1.1441–1(b)(2) and §1.1441–5(c) and (d) in the same manner as if it were making payments directly to the partners other than in their capacity as partners. In the absence of documentation regarding the partners, the partners are presumed to be foreign persons rather than U.S. persons, including for amounts that are not subject to chapter 3 withholding. A presumption of U.S. status for amounts not subject to chapter 3 withholding would not be meaningful because a foreign partnership is not a payor for purposes of chapter 61 of the Code and backup withholding under section 3406 when making payments to its partners. Therefore, payments made by a foreign partnership to its partners are not reportable under chapter 61 and are not subject to backup withholding. Instead, a foreign partnership must file an annual return on Form 1065 and report each partner's distributive share on Forms K-1, which forms are filed with the IRS with a copy to each partner. Such filing requirements apply in all cases in which the foreign partnership derives U.S. income, irrespective of whether the tax liability has been satisfied by withholding at source or whether all the partners are foreign. See section 6031 and §§1.6031–1(c) and 1.6031(b)–1T. However, in order to reduce the burden on foreign partnerships that are not withholding foreign partnerships, the IRS and Treasury are planning to issue regulations under section 6031 that would eliminate the filing requirement under section 6031 for foreign partnerships that are not engaged in a U.S. trade or business, that furnish appropriate documentation for each of their partners, and whose partners' U.S. tax liability has been fully satisfied at source.

Commentators asked that foreign partnerships be allowed to certify under penalties of perjury that all the partners are foreign and to use the same sub-accounting procedures that qualified intermediaries may use. In particular, where a partner is entitled to reduced withholding under the regulations without providing a TIN, commentators argue that there should not be a requirement that the partnership's intermediary withholding certificate specify that partner's distributive share of the item of income paid to the partnership. Also, they argue that there should not be a requirement that a separate Form 1042–S be filed under the partner's name. Instead, the partnership's intermediary withholding certificate should indicate the aggregate distributive shares of all members entitled to a single rate, and reporting should be done on the aggregate amount under the partnership's account. These comments are similar to those received for non-QIs and are not adopted for the same reasons that they are rejected for non-QIs. It is important to retain the distinction between foreign partnerships that qualify as withholding agents (i.e., those that are withholding foreign partnerships or are subject to section 1446) and those that are not qualified to act as withholding agents. If a foreign partnership is not a withholding foreign partnership, it should not be permitted to certify the status of its partners on their behalf.

Commentators asked that a foreign entity holding a passive investment for its own account be allowed to use the withholding procedures applicable to foreign corporate entities, irrespective of its actual classification for tax purposes. It is argued that, in many cases, investments are structured using organizations that, under the default classification rules of the check-the-box regulations would be classified as partnerships. In order to avoid more onerous withholding procedures, these entities would normally prefer a corporate classification. It is argued that the need to make an election for this purpose is an unnecessary step that should be eliminated. This comment is not accepted because the election procedure to insure corporate classification is simple and serves an important compliance role.

At the request of commentators, the final regulations in §1.1441–7(a) clarify that, if a nominee holds an interest in a domestic or foreign partnership on behalf of a partner and provides the partnership with the information required under §1.6031(c)–1T(a) with respect to the partner, the nominee is deemed to have satisfied its obligations as a withholding agent under chapter 3 of the Code and has no liability for underwithholding on the partner's distributive share of the amounts to which the furnished information pertains. This rule reflects the fact that a custodian holding a partnership interest for an investor often lacks the information needed to determine which withholding regime applies to income from the partnership. The necessary information to correctly withhold on partnership income is often only known to the partnership and is not easily accessible to the custodian. On the other hand, the partnership, which is also a withholding agent, or has withholding responsibilities, has the information necessary to determine how withholding should apply. It is also responsible for filing the partnership return and furnishing the Forms K–1 to the partners.

Some commentators requested that a withholding agent should be permitted to rely on a withholding certificate provided directly by a partner, without a withholding certificate from the partnership. The commentators argue that this reliance rule would permit partners to claim a reduced rate of withholding even though the partnership refuses to cooperate and to submit the proper documentation. This suggestion is not accepted because it would, in effect, read the partnership withholding certification rules out of the regulations. It may also become a source of confusion for withholding agents who would not always know how reliable the partner's information is. The IRS and Treasury believe that the partnership withholding certificate provides important information to the withholding agent, such as each partner's distributive share of the payment. In addition, in the absence of a partnership withholding certificate, the withholding agent would lack information required to be stated on the Form 1042-S (e.g., the partnership's EIN) and compliance may be weakened as a result.

G. *Comments and Changes to §1.1441–6*

1. Address Rule

Comments were received asking reconsideration of the proposal to eliminate the address rule for dividends. The IRS and Treasury believe, however, that there is no longer a justification for the address rule as in effect under current law. When the payment is made directly to a foreign beneficial owner, there is no justification for not requiring a Form W–8 from the owner in the same manner that is required for payments on debt obligations. In the case of payments of dividends to foreign intermediaries, the proposed and final regulations provide for new intermediary procedures that are more adapted to the monitoring of abusive claims of treaty benefits than is the address rule. For these reasons, the address rule is not reinstated.

2. Reliance on Withholding Certificate

In response to comments, §1.1441–6(b)(1) clarifies, by cross-reference to §1.1441–1(e)(4)(viii) dealing with reliance on withholding certificates, that a withholding agent may rely on information and certifications in a certificate without having to inquire into the truthfulness thereof, absent actual knowledge or reason to know otherwise. Therefore, absent actual knowledge or reason to know that such claims are false, a withholding agent may rely on claims on a Form W–8 of beneficial ownership and residence by a person claiming benefits under a tax treaty. Under these principles, a withholding agent may rely on representations from a foreign person regarding the application of foreign tax laws or certifications regarding the circumstances of the recipient or of the transaction. In particular, a withholding agent may rely on the recipient's representation made by furnishing a beneficial owner withholding certificate that it is a beneficial owner of the income. If the address on a withholding certificate comports with a claim of residence in a particular country, a withholding agent may also rely on such address as indicative of residence, even though the determination of residence for tax treaty purposes may be far more complex than establishing an address in the treaty country and is likely to involve the application of foreign tax laws, particularly in the case of a person other than an individual. However, if the withholding agent knows that the representations on a Form W–8 are inconsistent with foreign laws or with the recipient's or the transaction's circumstances, then the withholding agent must question the basis for the representations.

3. Requirement of a TIN

Commentators have suggested that the final regulations require a TIN only for related party transactions subject to treaty rate withholding. This would eliminate the need to provide a specific list of payments exempt from a TIN requirement. This suggestion is not adopted because the IRS and Treasury believe that the TIN requirement is useful in monitoring claims of reduced rates under tax treaties for all transactions. Because the procedures for obtaining a TIN are simple, the TIN requirement for non-market based transactions is not viewed as overly burdensome relative to the compliance benefits.

Section 1.1441–1(e)(4)(vii) enumerates the instances in which a TIN must be furnished on a withholding certificate. Under the proposed rules, a TIN is required to obtain the benefit of reduced withholding under an income tax treaty, unless the payment consists of dividends paid on publicly traded stocks. Commentators have requested that the exemption from having to furnish a TIN be extended to other securities, including pre-1984 bonds and other debt obligations, payments on any mutual fund investment (e.g., an open-end mutual fund), interests in publicly-traded grantor trusts generating royalty income, interest- and dividend-equivalent payments on the loan of exempted publicly traded stocks or securities, income from repurchase agreements involving exempted publicly traded stocks or securities, dividends on non-publicly traded stocks, interest on syndicated or bank loans, income from publicly-traded grantor trusts, contingent interest, and amounts paid on private placements of stocks or securities.

In response to these comments, the final regulation are amended to expand the categories of income for which a TIN is not required to be furnished. Under the final regulations, the categories are dividends

and interest on publicly traded securities, dividends on redeemable securities issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), income related to loans of publicly traded securities, and dividends, interest, or royalties from units of beneficial interest in a publicly offered and registered unit investment trusts. See §1.1441–6(b)(2)(ii). The covered securities extend to foreign securities as well as U.S. securities. Also, in response to comments that the regulations should provide a reliable source to determine whether or not a stock (or other security) is publicly traded, the regulations clarify that section 1092(d) and §1.1092(d)–1 apply to determine whether a stock or security is publicly traded for this purpose. An exception is not made for other securities because the IRS and Treasury believe that the TIN exemptions should be limited to income arising from securities that are publicly traded and should not extend to securities held and transacted as part of a private business relationship. Also, an exception is not made for sale-repurchase transactions (repos) because repos completed within a 6-month period give rise to income that is treated as short-term OID for tax purposes. Such income, if earned by a foreign person, is exempt from chapter 3 withholding. Because the type of repo transaction that would be equivalent to the type of TIN-exempted market transactions would generally be of substantially shorter duration, the IRS and Treasury believe that it is not appropriate to provide an exemption for more than 6-month repo transactions.

Comments suggested that requiring TINs on intermediary certificates is an undue compliance burden when reporting is not done to the intermediary's account, especially if the Form W–8 of any underlying beneficial owner is not required to bear a TIN. Commentators argue that any IRS compliance concerns can be met without the requirement for a TIN from a non-qualified intermediary since U.S. withholding agents would, in any event, supply the identification and address of the beneficial owners to the IRS on Form 1042–S. The final regulations eliminate the need for a TIN on a non-qualified intermediary certificate and on a certificate from a foreign partnership that is not a withholding foreign partnership. However, a TIN continues to be required in the case of a qualified intermediary certificate or in the case of a certificate from a foreign partnership.

Some commentators asked that the TIN requirement be made optional. They argue that this would provide a reasonable accommodation to foreign investors who only occasionally or rarely enter into financial transactions involving U.S. securities. This comment is not adopted; instead, the final regulations broaden the types of transactions exempt from the requirement to provide a TIN. This change should alleviate the concern expressed by these commentators. Also, commentators asked that the final regulations provide an exemption for intermediaries with a small number of foreign accounts (500 or less). This suggestion is also not adopted in light of the fact that the burden of manually processing account information for complying with these regulations should be outweighed by the substantial compliance benefits.

With regard to documentary evidence required to validate a TIN used to support a claim of treaty benefits, commentators asked that the documentary evidence remain valid indefinitely rather than expire after three years as provided in the proposed regulations. See §1.1441–6(c). This comment is not adopted. The withholding certificates, and the TIN showing on that certificate, are used to represent many facts, including the foreign status of the owner and his residence for tax treaty benefit purposes. These facts may change frequently, particularly for individuals, and it is important that beneficial owners recertify their status periodically to the IRS. This recertification is also important because withholding agents cannot monitor the continued validity of the original residence claim, since the TIN on the certificate does not indicate which country of residence has been represented to the IRS as part of the certification process.

The final regulations do not adopt a comment that some organizations claiming tax- exempt status under section 501(c) should be exempt from the requirement to obtain and furnish a TIN if the organization is a universally recognized charitable organization, such as a church or religious order. As previously stated, TINs are used by the IRS to electronically process and match tax information. Any exception to the TIN requirement precludes such electronic processing. In light of the ease with which such organizations can obtain an EIN, the IRS and Treasury believe that no change to the proposed regulations is justified. However, the regulations clarify that a TIN is required from a foreign exempt organization or foreign private foundation only to the extent it claims a reduced rate of withholding solely based upon its exempt status or if a TIN is otherwise required from non-tax exempt taxpayers in order to claim a reduced rate of withholding (e.g., under an income tax treaty). Also, a foreign private foundation is not required to furnish a TIN for income subject to the 4-percent tax under section 4948(a) if such income would otherwise be exempt from tax under the Code if paid to a foreign person that is not a private foundation.

4. Certification and Electronic Matching of TINs

The final regulations are revised to specify that a taxpayer must provide the IRS with a certificate of residence to enable it to certify a TIN if that procedure is available in the country of residence. Documentary evidence is permitted as an alternative means of establishing residence in a treaty country only if a certificate of residence is not reasonably available from the tax administration in the country of residence. This change reflects the view that a certificate of residence is more reliable evidence of tax residence in a treaty country than is documentary evidence. The obligation to furnish a certificate of residence if one is available does not apply to corporate bodies who may, instead, furnish incorporation documents establishing their status as a corporate body in the applicable treaty jurisdiction.

The final regulations retain the provision in the proposed regulations regarding the electronic confirmation by a withholding agent of a TIN under procedures to be prescribed by the IRS. The IRS has undertaken a TIN-matching prototype in the past. See 60 FR 66243 (December 21, 1995). More recently, the IRS and Treasury issued a regulation under §31.3406(j)–1 (1997–26 I.R.B. 4) and Rev. Proc. 97–31 (1997–26 I.R.B. 6) making a TIN-matching program available to Federal agency payors of reportable payments under section 3406.

TIN-matching, however, will not apply for chapter 3 withholding purposes until specifically implemented by the IRS.

5. Treaty Benefits for Payments to Hybrids

The proposed regulations provide guidance on procedures for claiming reduced withholding rates under an income tax treaty. For this purpose, the proposed regulations define the term *beneficial owner* under foreign law principles. See proposed §§1.1441–1(c)(6)(i)(B) and 1.1441–6(b)(4). Commentators were divided on whether the proposed rule is a correct interpretation of the treaty. In particular, several commentators noted that the term *beneficial owner* is meant to be defined under the source country's domestic law. Also, commentators asked whether the proposed rules were solely for withholding purposes or were meant to define a foreign beneficial owner's eligibility for treaty benefits for purposes of section 894.

In part in response to these comments, temporary regulations have been issued under section 894 (62 FR 35673, published July 2, 1997) that are largely consistent with the principles contained in the proposed withholding regulations. Under these temporary regulations, a reduced withholding rate applies under an income tax treaty only to the extent that the income is treated as derived by a resident of the applicable treaty jurisdiction. Income is treated as being so derived only to the extent it is taxed in the hands of the resident as income of a resident of the applicable treaty jurisdiction. The final withholding regulations have been modified to reflect these temporary regulations.

The regulations under §1.1441–6(b)-(4)(ii) finalize the rules regarding the type of withholding certificates that must be furnished in situations involving hybrid entities where the payment is made to the entity but the benefit is determined by the status of the interest holder. Generally, a partnership Form W–8 would have to be provided by the interest holder, which form must be presented by the entity on behalf of the interest holder. In order to reduce the burden in the case of reverse foreign hybrid entities (e.g., foreign mutual funds treated as corporations for U.S. tax purposes but as fiscally transparent entities for foreign countries' law purposes), the final regulations allow those entities to become qualified intermediary, so that, like foreign partnerships and entities acting as intermediaries for others, they may present a global Form W–8 to a U.S. withholding agent instead of furnishing individual forms for each of their shareholders who claim a benefit under an income tax treaty. See §1.1441–1(e)(5)(ii)(C).

The preamble to the temporary regulations under section 894 indicates that withholding agents should consider the effect of the regulations on their withholding obligations, including the need to obtain new withholding certificates to confirm claims of treaty benefits for payments made on or after the effective date of §1.894–1T(d). Until the final regulations under section 1441 are effective (i.e., until 1999), withholding agents may continue to rely on Forms 1001 regarding claims of reduced rates under income tax treaties. In addition, with respect to dividends, no Form 1001 is generally required due to the alternative "address" rule. However, withholding agents that are making payments in 1998 should require new Forms 1001 for payments that they believe are affected by the provisions of §1.894–1T(d) in order to insure that representations regarding entitlement to a reduced rate under an income tax treaty are given in light of the provisions of §1.894–1T(d). For this purpose, withholding agents may rely on Forms 1001 that are prepared and furnished in accordance with the procedures described in §1.1441–6(b)(4)(ii), even though these procedures are not effective until 1999. Thus, for example, if the withholding agent pays to a foreign reverse hybrid entity, it may rely on a Form 1001 furnished by the entity even though the name of the beneficial owner is that of the entity's interest holder. Implicit in the entity's presentation of a Form 1001 from its interest holder is a representation that the interest holder is a resident of an applicable treaty country and derives the income paid to the entity within the meaning of §1.894–1T(d)(1). A Form 1001 obtained in 1998 is valid until December 31, 1999 (except to the extent that circumstances change affecting its validity). Payments made after 1998 to persons for whom the withholding agent does not hold a certificate will require a new Form W–8.

In view of the temporary regulations under §1.894–1T(d), several commentators have asked for guidance on how to apply the "reason-to-know" standard to self-certifications of entitlement to treaty benefits in situations involving hybrid entities. The regulations do not include special guidance on this point, because the IRS and Treasury believe that the due diligence issues in this context are not different from those arising in other contexts. Therefore, withholding agents may rely on the general principles in §1.1441–1(e)(4)(viii) (that, absent actual knowledge or reason to know otherwise, a withholding agent may rely on information and certifications without having to inquire into the truthfulness thereof) and in §1.1441–6(b)(4)(ii) (that a withholding agent may rely on representations that the beneficial owner derives the income within the meaning of §1.894–T(d) and is a resident of the treaty country without inquiring into the truthfulness thereof or researching foreign law). For example, if a withholding agent knows that a person whose name is on a Form 1001 or a Form W–8 is an interest holder in an entity and that the treaty country where the person claims residence generally treats the entity as a non-fiscally transparent entity, the withholding agent would have reason to know that a claim of reduced rate by such person may not be reliable and should make further inquiries. Generally, any claim of treaty benefits by interest holders in a U.S. LLC should be scrutinized based on many published indications that foreign countries generally regard U.S. LLC's as corporate entities.

6. Certification of Entitlement to Benefits Under an Income Tax Treaty

The proposed regulations do not contain special procedures regarding the manner in which a foreign person can establish that it satisfies the conditions under applicable limitation on benefits provisions of an income tax treaty. This matter is indirectly addressed in §1.1441–6(b)(1) for foreign persons claiming benefits under an income tax treaty that are required to file a disclosure statement under section 6114 if they are related to the withholding agent and the amounts received during the calendar year that exceed $500,000.

After further consideration, the IRS and Treasury have determined that certifica-

tion procedures, as had been suggested in Notice 94–85 (1994–2 CB 511), issued under the U.S.-Dutch tax treaty, are not procedures that could realistically be extended to all tax treaties within a reasonable time frame, if at all. Instead, the IRS and Treasury believe that an approach relying on self-certification and proper disclosure to the IRS is more practical. Therefore, the final regulations provide in §1.1441–6(c)(5)(i) that those persons who are required to furnish an IRS-certified TIN must, as part of the TIN certification process, certify that they satisfy the conditions of an applicable limitation on benefits provision. For this purpose, the person must attach an affidavit to the request for certification, describing sufficient facts for the IRS to determine the basis upon which such conditions are satisfied. The IRS review of a foreign person's affidavit does not constitute an audit of the taxpayer on this issue. In view of these new procedures, Notice 94–85 is withdrawn.

The final regulations also provide under §1.1441–6(c)(5)(ii) that a taxpayer (other than an individual) applying for IRS certification of its TIN must certify to the IRS that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself within the meaning of §1.894–1T(d)(1).

7. Reporting under section 6114

Under proposed §1.1441–6(b)(1), a taxpayer receiving income benefitting from a reduced rate under an income tax treaty is required to file an information return under section 6114 if it is related to the withholding agent and the amounts "paid" during the taxable year exceed $500,000. The final regulations modify the $500,0000 condition by providing that the requirement to file an information return applies only to amounts "received" during the calendar year that, in the aggregate, exceed $500,000. The revision clarifies that the test is not intended to be applied on a per-withholding agent basis. Rather, the $500,000 threshold is intended to measure the total amount received by the taxpayer, whether from one or several related withholding agent.

The final regulations under section 6114 are also revised to allow the IRS to eliminate duplicate reporting requirements for payments received by a foreign taxpayer that must be reported both on a Form 5472 under section 6038A and under section 6114. See §301.6114–1(c)(6). Such change is to be reflected in the applicable forms and instructions.

8. Joint Owners

One commentator suggested that since a joint owner can get a separate Form 1042–S, the final regulations under §1.1441–6 should let each joint owner claim its own treaty rate (if different) on its pro-rata share of the income. This suggestion is not adopted because of the difficulties, generally, for each joint owner to present reliable representation of its pro-rata share of the income being paid.

9. Claim of Treaty Benefits by U.S. Taxpayer

A commentator noted that the existing regulations under §1.1441–4(b)(2) fail to address the situation of a foreign national who is a resident alien of the United States under section 7701(b) and under a treaty tie-breaker rule, but who is entitled to treaty benefits under a treaty saving clause exception. The commentator indicated that procedures are needed to allow such persons to submit proper forms and documentation. According to the commentator, such persons entitled to treaty benefits often are not currently residents of a treaty country, do not have a permanent residence address in the foreign country of which they are claiming benefits, and are not able to obtain certification or documentation to satisfy the three-year rule under §1.1441–6(c)(4). Further, the commentator argued that the regulations should specify which form such persons can file to claim treaty benefits (under the proposed regulations neither Form W–8 nor W–9 would accommodate this claim). In response to this suggestion, paragraph (b)(5) is added to allow a U.S. taxpayer to claim benefits under an income tax treaty on a Form W–9 or such other form as the IRS may prescribe.

H. *Comments and Changes to §1.1441–7*

1. Withholding agent's due diligence standards

Section 1.1441–7(b)(1) is restated to clarify that a withholding agent is under a general due diligence standard to determine its withholding obligations based on its actual knowledge or reason to know, if based on such knowledge or reason to know, it appears that the obligation to withhold or report the payment is greater than would otherwise be the case. This due diligence standard applies generally, not just in the context of determining the extent to which a withholding agent can rely on a withholding certificate. Therefore, for example, if a withholding agent has reasons to believe that a foreign beneficial owner of interest income is related to the debtor, so that the portfolio interest exemption may not be available, the withholding agent should make an inquiry in order to ascertain whether the portfolio interest, in fact, applies. The fact that the Form W–8 is not required to certify lack of relationship does not mean that the withholding agent can ignore what it knows or otherwise suspects if such knowledge or reason to know affects the tax liability of the beneficial owner which withholding under chapter 3 of the Code is intended to satisfy.

2. Due Diligence Safe Harbors

Some commentators asked that the standard of care governing the withholding agent's liability should be actual knowledge rather than reason to know, especially in the context of high-volume commercial transactions where there is not necessarily a pre-existing client relationship. In response to this comment, the final regulations define *reason to know* so that certain circumstances described in paragraphs (b)(2)(ii) (A) through (F) are the only circumstances that require the withholding agent to exercise due diligence (other than actual knowledge). Further, examples are added regarding the documentation that a withholding agent may rely on in order to correct a defective Form W–8. This limitation only applies to payments made by a financial institution with which a customer may open an account that consists of portfolio interest, payments on publicly traded securities described in §1.1441–6(b)(2)(ii), deposit interest with banks or other financial institutions as described in sections 871(i)(2)(a) and 881(d), or original issue discount (or interest) on obligations with a maturity of 183 days or less from the date of original issue.

The final regulations eliminate the need

to inquire further when the customer directs the financial institution to make a payment to another U.S. financial institution. While such direction may indicate that the account holder is, in fact, residing in the U.S., the burden of this due diligence requirement outweighs the compliance benefits.

However, the final regulations impose a duty to inquire when a payment is directed to a P.O. box or an in-care-of address where the withholding agent has a permanent address on file for the payee that is neither a P.O. box or an in-care-of address. Contrary to the comments, the IRS and Treasury believe that how a payment is directed may indicate that the beneficial owner wishes not to disclose his or her place of residence. As stated above, the beneficial owner may be treated as a foreign person despite a P.O. box address; however, such treatment would require that the withholding agent obtain evidence of foreign status in addition to the Form W–8.

The final regulations add a due diligence item. A withholding agent may not rely on a claim of partnership status on a Form W–8 if the name of the person on the form indicates that the entity may be the type of entity that is on the per se list of foreign corporations included in §301.7701–2(b)(8)(i), unless the form explains that the entity is a grandfathered partnership.

2. Authorized Foreign Agents

The proposed regulations would modify the current rules governing foreign agents of U.S. withholding agents by allowing a foreign agent to file Forms 1042 and 1042–S returns on behalf of the U.S. withholding agent. Some commentators have pointed out that the inability to tier authorized foreign agents limits the usefulness of the procedure. However, after further consideration, the IRS and Treasury have decided to leave the proposed rules unchanged. The authorized foreign agent procedure relies on the IRS' ability to audit the agent. Any compliance failure of the agent is imputed to the U.S. withholding agent. If the U.S. withholding agent acts through several layers of agents, the IRS would have to audit all of the agents in the chain of payment to determine the compliance of the U.S. withholding agent. Such audits are impractical. The procedure is retained, however, because it may still be useful in its proposed form in cases not involving tiers of intermediaries.

I. *Comments and Changes to §1.1441–8*

The final regulations are revised to take into account comments that the proposed documentation requirements for payments to foreign governments and international organizations are unnecessarily cumbersome. The documentation requirement is eliminated entirely for payments to international organizations and for interest on bankers' acceptances paid to central banks of issue. This exception is appropriate because the withholding exemption is not conditioned on any representation of the beneficial owner, other than its status as such (see §1.6049–4(c)-(1)(ii)(G) and (H) for an "eyeball" test for ascertaining the status of the payee as an international organization or a foreign central bank of issue). Payments to foreign governments and to the Bank for International Settlements must be documented, however, because a withholding exemption applies only if the government's or the Bank's income is not associated with a commercial activity. However, if a person represents that it is an integral part of a foreign government, the documentation remains valid permanently. If, on the other hand, the person claiming to be a foreign government represents that it is a controlled entity, then the certificate must be renewed every three years. A certificate furnished by the Bank for International Settlements is also valid permanently. In view of these simplified documentation requirements, the final regulations require that all payments to foreign governments, international organizations, and the Bank for International Settlements be reported on a Form 1042 and 1042-S, to the extent reportable if paid to a foreign person.

J. *Comments and Changes to §§1.1441–9 and 1.1443–1*

1. Foreign Tax-exempt Organization and Foreign Private Foundations

Several comments were received regarding withholding on the income of foreign tax-exempt organizations and applicable procedures for documenting the foreign organization's exempt status. The commentators questioned whether section 1443(a) should apply to items of passive income that would not be unrelated business income but for section 514 (relating to debt-financed property), and whether section 4948 should apply to impose a 4-percent tax on U.S. source portfolio interest and bank deposit interest so that a 4-percent withholding applies under section 1443(b) to payments of such income to foreign foundations.

Commentators argued that a foreign organization meeting the description of section 501(c)(3) should be permitted to claim tax-exempt status even if it has not first obtained an IRS determination. They argued that the IRS determination letter is required for domestic organizations because contributions to a domestic section 501(c)(3) organization are deductible. No such deduction is permitted for a contributions to a foreign organization and, therefore, a foreign organization described in section 501(c)(3) should be treated like any other organization described under section 501(c). Also, commentators argued that the regulations should not require an opinion of counsel to be attached to the withholding certificate. The final regulations, however, do not accept most of these comments. As in the proposed regulations, foreign organizations that are required to obtain an IRS determination letter in order to qualify as a tax-exempt organization under section 501(c)(3) (i.e., those organizations that obtain a substantial portion of their support from U.S. sources) must obtain such a determination letter and attach it to the Form W–8. Other foreign organizations that may qualify for tax-exempt status under section 501(c)(3) without an IRS determination letter (i.e., organizations that receive substantially all of their support from sources outside the United States; see section 4948(b)) may establish their exempt status on the basis of an opinion of counsel. Also, they clarify that the opinion must be from U.S. counsel, meaning an attorney admitted to, and in good standing with, the bar in one of the fifty States or the District of Columbia. In addition, the final regulations under §1.1441–9(b)(2) provide that tax-exempt organizations that claim that they are tax-exempt under section 501(c)(3) and not private foundations and do not have an IRS determination letter must attach an affidavit to their Form W–8

in addition to the opinion of counsel. Thus, the final regulations relieve those organizations from the obligation under the proposed regulations to provide an opinion of counsel regarding their non-private foundation status. The IRS and Treasury view the IRS certification procedure for section 501(c)(3) organizations as an important compliance measure. They do not believe that self-certification procedures should be substituted where the Code clearly requires an IRS determination letter.

The final regulations under §1.1441–9(a) also clarify that a foreign organization that does not rely on its tax-exempt qualification to claim reduced withholding on a payment need not comply with the special procedures in §1.1441–9. Instead, it may follow the same procedures that apply to taxable entities. In particular, the final regulations clarify that a foreign tax-exempt organization or foreign private foundation that claims a benefit under an income tax treaty must follow the procedures described under §1.1441–6 rather than rely on the procedures described under §§1.1441–9 or 1443–1.

The final regulations do not make a special exception for debt-financed income that, under section 512, is treated as unrelated business income. In addition, the final regulations do not eliminate the 4-percent tax imposed under section 4948(a) on any items of investment income of a private foreign foundation and required to be withheld under section 1443(b). The IRS and Treasury believe that they have no authority to eliminate a tax that is clearly imposed by statute. Therefore, it would be inappropriate to eliminate the requirement to withhold such tax. A foreign private foundation claiming a reduced rate of 4-percent is subject to the same documentation requirements as apply to tax-exempt foreign organizations, meaning that a Form W–8 must be furnished, to which the appropriate determination letter or opinion of U.S. counsel must be attached. The final regulations restate the existing regulations under section 1443 in an effort to eliminate unnecessary provisions. The elimination of several provisions does not indicate that the procedures do not apply (e.g., requirement to file Forms 1042 and 1042-S), but, simply that these provisions are not necessary.

K. *Comments and Changes to §§1.1461–1 and 1.1461–2*

1. Form 1042–S Reporting

In response to comments, the deadline for filing Forms 1042 and 1042–S has been moved from February 28 to March 15. Regarding joint accounts, the final regulations do not adopt the suggestion that only one Form 1042–S be required for a joint account even where the other joint owner requests another statement. Commentators argued that subdividing payments made to a single account and providing multiple Forms 1042–S would significantly increase administrative burden. However, joint owners should be able to obtain a proof of tax payment in case one of them wishes to apply for a refund of tax or needs to substantiate the payment of tax for any reason and it does not have access to the form issued to one of the joint owners. The fact that the obligation to issue more than one Form 1042–S is only on request by one of the joint owners should minimize the burden on withholding agents.

The proposed regulations require that a financial institution with actual knowledge of the payee's TIN report the TIN on Form 1042–S even though a TIN did not have to be provided in connection with the payment. In response to comments, the final regulations clarify in §1.1461–1(c)(3)(v) that, in the case of a financial institution dealing with customers through a system of accounts, actual knowledge exists only if such TIN was reported on a Form W–8 provided with respect to another payment made through the same account or through another account, the information with respect to which can be retrieved through a centralized account information system (including a universal account system) containing both accounts.

Commentators requested a clarification that Form 1042–S reporting is not required with respect to interest on deposits paid by any U.S. bank (including its foreign branches or subsidiaries), except in the limited situation where the interest is paid to a Canadian resident. This point is clarified under §1.1461–1(c)(2)(i), which limits reporting to amounts subject to withholding, as defined in §1.1441–2(a). However, §1.1461–1(c)(2)(i)(D) contains an exception for interest paid to Canadian residents. In addition, §1.1461–1(c)(2)-(ii)(F) is added to clarify that interest or OID accrued on an obligation is not required to be reported on a Form 1042–S to the extent the interest or OID is not required to be withheld upon under §1.1441–2(b)(3) due to the lack of knowledge by the withholding agent. On the other hand, §1.1461–1(c)(2)(i)(E) clarifies that, as is the case under existing regulations, amounts representing interest on an obligation sold between interest payment dates is reportable on a Form 1042 and 1042–S, even though it is not subject to withholding.

2. Adjustments for Overwithholding or Underwithholding of Tax

Commentators asked that withholding agents be permitted to process refund claims for nonresident alien payees. Since refund claims will now require TINs, duplication of claims can be avoided. Commentators point to the fact that this procedure should be more efficient as it may require the IRS to process only a single refund claim from a withholding agent for all of its foreign clients rather than dealing with claims filed by each individual foreign client. This comment is accepted in the context of qualified intermediary arrangements. However, in other situations, a procedure allowing refunds on behalf of customers is impractical because of the risk that customers would independently file for refunds based on their form 1042–S.

Withholding agents also made a number of points regarding authority to rectify any underwithholding situation discovered after the due date for filing Form 1042 but before actual filing, streamlining current refund procedures by, for example, providing for a "quickie" refund form, and the reporting of adjustments to withholding during the calendar year. Those points, however, should be addressed in the context of forms and administrative procedures, rather than in the regulations. The IRS will continue to

work with the industry to find ways to improve and streamline the information and return filing procedures.

L. *Comments and Changes to Information Reporting Provisions Under Chapter 61 and Section 3406 of the Code*

1. Information Reporting—Exempt Recipient

Commentators asked that the proposed changes to the exempt recipient rules for corporations be eliminated. Under §1.6049–4(c)(1)(ii)(A) of the proposed regulations, the "eyeball" test for corporations with an account relationship with the payor would be required to be supplemented by an EIN or a corporate resolution. Commentators suggested that, instead, payors should be allowed to rely on the per se list provided in the check the box regulations under §301.7701–3.

In response to these comments, the final regulations eliminate the proposed corporate resolution requirement and, therefore, reinstate the "eyeball" test for corporate payees. Foreign corporations are able to establish their corporate payee status based on the per se list in §301.7701–2(b)(8)(i). In addition, a payee may establish corporate status with a copy of the Form 8832, if the entity has filed one with the IRS in order to elect corporate classification. See §1.6049–4(c)(1)(ii)(A)(*1*) and (*2*).

Section 1.6049–4(c)(1)(ii) of the 1988 proposed regulations delete nominees, custodians, and brokers from the list of exempt recipients. Some commentators objected to this change. The final regulations re-instate nominees, custodians, and brokers as exempt recipients. Additionally, swap dealers are included in the list of exempt recipients, and the description of financial institutions that are exempt recipients has been clarified to include clearing organizations.

Comments were received requesting that the list of international organizations be re-instated in the regulations. The final regulations do not contain such a list because frequent changes in the status of such organizations would make it too burdensome for the IRS to keep current. Instead, the IRS intends to issue guidance indicating that withholding agents and payors may rely on the list published by the Department of State.

Commentators asked that the list of exempt recipients under sections 6041 and 6045 be conformed to that under section 6049 and, in the case of section 6041, be extended to banks and financial institutions. The final regulations apply the same exempt recipient rules to interest under section 6049, dividends under section 6042, and notional principal contracts under section 6041. The exempt recipient rules under section 6045 remain unchanged, except that a foreign central bank of issue is added to the list for substitute payments under §1.6045–2(b)(2)(i)(G).

2. Information Reporting for Offshore Accounts—Documentary Evidence

The proposed regulations make a number of changes to the existing procedures applicable to deposits with foreign branches of U.S. banks. The proposed regulations modify the documentary evidence standard in §35a.9999–3, A–34, as part of an effort to subject all off-shore accounts to a uniform documentary evidence standard, whether the account is with a foreign branch of a U.S. bank, with a foreign branch of a domestic institution other than a bank, or with a foreign branch of a foreign financial institution. As a result, foreign branches of U.S. banks would become subject to more stringent documentary evidence requirements to the extent they would no longer be able to rely on an indication of foreign status from a customer. Instead, the proposed regulations require a foreign banking branch to obtain actual documentary evidence from the customer and keep a record of it. Some commentators questioned whether the proposed regulations eliminate the possibility of relying on a statement of foreign status incorporated in the account opening form. In addition, the proposed regulations impose a three-year renewal of the documentary evidence, a requirement that does not currently apply to foreign banking branches. Further, the proposed regulations eliminate the $600 threshold under the current regulations (by making foreign branch bank deposit interest subject to reporting under section 6041 rather than section 6049). They impose new backup withholding requirements for accounts actually known to the branch as being owned by a U.S. person. In addition, the provisions under §1.1441–1(f) create a presumption of U.S. status for undocumented accounts. Although a presumption of U.S. status is not sufficient for triggering an obligation to backup withhold (because the bank has no actual knowledge), it is sufficient to require the interest to be reported on a Form 1099.

After further consideration, and based on comments received, the final regulations are revised. Consistent with the regulations proposed in 1988 and in 1996, the requirement to document owners of accounts maintained at offshore branches of U.S. banks is imposed under section 6049 rather than section 6041. Therefore, the $600 limit will no longer apply to those accounts. On the other hand, the documentation requirements are substantially simplified. If the customer's address is in the country where the branch is located and it is not customary in that location that banks request documentary evidence from customers when opening an account, then the bank or other financial institution may rely on a declaration of foreign status, contained in an account opening form, that does not have to be signed under penalties of perjury. The declaration does not expire unless circumstances change that would indicate that the account holder has become a U.S. person or the payor is so notified. The payor must send a year-end reminder to the account holder to notify the payor of change of status, if applicable.

These alternative documentary evidence procedures are extended to all offshore accounts for payments that are not subject to withholding under chapter 3 of the Code and are not U.S. source bank deposit interest. These amounts include foreign source income and gross proceeds.

The alternative documentary evidence rules apply to accounts opened on or after the effective date of the regulations (i.e., on or after January 1, 1999). However, existing accounts as of that date are required to comply with the due diligence requirements, including inserting a negative confirmation statement in the annual year-end statement provided to the customer.

In response to comments, the final regulations under §1.6049–5(b)(10) are revised to incorporate a waiver from the certification requirement of regulations §1.163–5(c)(2)(i)(D)(3) for debt instru-

ments with a maturity of 183 days or less from the date of issue. In addition, §1.6049–4(d)(3) is modified to clarify that the same conversion rules are applicable to all foreign currency-denominated obligations for purposes of section 6049.

3. Reporting Obligations of Non-U.S. Payors or Middlemen

Under the regulations under section 6045, dealing with broker proceeds, non-U.S. payors are exempt from reporting if the payment is made outside the United States. See §1.6045–1(a)(1). In contrast, non-U.S. payors and middlemen making payments of U.S. source interest or dividends are required to report these payments on a Form 1099, unless they receive documentation supporting the payee's foreign status (or the payee is an exempt recipient). Commentators requested that non-U.S. payors of U.S. interest and dividends be similarly exempt from information reporting if the payments are made outside the United States. This change is not appropriate, at least for amounts that are subject to withholding under chapter 3 of the Code. To the extent the U.S. interest or dividends are subject to U.S. 30-percent withholding, and documentation is received for reducing the withholding rate, the foreign payee exemption would apply under sections 6042 and 6049 and the payment would not be reportable. Under the final regulations, however, a payor making a payment of U.S. source dividends or interest (whether inside or outside the U.S.) to a payee who has provided no documentation is not exempt from Form 1099 information reporting, even if another payor "upstream" has withheld an amount under chapter 3 of the Code. However, a payor is exempt from backup withholding on the payment if an "upstream" withholding agent has withheld a full 30-percent amount from the payment. The payor, however, is not relieved from making a return on Form 1099 under section 6042 or 6049 if it has actual knowledge that the payee is a U.S. person who is not an exempt recipient. See §31.3406(g)–1(e). These rules also apply to U.S. source royalties reportable under section 6050N.

Further, the regulations under section 3406 are amended to authorize the IRS to establish procedures by which an amount backup withheld under section 3406 from a payee that subsequently establish that it is a foreign person exempt from information reporting and backup withholding can be credited toward amounts required to be withheld under chapter 3 of the Code. Such "cross-crediting" procedures are not available at present and would require the IRS to modify its systems.

4. Information Reporting for Capital Gain Dividends

Under the proposed regulations, capital gain dividends as defined under section 852(b)(3)(C) would no longer be reportable on Form 1099–DIV. Commentators objected that, absent such reporting, shareholders could not easily ascertain the amount of capital gain dividends paid for the calendar year for purposes of calculating their income tax liability. Accordingly, the final regulations eliminate the proposed exclusion of capital gain dividends under §1.6042–3(b)(3).

Effect on Other Documents

The following publications are obsolete as of October 14, 1997:

Rev. Rul. 55–106, 1955–1 CB 102.
Rev. Rul. 57–391, 1957–2 CB 606.
Rev. Rul. 60–288, 1960–2 CB 265.
Rev. Rul. 65–86, 1965–1 CB 538.
Rev. Rul 68–173, 1968–1 CB 626.
Rev. Rul. 68–237, 1968–1 CB 391.
Rev. Rul. 68–333, 1968–1 CB 390.
Rev. Rul. 69–41, 1969–1 CB 214.
Rev. Rul. 69–244, 1969–1 CB 215.
Rev. Rul. 70–175, 1970–1 CB 184.
Rev. Rul. 70–250, 1970–1 CB 182.
Rev. Rul. 70–251, 1970–1 CB 183.
Rev. Rul. 70–616, 1970–2 CB 174.
Rev. Rul. 72–87, 1972–1 CB 274.
Rev. Rul. 80–222, 1980–2 CB 211.
Rev. Rul. 83–175, 1983–2 CB 109.
Rev. Rul. 84–158, 1984–2 CB 262.
Rev. Rul. 85–61, 1985–1 CB 355.
Rev. Rul. 89–17, 1989–1 CB 268.
Rev. Rul. 89–33, 1989–1 CB 269.
Rev. Rul. 89–91, 1989–2 CB 129.
Rev. Proc. 65–2, 1965–1 CB 715.
Rev. Proc. 67–24, 1967–1 CB 625.
Notice 94–85, 1994–2 CB 511.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

This Treasury decision finalizes notices of proposed rulemaking published February 29, 1988 (53 FR 5991), December 21, 1995 (60 FR 66243), and April 15, 1996 (61 FR 17614), respectively. It is has been determined that a final regulatory flexibility analysis is required under 5 U.S.C. §604 for the collections of information contained in this Treasury decision with respect to the notice of proposed rulemaking published on April 15, 1996. An initial regulatory flexibility analysis was not required because the notice of proposed rulemaking was issued prior to the effective date (June 27, 1996) of the amendments to the Regulatory Flexibility Act (5 U.S.C. chapter 6) made by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (Public Law 104–121). It also has been determined that a regulatory flexibility analysis is not required for the notice of proposed rulemaking published on (1) December 21, 1995 because the notice does not impose any collection of information on a small entity, and was published prior to the March 29, 1996 enactment date of SBREFA, and (2) on February 29, 1988 because the notice was published prior to the enactment of SBREFA.

Final Regulatory Flexibility Act Analysis

The major objective of the final regulations is to prescribe new procedures to eliminate unnecessary burdens created by the lack of standardization and coordination of the current withholding and information reporting procedures with respect to amounts paid to foreign persons. To this effect, the regulations facilitate compliance and reduce taxpayer burden by simplifying the documentation requirements, unifying the certification procedures and clarifying reliance standards in an effort to streamline the processing of U.S. source payments to foreign persons.

The economic impact of collection of information contained in these regulations on any small entity would result primarily from the entity being required either (1) to provide a Form W–8 as the beneficial owner or payee of U.S. source income, or (2) to receive a Form W–8 as the withholding agent or payor (and eventually,

file a Form 1042 and Forms 1042–S). In both situations, these regulations generally impose minimal additional reporting or recordkeeping requirements beyond those already imposed under current law. In fact, the regulations significantly reduce the withholding and reporting burdens associated with Form W–8 by, for example, consolidating the current withholding certificates (Forms 1001, 1078, 4224, 8709 and W–8) into a Form W–8 format, permitting certain foreign intermediaries to certify on behalf of their customers, permitting the electronic transmission of the form (subject to IRS prescribed procedures), clarifying the standards for an acceptable substitute form, permitting a 90-day grace period for actual receipt of the form, and providing cure procedures for a late-received form.

For a small entity in the role of the beneficial owner, the new collection of information contained in these regulations is the extension of the Form W–8 requirement to claims for a treaty-based reduction in the withholding rate with respect to dividend income; thereby, subjecting dividends to the same documentation requirements as other income types. This change imposes no recordkeeping requirements beyond those necessary (and currently required for all other income types) to ensure proper entitlement to treaty benefits, and is illustrative of IRS efforts to eliminate unnecessary procedural differences in order to reduce the burden on withholding agents. Although there is no estimate of the number of beneficial owners or payees of U.S. source income payments, the number of cross border payments have steadily increased over the years (over 80 billion dollars paid in 1995). The IRS and Treasury believe that most of these payments are made to individuals, large financial institutions and large corporations.

For a small entity in the role of the withholding agent, the most significant change of the regulations that impacts the collection of information is the establishment of the wholly-elective qualified intermediary regime which will impose, but only pursuant to an agreement with the IRS, additional reporting and recordkeeping requirements in exchange for the benefit of furnishing a single Form W–8 for multiple beneficiary owners or payees. The IRS and Treasury believe that this alternative will be adopted primarily by large foreign financial institutions that maintain numerous accounts for large numbers of customers, and it is unlikely that a substantial number of small entities would find it necessary or useful to agree to act as a qualified intermediary. Of the approximately 25,000 tax returns (Form 1042) filed by withholding agents per year, the IRS estimates that 95-percent of such returns are filed by large financial institutions.

A summary of the significant issues raised by the public comments in response to the proposed regulations and IRS' views on such issues, and changes made as a result of the comments is set forth above in the section of the preamble to the regulations entitled "Explanation of Provisions and Revisions."

The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap, or conflict with the regulations.

These regulations will affect small entities such as small banks, small businesses paying interest and dividends, small private foundations, and small tax-exempt organizations (including colleges and charities). The IRS and Treasury believe that most of these small entities will have a direct relationship with the foreign person and therefore, will not act as, or have transactions through, an intermediary (i.e., nominee, custodian, or agent). The professional competence necessary to comply with these regulations is no greater than that already necessary to handle the day-to-day business operations of a small entity because much of the recordkeeping and reporting requirements under the regulations can be easily (if not already done under the existing regulations) incorporated into the existing or customary recordkeeping and reporting obligations of the small entity (e.g., an account opening form of a bank, the registration form of a college, etc.).

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of these regulations on small entities. A detailed description of the measures taken to minimize the economic impact of the collections of information on small entities, consistent with the stated objectives of applicable statutes is set forth above in the section of the preamble to the regulations entitled "Explanation of Provisions and Revisions." In considering alternatives, the IRS and Treasury have concluded that a withholding system (based on reduction of withholding at source) rather than a refund system avoids the administrative burdens (including costs and delays) that can occur when applying for a refund of overwithheld amounts. Ensuring compliance under a withholding system, however, requires documentation substantiating claims of foreign status and of exemptions from, or reduced rates of, withholding, and submission of proper information to the IRS.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.1441–4T, revising the entries for Sections 1.1441–3, 1.1441–4, 1.1441–5, 1.1441–7, 1.6049–4 and 1.6049–5 adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1441–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–3 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(l).

Section 1.1441–4 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–5 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(b)(11).

Section 1.1441–6 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–7 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(l).

Section 1.1443–1 also issued under 26 U.S.C. 1443(a). * * *

Section 1.1461–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1461–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1462–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Section 1.6042–3 also issued under 26 U.S.C. 6045. * * *

Section 1.6049–4 also issued under 26 U.S.C. 6049(a), (b), and (d).

Section 1.6049–5 also issued under 26 U.S.C. 6049(a), (b), and (d). * * *

§1.163-5 [Amended]

Par. 2. In §1.163–5, paragraph (c)(2)(i)(B)(5) is amended by removing the language "subdivision (iii) of A–5 of §35a.9999–4T" in the last sentence and adding "§1.6049–5(c)(1)" in its place.

Par. 3. Section 1.165–12 is amended by:

1. Adding a sentence at the end of paragraph (a).

2. Removing the language "(c)(1)(v)" and adding "(c)(1)(iv)" in its place in paragraph (c)(1)(i).

3. Removing paragraph (c)(1)(iii) and redesignating paragraphs (c)(1)(iv) and (c)(1)(v) as paragraphs (c)(1)(iii) and (iv).

4. Revising paragraphs (c)(1)(ii) and newly redesignated paragraph (c)(1) (iii).

5. Removing the language "(c)(1)(ii) and (iv)" and adding "(c)(1)(ii) and (iii)" in its place in paragraphs (c)(2)(iv) and (c)(3)(iv).

The addition and revisions read as follows:

§1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.

(a) * * * For purposes of this section, the term *United States* means the United States and its possessions within the meaning of §1.163–5(c)(2)(iv).

* * * * *

(c) * * *

(1) * * *

(ii) The holder must offer to sell, sell and deliver the obligation in bearer form only outside of the United States except that a holder that is a registered broker-dealer as described in paragraph (c)(1)(i) of this section may offer to sell and sell the obligation in bearer form inside the United States to a financial institution as defined in paragraph (c)(1)(iv) of this section for its own account or for the account of another financial institution or of an exempt organization as defined in section 501(c)(3).

(iii) The holder may deliver an obligation in bearer form that is offered or sold inside the United States only if the holder delivers it to a financial institution that is purchasing for its own account, or for the account of another financial institution or of an exempt organization, and the financial institution or organization that purchases the obligation for its own account or for whose account the obligation is purchased represents that it will comply with the requirements of section 165(j)(3)(A), (B), or (C). Absent actual knowledge that the representation is false, the holder may rely on a written statement provided by the financial institution or exempt organization, including a statement that is delivered in electronic form. The holder may deliver a registration-required obligation in bearer form that is offered and sold outside the United States to a person other than a financial institution only if the holder has evidence in its records that such person is not a U.S. citizen or resident and does not have actual knowledge that such evidence is false. Such evidence may include a written statement by that person, including a statement that is delivered electronically. For purposes of this paragraph (c), the term *deliver* includes a transfer of an obligation evidenced by a book entry including a book entry notation by a clearing organization evidencing transfer of the obligation from one member of the organization to another member. For purposes of this paragraph (c), the term *deliver* does not include a transfer of an obligation to the issuer or its agent for cancellation or extinguishment. The record-retention provisions in §1.1441–1(e)(4)(iii) shall apply to any statement that a holder receives pursuant to this paragraph (c)(1)(iii).

* * * * *

Par. 4. Section 1.871-6 is revised to read as follows:

§1.871-6 Duty of withholding agent to determine status of alien payees.

For the obligation of a withholding agent to withhold the tax imposed by this section, see chapter 3 of the Internal Revenue Code and the regulations thereunder.

§1.871–7 [Amended]

Par. 5. In §1.871–7, paragraph (b), the third sentence is amended by removing the words "see paragraph (a) of §1.1441–2" and adding "see §1.1441–2(b)" in its place.

Par. 6. Section 1.871–14 is added to read as follows:

§1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

(a) *General rule.* No tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. But see section 871(b) or 882(a) if such interest is effectively connected with the conduct of a trade or business within the United States.

(b) *Rules concerning obligations in bearer form*—(1) *In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, that is described in section 163(f)(2)(B) and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see §1.1441–1(b)(4)(i). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and §1.6049–5(b)(8) for the payment of interest and §1.6045–1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c) *Rules concerning obligations in registered form*—(1) *In general*—(i) *Obligation in registered form.* For purposes of this section, an obligation is in registered form only as provided in this paragraph (c)(1)(i). The conditions for an obligation to be considered in registered form are identical to the conditions described in §5f.103–1 of this chapter. Therefore, an obligation that would be an obligation in registered form except for the fact that it can be converted at any time in the future into an obligation that is not in registered form shall not be an obligation in registered form. An obligation that is not in registered form by reason of the preceding sentence may nevertheless be in registered form, but only after the possibility of conversion is terminated. An obligation that is not in registered form and can be converted into an obligation that would meet the requirements of this paragraph (c)(1)(i) for being in registered form shall be considered in registered form only after the conversion is effected. For purposes of this section, an obligation is convertible if the obligation can be transferred by any means not described in §5f.103–1(c) of this chapter. An obligation is treated as an obligation in registered form if—

(A) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument, and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder;

(B) The right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) described in this paragraph (c)(1)(i)(B). An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation, is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an in interest in the obligation; or

(C) It is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred by way of either of the methods described in paragraph (c)(1)(i)(A) or (B) of this section.

(ii) *Requirements for portfolio interest qualification in the case of an obligation in registered form.* Interest (including original issue discount) received on an obligation that is in registered form qualifies as portfolio interest only if—

(A) The interest is paid on an obligation issued after July 18, 1984;

(B) The interest would be subject to tax under section 871(a)(1)(A), 871(a)(1)-(C), 881(a)(1) or 881(a)(3) but for section 871(h) or 881(c);

(C) A United States (U.S.) person otherwise required to deduct and withhold tax under chapter 3 of the Internal Revenue Code (Code) receives a statement that meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a U.S. person; and

(D) An exception under section 871(h) or 881(c) does not apply.

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section.

(i) The U.S. person (or its authorized foreign agent described in §1.1441-7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii). See §1.1441–1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized foreign agent described in §1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in §1.1441–5(c)(2)(iv) from a person claiming to be withholding foreign partnership and the foreign partnership can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii).

(iii) The U.S. person (or its authorized foreign agent described in §1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in §1.1441–1(c)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary withholding responsibility in accordance with §1.1441–1(e)(5)(iv) and the qualified intermediary can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with its agreement with the Internal Revenue Service (IRS).

(iv) The U.S. person (or its authorized foreign agent described in §1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in §1.1441–1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in §1.1441–1(b)(2)(iv)(A) or a U.S. branch designated in accordance with §1.1441–1(b)-(2)(iv)(E) and the U.S. branch can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii).

(v) The U.S. person receives a statement from a securities clearing organization, a bank, or another financial institution that holds customers'securities in the ordinary course of its trade or business. In such case the statement must be signed under penalties of perjury by an authorized representative of the financial institution and must state that the institution has received from the beneficial owner a withholding certificate described in §1.1441–1(e)(2)(i) (a Form W–8 or an acceptable substitute form as defined §1.1441–1(e)(4)(vi)) or that it has received from another financial institution a similar statement that it, or another financial institution acting on behalf of the beneficial owner, has received the Form W–8 from the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this statement must be given by each financial institution to the one above it in the chain. No particular form is required for the statement provided by the financial institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–8 provided by the beneficial owner must be attached. The statement is subject to the same rules described in

§1.1441–1(e)(4) that apply to intermediary Forms W–8 described in §1.1441–1(e)(3)(iii). If the information on the Form W–8 changes, the beneficial owner must so notify the financial institution acting on its behalf within 30 days of such changes, and the financial institution must promptly so inform the U.S. person. This notice also must be given if the financial institution has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this notice must be given by each financial institution to the institution above it in the chain.

(vi) The U.S. person complies with procedures that the U.S. competent authority may agree to with the competent authority of a country with which the United States has an income tax treaty in effect.

(3) *Time for providing certificate or documentary evidence*—(i) *General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to such interest. See, however, §1.1441–1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in §§1.1464–1 and 301.6402–3(e) of this chapter. For this purpose, the taxpayer must attach a withholding certificate described in §1.1441–1(e)(2)(i) to the income tax filed for claiming a refund of tax. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in §1.1461–2(a) (for example, if the beneficial owner furnishes documentation to the withholding agent before the due date for filing the return required under §1.1461–1(b) with respect to that payment).

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(3) and their coordination with §1.1441–1(b)(7):

Example. A is a withholding agent who, on October 12, 1999, pays interest on a registered obligation to B, a foreign corporation. B is a calendar year taxpayer, engaged in the conduct of a trade or business in the United States, and is, therefore, required to file an annual income tax return on Form 1120F. The interest, however, is not effectively connected with B's U.S. trade or business. On the date of payment, B has not furnished, and A cannot associate the payment with documentation for B. However, A does not withhold under section 1442, even though, under §1.1441–1(b)(3)(iii)(A), A should presume that B is a foreign person, because A's communications with B are mailed to an address in a foreign country. Assuming that B files a return for its taxable year ending December 31, 1999, and that its statute of limitations period with regard to that year expires on June 15, 2003, the interest paid on October 12, 1999, may qualify as portfolio interest only if B provides appropriate documentation to A on or before June 15, 2003. If B does not provide the documentation on or before June 15, 2003, and does not pay the tax, A is liable for the tax under section 1463, even if B provides the documentation to A after June 15, 2003. Therefore, the provisions in §1.1441–1(b)(7), regarding late-received documentation would not help A avoid liability for tax under section 1463 even if the documentation is furnished within the statute of limitations period of A. This is because, in a case involving interest, the documentation received within the limitations period of the beneficial owner serves as a condition for the interest to qualify as portfolio interest. When documentation is received after the expiration of the beneficial owner's limitations period, the interest can no longer qualify as portfolio interest. On the other hand, A could rely on documentation that it receives after the expiration of B's limitations period to establish B's right to a reduced rate of withholding under an applicable income tax treaty (since, in such a case, a claim of treaty benefits is not conditioned upon providing documentation prior to the expiration of the beneficial owner's limitations period).

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c), see §1.1441–1(b)(4)(i). For rules applicable to withholding certificates, see §1.1441–1(e)(4). For rules regarding documentary evidence, see §1.6049–5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see §1.1441–1(b)(3). For standards of knowledge applicable to withholding agents, see §1.1441–7(b). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and §1.6049–5(b)(8) for the payment of interest and §1.6045–1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to reporting on Forms 1042 and 1042-S, see §1.1461–1(b) and (c).

(d) *Application of repeal of 30-percent withholding to pass-through certificates*—(1) *In general.* Interest received on a pass-through certificate qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1), or (e) of this section without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. This paragraph (d)(1) applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in paragraph (b)(1) of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in paragraph (b)(1), (c)(1)(ii), or (e) of this section. However, for purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984, only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(2) *Interest in REMICs.* Interest received on a regular or residual interest in a REMIC qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a regular interest in a REMIC is not considered interest on any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a residual interest in a REMIC is consid-

ered to be interest on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered as issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

(3) *Date of issuance.* In general, a mortgage pass-through certificate will be considered to have been issued after July 18, 1984, if all of the mortgages held by the fund or trust were issued after July 18, 1984. If some of the mortgages held by the fund or trust were issued before July 19, 1984, then the portion of any interest payment which represents interest on those mortgages shall not be considered to be portfolio interest. The preceding sentence shall not apply, however, if all of the following conditions are satisfied:

(i) The mortgage pass-through certificate is issued after December 31, 1986;

(ii) Payment of the mortgage pass-through certificate is guaranteed by, and a guarantee commitment has been issued by, an entity that is independent from the issuer of the underlying obligation;

(iii) The guarantee commitment with respect to the mortgage pass-through certificate cannot have been issued more than 14 months prior to the date on which the mortgage pass-through certificate is issued; and

(iv) The fund or trust to which the mortgage pass-through certificate relates cannot contain mortgage obligations on which the first scheduled monthly payment of principal and interest was made more than twelve months before the date on which the guarantee commitment was made.

(e) *Foreign-targeted registered obligations*—(1) *General rule.* The statement described in paragraph (c)(1)(ii)(C) of this section is not required with respect to interest paid on a registered obligation that is targeted to foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in §1.1441–1(b)(2)(iv)(A) or (E) to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

(2) *Definition of a foreign-targeted registered obligation.* An obligation is considered to be targeted to foreign markets for purposes of paragraph (e)(1) of this section if it is sold (or resold in connection with its original issuance) only to foreign persons (or to foreign branches of United States financial institutions described in section 871(h)(5)(B)) in accordance with procedures similar to those prescribed in §1.163–5(c)(2)(i)(A), (B), or (D). However, the provisions of that section that require an obligation to be offered for sale or resale in connection with its original issuance only outside the United States do not apply with respect to registered obligations offered for sale through a public auction. Similarly, the provisions of that section that require delivery to be made outside the United States do not apply to registered obligations offered for sale through a public auction if the obligations are considered to be in registered form by virtue of the fact that they may be transferred only through a book entry system. The obligation, if evidenced by a physical document other than a confirmation receipt, must contain on its face a legend indicating that it has been sold (or resold in connection with its original issuance) in accordance with those procedures.

(3) *Documentation.* A certificate described in paragraph (e)(3)(i) of this section is required if the United States person otherwise required to deduct and withhold tax (the withholding agent) pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentation described in paragraph (e)(3)(ii) of this section is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization.

(i) *Interest paid to a financial institution or a member of a clearing organization*—(A) *Requirement of a certificate*—(*1*) If the withholding agent pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this paragraph (e)(3)(i) was provided and while the financial institution or clearing organization member has held the obligation, with respect to each foreign-targeted registered obligation which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(*i*) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(*ii*) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of paragraph (e)(4) of this section.

(*2*) The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this paragraph (e)(3)(i).

(B) *Additional representations.* Whether or not a previous certificate has been required to be provided with respect to the obligation, each certificate furnished pursuant to the provisions in this paragraph (e)(3)(i) must further state that,

for each foreign-targeted registered obligation held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by this paragraph (e)(3) to furnish the clearing organization with a statement) in accordance with paragraph (e)(4) of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) *Obligation must be identified.* The certificate described in paragraph (e)(3)(ii)(A) of this section must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (e.g., $5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, $3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify and provide the address of the person furnishing the certificate.

(D) *Payment to a depository of a clearing organization.* If the withholding agent pays interest to a depository of a clearing organization, then the clearing organization must provide the certificate described in this paragraph (e)(3)(i) to the withholding agent. Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with the provisions of this paragraph (e)(3)(i) and of paragraph (e)(4) of this section (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(5)(B)).

(E) *Statement in lieu of Form W–8.* Subject to the requirements set out in paragraph (e)(4) of this section, a certificate or statement in the form described in this paragraph (e)(3)(i), in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W–8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(F) *Electronic transmission.* The certificate described in this paragraph (e)(3)(i) may be provided electronically under the terms and conditions of §1.163–5(c)(2)(i)(D)(*3*)(*ii*).

(ii) *Payment to a person other than a financial institution or member of a clearing organization.* If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a statement described in paragraph (c)(1)(ii)(C) of this section.

(4) *Applicable procedures regarding documentation*—(i) *Procedures applicable to certificates required under paragraph (e)(3)(i) of this section*—(A) *Time for providing certificate.* Where no previous certificate for foreign-targeted registered obligations has been provided to the withholding agent by the person providing the certificate under paragraph (e)(3)(i) of this section, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the certificate is not received by the date 30 days prior to the interest payment. Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this paragraph (e)(4)(i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then no other certificate need be provided during such period in such year.

(B) *Change of status notification on Form W–9.* If, on any interest payment date after the obligation was acquired by the person making the certification, the beneficial owner of the obligation is a U.S. person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a U.S. beneficial ownership notification within 30 days after such interest payment date. A U.S. beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a U.S. person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) *Alternative notification statement.* Where the person providing the notification described in paragraph (e)(4)(i)(B) of this section is neither a controlled foreign corporation within the meaning of section 957(a), nor a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the U.S. ben-

eficial ownership notification does not attach to it a copy of such Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) must send a copy of such form to the IRS, at such address as the IRS shall indicate, within 30 days after receiving it and must attach a statement that the Form W–9 or substitute form was provided pursuant to this paragraph (e)(4) with respect to a U.S. person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) *Failure to provide notification.* If either a Form W–9 (or a substitute form that is substantially similar to a Form W–9 and completed under penalties of perjury) or the statement described in paragraph (e)(4)(i)(C) of this section is not attached to the U.S. beneficial ownership notification provided pursuant to paragraph (e)(4)(i)(B) of this section, the withholding agent is required to withhold under section 1441, 1442, or 1443 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a U.S. person) is received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in paragraph (e)(3)(i) of this section (subject to paragraph (e)(3)(i)(A)(*2*) of this section) then the withholding agent is not required to withhold during the year following such certification (unless such person again provides a U.S. beneficial ownership notification without attaching a Form W–9 or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury or the statement described in paragraph (e)(4)(i)(C) of this section).

(E) *Procedures for clearing organizations.* Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent) relying on annual certificates or statements from its member organizations, as set forth in paragraph (e)(3)(i) of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a U.S. beneficial ownership notification in the circumstances described in paragraph (e)(4)-(i)(B) of this section.

(F) *Retention of certificates.* The certificate described in paragraph (e)(3)(i) of this section must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in paragraph (e)(3)(i) of this section that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received.

(G) *No reporting requirement.* The withholding agent who receives the certificate described in paragraph (e)(3)(i) of this section is not required to file Form 1042S to report payments under §1.1461–1(b) or (c) of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii) *Procedures regarding certificates required under paragraph (e)(3)(ii) of this section*—(A) *Time for providing certificate.* The statement described in paragraph (e)(3)(ii) of this section must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the statement is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the statement described in paragraph (e)(3)(ii) of this section is not required to report payments of interest under §1.1461–1(b) or (c) if the payments are made with respect to foreign-targeted registered obligations held by the person who provides the statement and are made within the period beginning with the date on which the statement is provided and ending on the last date for confirming the validity of the statement. The statement received for purposes of paragraph (e)(3)(ii) of this section is subject to the applicable procedures set forth in §1.1441–1(e)(4).

(B) *Change of status notification on Form W–9.* If on any interest payment date after the obligation was acquired by the person providing the statement described in paragraph (e)(3)(ii) of this section, the beneficial owner of the obligation is a U.S. person, then the beneficial owner must so inform the withholding agent within 30 days after such interest payment date and must provide a Form W–9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W–9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) *Disqualification of documentation.* In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to 30-percent withholding under section 1441(a), 1442(a), or 1443.

(iv) *Special effective date.* Notwithstanding the foregoing requirements of this section—

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on January 15 and ending on January 31, 1986, is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of this paragraph (e), as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in paragraph (e)(4)(iv)(A) of this section, except that the provisions of paragraph (e)(3) of this section relating to which persons are required to receive certificates or statements and paragraph (e)(3)(ii) or (4)(ii) of this section shall become effective with respect to each interest payment after September 20, 1985.

(5) *Information reporting.* See §1.6049–5(b)(7) for special information reporting rules applicable to interest on foreign-targeted registered obligations. See §1.6045–1(g)(1)(ii) for information reporting rules applicable to the redemption, retirement, or sale of foreign-targeted registered obligations.

(f) *Securities lending transactions.* For applicable rules regarding substitute interest payments received pursuant to a securities lending transaction or a sale-repurchase transaction, see §§1.871–7(b)(2) and 1.881–2(b)(2).

(g) *Definitions.* For purposes of this section, the terms *U.S. person* and *foreign person* have the meaning set forth in §1.1441–1(c)(2), the term *beneficial owner* has the meaning set forth in §1.1441–1(c)(6), the term *withholding agent* has the meaning set forth in §1.1441-7(a); the term *payee* has the meaning set forth in §1.1441–1(b)(2); and the term *payment* has the meaning set forth in §1.1441–2(e).

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 1998.

(2) *Transition rule.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form W–8 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under these regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W–8 that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 6. Section 1.1441-0 is added to read as follows:

§1.1441–0 Outline of regulation provisions for section 1441.

This section lists captions contained in §§1.1441–1 through 1.1441-9.

§1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) Purpose and scope.
(b) General rules of withholding.
(1) Requirement to withhold on payments to foreign persons.
(2) Determination of payee and payee's status.
(i) In general.
(ii) Payments to a U.S. agent of a foreign person.
(iii) Payments to wholly-owned entities.
(A) Foreign-owned domestic entity.
(B) Foreign entity.
(iv) Payments to a U.S. branch of certain foreign banks or foreign insurance companies
(A) U.S. branch treated as a U.S. person in certain cases.
(B) Consequences to the withholding agent.
(C) Consequences to the U.S. branch.
(D) Definition of payment to a U.S. branch.
(E) Payments to other U.S. branches.
(v) Payments to a foreign intermediary.
(A) Payments treated as made to persons for whom the intermediary collects the payment.
(B) Payments treated as made to foreign intermediary.
(vi) Other payees.
(vii) Rules for reliably associating a payment with documentation.
(3) Presumptions regarding payee's status in the absence of documentation.
(i) General rules.
(ii) Presumptions of status as individual, corporation, partnership, etc.
(iii) Presumption of U.S. or foreign status.
(A) Payments to exempt recipients.
(B) Scholarships and grants.
(C) Pensions, annuities, etc.
(D) Certain payments to offshore accounts.
(iv) Grace period in the case of indicia of a foreign payee.
(v) Special rules applicable to payments to foreign intermediaries.
(A) Reliance on claim of status as foreign intermediary.
(B) Beneficial owner documentation is lacking or unreliable.
(C) Information regarding allocation of payment is lacking or unreliable.
(D) Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.
(vi) U.S. branches and foreign flow-through entities.
(vii) Joint payees.
(viii) Rebuttal of presumptions.
(ix) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
(A) General rule.
(B) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.
(x) Examples.
(4) List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.
(5) Establishing foreign status under applicable provisions of chapter 61 of the Code.

Par. 7. Sections 1.1441–1 and 1.1441-2 are revised to read as follows:

§1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) *Purpose and scope.* This section, §§1.1441–2 through 1.1441–9, and 1.1443–1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special proce-

dures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441–2 defines the income subject to withholding under section 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441–3 provides rules regarding the amount subject to withholding. Section 1.1441–4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441–5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441–6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–7 defines the term *withholding agent* and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441–8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441–9 and 1.1443–1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding*—(1) *Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30-percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner that is U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraph (e)(5) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see §1.1441–5(c)(2)(i)), or as an authorized foreign agent (see §1.1441–7(c)(1)). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner), and §§1.1441–4, 1.1441–5, 1.1441–6, 1.1441–8, 1.1441–9, and 1.1443–1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for determining who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (i.e., as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405 or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (e.g., in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph (b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See §1.1441–7(a) for a definition of withholding agent. See §1.1441–2(a) for the determination of an amount subject to withholding. See §1.1441–2(e) for the definition of a payment and when it is considered made. Except as otherwise provided, the provisions of this section apply only for purposes of determining a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (e.g., as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W–8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W–9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and §1.1441–5(c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation, apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of §1.1441–2(a)). Similar payee and presumption provisions are set forth under §1.6049–5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and §1.1441–5(d). For definitions of a foreign person and U.S. person, see paragraph (c)(2) of this section.

(ii) *Payments to a U.S. agent of a for-*

eign person. A withholding agent making a payment to a U.S. person (other than to a U.S. branch that is treated as a U.S. person pursuant to paragraph (b)(2)(iv) of this section) and who has actual knowledge that the U.S. person receives the payment as an agent of a foreign person must treat the payment as made to the foreign person. However, the withholding agent may treat the payment as made to the U.S. person if the U.S. person is a financial institution and the withholding agent has no reason to believe that the financial institution will not comply with its obligation to withhold. See paragraph (c)(5) of this section for the definition of a financial institution.

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under §301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under §301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W–9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under §301.7701–3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in §1.6049–4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W–9 because it may not represent that it is a U.S. person for purposes of the provisions of chapters 3 and 61 of the Code, and section 3406. Therefore, A must furnish a Form W–8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§1.894–1T(d) and 1.1441–6(b)(4) for special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

(B) *Foreign entity.* A payment to a wholly-owned foreign entity that is disregarded under §301.7701–2(c)(2) of this chapter as an entity separate from its owner shall be treated as a payment to the single owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section if the foreign entity has a U.S. branch in the United States. For purposes of this paragraph (b)(2)(iii)(B), a foreign entity means a person that would be treated as a foreign person if it had an election in effect under §301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. See §§1.894–1T(d) and 1.1441–6(b)(4) for special rules where the foreign entity or its owner is claiming a reduced rate of withholding under an income tax treaty. Thus, for example, if the foreign entity's single owner is a U.S. person, the payment shall be treated as a payment to a U.S. person. Therefore, based on the savings clause in U.S. income tax treaties, such an entity may not claim benefits under an income tax treaty even if the entity is organized in a country with which the United States has an income tax treaty in effect and treats the entity as a non-fiscally transparent entity. See §1.894–1T(d)(6), *Example 10.* Unless it has actual knowledge or reason to know that the foreign entity to whom the payment is made is disregarded under §301.7701–2(c)(2) of this chapter, a withholding agent may treat a foreign entity as an entity separate from its owner unless it can reliably associate the payment with a withholding certificate from the entity's owner.

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to the U.S. branch of a foreign person is a payment to the foreign person. However, a U.S. branch described in this paragraph (b)(2)(iv)(A) and a withholding agent (including another U.S. branch described in this paragraph (b)(2)(iv)(A)) may agree to treat the branch as a U.S. person for purposes of withholding on specified payments to the U.S. branch. Such agreement must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioner with the Insurance Department of a State, a Territory, or the District of Columbia. The Internal Revenue Service (IRS) may approve a list of U.S. branches that may qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see §601.601(d)(2) of this chapter).

(B) *Consequences to the withholding agent.* Any person that is otherwise a withholding agent regarding a payment to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section shall treat the payment in one of the following ways—

(*1*) As a payment to a U.S. person, in which case the withholding agent is not responsible for withholding on such payment to the extent it can reliably associate the payment with a withholding certificate described in paragraph (e)(3)(v) of this section that has been furnished by the U.S. branch under its agreement with the withholding agent to be treated as U.S. person;

(*2*) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation; or

(*3*) As a payment to a foreign person of income that is effectively connected with the conduct by that foreign person of a trade or business in the United States if the withholding agent cannot reliably associate the payment with a certificate from the U.S. branch or any other certificate or other appropriate documentation from another person.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a person for purposes of section 1441(a) and all other

provisions of chapter 3 of the Code and the regulations thereunder for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on the payment in accordance with the provisions under chapter 3 of the Code and the regulations thereunder and other applicable withholding provisions of the Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment on behalf of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section.

(D) *Definition of payment to a U.S. branch.* A payment is treated as a payment to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (e.g., the check mailed or a letter addressed to the branch).

(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by the district director or the Assistant Commissioner (International). Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)-(iv)(A) of this section regarding its registration with, and regulation by, a U.S. governmental institution, the type and amounts of assets it is required to, or actually maintain in the United States, and the personnel who carry out the activities of the branch in the United States. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the district director or the Assistant Commissioner (International) and unless the district director or the Assistant Commissioner (International) is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see §601.601(d)(2) of this chapter).

(v) *Payments to a foreign intermediary*—(A) *Payments treated as made to persons for whom the intermediary collects the payment.* Except as otherwise provided in paragraph (b)(2)(v)(B) of this section, a payment to a person that the withholding agent may treat as a foreign intermediary in accordance with the provisions of paragraph (b)(3)(v)(A) of this section is treated as a payment made directly to the person or persons for whom the intermediary collects the payment. Thus, for example, a payment that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary (defined in paragraph (e)(5)(ii) of this section) and that is allocable to the category of assets described in paragraph (e)(5)(v)(B)(*3*) of this section (i.e., assets allocable to persons for whom the foreign qualified intermediary does not hold documentation as specified under its agreement with the IRS) is treated as a payment to the persons holding assets in that category. See paragraph (b)(3)(v)(B) of this section for applicable presumptions in such a case. For similar rules for payments to flow-through entities, see §1.1441–5(c)(1)(i) and (e).

(B) *Payments treated as made to foreign intermediary.* A payment to a person that the withholding agent can reliably associate with a withholding certificate described in paragraph (e)(3)(ii) of this section from a qualified intermediary that has elected to assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section is treated as a payment to the qualified intermediary, except to the extent of the portion of the payment that the withholding agent can reliably associate with Forms W–9. See paragraphs (b)(1) and (e)(5)(iv) of this section for consequences to the withholding agent.

(vi) *Other payees.* A payment to a person described in §1.6049–4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A)(*6*) or (*7*) of this section). Further, payments that the withholding agent can reliably associate with documentary evidence described in §1.6049–5(c)(4) relating to the payee is treated as a payment to a foreign payee. A payment that the withholding agent may treat as a payment to an authorized foreign agent (as defined in §1.1441–7(c)(2)) is treated as a payment to the agent and not to the persons for whom the agent collects the payment. See §1.1441–5(b)(1) and (c)(1) for payee determinations for payments to partnerships. See §1.1441–5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) *Rules for reliably associating a payment with documentation.* Generally, a withholding agent can reliably associate a payment with documentation if, for that payment, it holds valid documentation to which the payment relates, it can reliably

determine how much of the payment relates to the valid documentation (e.g., based on information furnished in accordance with paragraph (e)(3)(iv) or (5)(v) of this section in the case of a payment to a foreign intermediary or in accordance with §1.1441–5(c)(3)(iv) in the case of a payment to a foreign partnership), and it has no actual knowledge or reason to know that any of the information or certifications stated in the documentation are incorrect. The documentation referred to in this paragraph (b)(2)(vii) is documentation described in paragraph (d) or (e) of this section upon which a withholding agent may rely in order to treat the payment as a payment made to a payee or beneficial owner that is a U.S. or a foreign person, and to ascertain the characteristics of the payee or beneficial owner, as may be relevant to withholding or reporting under chapter 3 of the Code and the regulations thereunder (e.g., beneficial owner or intermediary, corporation or partnership). For purposes of this paragraph (b)(2)(vii), documentation also includes a withholding certificate described in paragraph (e)(3)(ii) of this section from a person representing to be a qualified intermediary that has assumed primary withholding responsibility, a withholding certificate described in paragraph (e)(3)(v) of this section from a person representing to be a U.S. branch described in paragraph (b)(2)(iv)(A) of this section, a withholding certificate described in §1.1441–5(c)(2)(iv) from a person representing to be a withholding foreign partnership, and the agreement that the withholding agent has in effect with an authorized foreign agent in accordance with §1.1441–7(c)(2)(i). A withholding agent that is not required to obtain documentation with respect to a payment is considered to lack documentation for purposes of this paragraph (b)(2)(vii). For example, a withholding agent paying U.S. source interest to a person that is an exempt recipient, as defined in §1.6049–4(c)(1)(ii), is not required to obtain documentation from that person in order to determine whether an amount paid to that person is reportable under an applicable information reporting provision under chapter 61 of the Code. Therefore, the withholding agent may rely on the provisions of paragraph (b)(3)(iii)(A) of this section to determine whether the person is presumed to be a U.S. person (in which case, no withholding is required under this section), or whether the person is presumed to be a foreign person (in which case 30-percent withholding is required under this section). See paragraph (b)(3)(v)(A) of this section for special reliance rules in the case of a payment to a foreign intermediary and §1.1441–5(d)(3) for special reliance rules in the case of a payment to a foreign partnership.

(3) *Presumptions regarding payee's status in the absence of documentation*—(i) *General rules.* A withholding agent that cannot reliably associate a payment with documentation may rely on the presumptions of this paragraph (b)(3) in order to determine the status of the payee as a U.S. or a foreign person and the payee's other relevant characteristics (e.g., as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapter 3 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, sections 3402, 3405, or 3406, and the regulations under these provisions. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this paragraph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of status as individual, corporation, partnership, etc.* A withholding agent that cannot reliably associate a payment with documentation must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (i.e., based on the payee's name or other indications). In the absence of reliable indications that the payee is an individual, estate, or trust, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under §1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under §1.6049–4(c)(1)(ii)(A)(*1*) or any one of the paragraphs under §1.6049–4(c)(1)(ii)(B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in §1.6049–4(c)(1)(ii)(A)(*1*) through (Q), then the payee shall be presumed to be a partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation, if documentation is otherwise required in order to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on §1.6049–4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W–8 described in §1.1441–9(b)(2) be furnished to the withholding agent.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3)(iv) and (v) of this section, or in §1.1441–5(d) or (e).

(A) *Payments to exempt recipients.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient (as determined under the provisions of §1.6049–4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent

may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(*1*) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98";

(*2*) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(*3*) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in §301.7701–2(b)(8)(i) of this chapter; or

(*4*) If the payment is made outside the United States (as defined in §1.6049–5(e)).

(B) *Scholarships and grants.* A payment representing taxable scholarship or fellowship grant income that does not represent compensation for services (but is not excluded from tax under section 117) and that a withholding agent that cannot reliably associate with documentation is presumed to be made to a foreign person if the withholding agent has a record that the payee has a U.S. visa that is not an immigrant visa. See section 871(c) and §1.1441–4(c) for applicable tax rate and withholding rules.

(C) *Pensions, annuities, etc.* A payment from a trust described in section 401(a), 403(a), or a payment with respect to any annuity, custodial account, or retirement income account described in section 403(b) that a withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person only if the withholding agent has a record of a Social Security number for the payee and relies on a mailing address described in the following sentence. A mailing address is an address used for purposes of information reporting or otherwise communicating with the payee that is an address in the United States or in a foreign country with which the United States has an income tax treaty in effect that provides that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on amounts described in this paragraph (b)(3)(iii)(C). Any payment described in this paragraph (b)(3)(iii)(C) that is not presumed made to a U.S. person is presumed to be made to a foreign person. A withholding agent making a payment to a person presumed to be a foreign person may not reduce the 30-percent amount of withholding required on such payment unless it receives a withholding certificate described in paragraph (e)(2)(i) of this section furnished by the beneficial owner. For basis of reduction in the 30-percent rate, see §1.1441–4(e) or §1.1441–6(b).

(D) *Certain payments to offshore accounts.* A payment that would be subject to withholding under section 1441, 1442, or 1443 if made to a foreign person and is exempt from backup withholding under section 3406 by reason of §31.3406(g)–1(e) of this chapter (relating to exemption from backup withholding under section 3406 for certain payments to offshore accounts) is presumed to be made to a foreign payee.

(iv) *Grace period in the case of indicia of a foreign payee.* A withholding agent may choose, in its discretion, to apply the provisions of §1.6049–5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by substituting the term *withholding agent* for the term *payor*) to amounts described in §1.1441–6(b)(2)(ii) and to amounts covered by a Form 8233 described in §1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may, in its discretion, choose to treat an account holder as a foreign person and withhold under chapter 3 of the Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to the account. However, a withholding agent who can reliably associate the payment with a withholding certificate that is otherwise valid within the meaning of the applicable provisions except for the fact that it is transmitted by facsimile may rely on that facsimile form for purposes of withholding at the claimed reduced rate. For reporting of amounts credited both before and after the grace period, see §1.1461–1(c)(7). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. person who is not an exempt recipient, then backup withholding applies to amounts credited to the account after the expiration of the grace period only. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in §1.1461–2.

(B) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a foreign person, or if documentation is furnished that does not support the claimed rate reduction, then adjustments must be made to correct the underwithholding on amounts credited to the account during the grace period, based on adjustment procedures described in §1.1461–2.

(v) *Special rules applicable to payments to foreign intermediaries*—(A) *Reliance on claim of status as foreign intermediary.* A withholding agent that can reliably associate a payment with a withholding certificate described in paragraph (e)(3)(ii) or (iii) of this section may treat the payment as made to a foreign intermediary, as represented in the certificate. For this purpose, a U.S. person's foreign branch that is a qualified intermediary defined in paragraph (e)(5)(ii) of this section shall be treated as a foreign intermediary. For purposes of this section, a payment that the withholding agent can reliably associate with a withholding certificate described in paragraph (e)(3)(ii) or (iii) of this section that would be valid except for the fact that some or all of the withholding certificates or other appropriate documentation required to be attached are lacking or are unreliable or that information for allocating the payment among the various persons for whom the intermediary is acting is lacking or is unreliable shall nevertheless be treated as a payment to a foreign intermediary and the rules of this paragraph (b)(3)(v) shall apply accordingly. A payee that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (b)(3)(v)(A) is presumed to be an owner whose status as an individual, trust, estate, etc., must be determined in accordance with paragraph (b)(3)(ii) of this section, to the extent relevant. In addition, such payee is presumed to be a U.S.

or a foreign payee based upon the presumptions described in paragraph (b)(3)(iii) of this section. The provisions of paragraphs (b)(3)(v)(B), (C), and (D) of this section are not relevant to a withholding agent that can reliably associate a payment with a withholding certificate from a person representing to be a qualified intermediary that has assumed primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section.

(B) *Beneficial owner documentation is lacking or unreliable.* Any portion of a payment that the withholding agent may treat as made to a foreign intermediary in accordance with paragraph (b)(3)(v)(A) of this section but cannot reliably associate with a beneficial owner due to the lack of a withholding certificate or other appropriate documentation for that beneficial owner is presumed to be made to a foreign payee for whom the foreign intermediary collects the payment (see paragraph (b)(2)(v) of this section). For purposes of this paragraph (b)(2)(v)(B), any payment that a foreign qualified intermediary represents to be allocable to the category of assets described in paragraph (e)(5)(v)(B)(*3*) of this section (i.e., assets allocable to persons for whom the qualified intermediary does not hold documentation as specified under its agreement with the IRS) is treated as a payment that the withholding agent cannot reliably associate with beneficial owners. As a result, any payment allocable to such category of assets is presumed to be made to an unidentified foreign payee. Under paragraph (b)(1) of this section, a payment to a foreign payee is subject to withholding at a 30-percent rate.

(C) *Information regarding allocation of payment is lacking or unreliable.* If a withholding agent can reliably associate a payment with a group of beneficial owners or payees but lacks reliable information to determine how much of the payment is allocable to one or more of the beneficial owners or payees in the group (because, for example, the statement described in paragraph (e)(3)(iv) of this section has not been furnished), the payment, to the extent it cannot reliably be allocated, is presumed to be allocable entirely to the beneficial owner or payee in the group with the highest applicable withholding rate or, if the rates are equal, to the beneficial owner or payee in the group with the highest U.S. tax liability, as the withholding agent shall estimate, based on its knowledge and available information. If a withholding certificate attached to an intermediary certificate is another intermediary certificate or a certificate from a foreign partnership described in §1.1441–5(c)(3)(iii), the rules of this paragraph (b)(3)(v)(C) apply by treating the share of the payment allocable to the other intermediary or to the foreign partnership as if the payment were made directly to the other intermediary or to the foreign partnership.

(D) *Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.* If the certification required under paragraph (e)(3)(iii)(D) of this section (that the attached withholding certificates and other appropriate documentation represent all of the persons to whom the intermediary withholding certificate relates) is lacking or is unreliable and, as a result, the withholding agent cannot reliably determine how much of the payment is allocable to each of the persons or group of persons for which the withholding agent holds a withholding certificate or other appropriate documentation, then none of the payment can reliably be associated with any one person and the entire payment is presumed to be made to an unidentified foreign payee for whom the intermediary collects the payment and from which a 30-percent amount must be withheld in accordance with paragraph (b)(1) of this section.

(vi) *U.S. branches and foreign flow-through entities.* The rules of paragraphs (b)(3)(v)(B), (C), and (D) of this section shall apply to payments to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that has agreed to assume withholding responsibility in the same manner that they apply to payments to a foreign intermediary. See §1.1441–5(d) for similar rules in the case of payments to foreign partnerships. See §1.1441–5(e) for similar rules in the case of payments to foreign trusts or foreign estates.

(vii) *Joint payees.* A payment made to joint payees for whom the withholding agent cannot reliably associate documentation for all joint payees or can reliably associate the payment with a Form W–9 furnished in accordance with the procedures described in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter from one of the joint payees is presumed to be made to U.S. persons. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee qualifies for the conditions described in paragraph (b)(3)(iv) of this section. However, as provided in paragraph (b)(3)(iii)(D) of this section, a payment of an amount that would be subject to withholding under section 1441, 1442, or 1443 if paid to a foreign person and is exempt from the application of the provisions of section 3406 by reason of §31.3406(g)–1(e) of this chapter (relating to exemption from backup withholding under section 3406 of the Code for certain payments made with respect to offshore accounts), is presumed to be made to foreign persons.

(viii) *Rebuttal of presumptions.* A payee or beneficial owner may rebut the presumptions described in this paragraph (b)(3) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(A) *General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405 or 3406 in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under this section even it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on

the presumptions described in this paragraph (b)(3) shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3)

(B) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (b)(3)(ix)(A) of this section, a withholding agent may not rely on the presumptions described in this paragraph (b)(3) to the extent it has actual knowledge or reason to know that the status or characteristics of the payee or of the beneficial owner are other than what is presumed under this paragraph (b)(3) and, if based on such knowledge or reason to know, it should withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (b)(3) or it should report (under this section or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the presumptions described in this paragraph (b)(3). In such a case, the withholding agent must rely on its actual knowledge or reason to know rather than on the presumptions set forth in this paragraph (b)(3). Failure to do so and, as a result, failure to withhold the higher amount or to report the payment, shall result in liability for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections.

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. A withholding agent, W, makes a payment of U.S. source dividends to person X, Inc. at an address outside the United States. W cannot reliably associate the payment to X with documentation. Under §§1.6042–3(b)(1)(vii) and 1.6049–4(c)-(1)(ii)(A)(1), W may treat X as a corporation. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that X is a foreign person (because the payment is made outside the United States). However, W knows that X is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

Example 2. A withholding agent, W, makes a payment of U.S. source dividends to Y who does not qualify as an exempt recipient under §§1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6042. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

Example 3. A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. W cannot reliably associate the payment to X, Inc. with documentation. X, Inc. presents none of the indicia of foreign status described in paragraph (b)(3)(iii)(A) of this section, but W has actual knowledge that X, Inc. is a foreign corporation. W may treat X, Inc. as an exempt recipient under §1.6042–3(b)(1)(vii). Because there are no indicia of foreign status, W would, absent actual knowledge or reason to know otherwise, be permitted to treat X, Inc. as a domestic corporation in accordance with the presumptions of paragraph (b)(3)(iii) of this section. However, under paragraph (b)(3)(ix)(B) of this section, W may not rely on the presumption of U.S. status since reliance on its actual knowledge requires that it withhold an amount greater than would be the case under the presumptions.

Example 4. A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references §1.1441–4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references §1.1441–6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income identified in this paragraph (b)(4).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in §1.871–7(b)-(2)(i) or 1.881-2(b)(2) are exempt from withholding under section 1441(a). See §1.871–14 for regulations regarding portfolio interest and section 1441(c)(9) for exemption from withholding. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and §1.871–14(c)(1)(ii)(C). For special documentation rules regarding foreign-targeted registered obligations described in §1.871–14(e)(2), see §1.871–14(e)(3) and (4) and, in particular, §1.871–14(e)(4)(i)(A) and (ii)(A) regarding the time when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding ex-

emption for purposes of this section and for purposes of establishing foreign status for purposes of section 6049. See §1.6049–5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in §1.871–14(b)(1) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See §1.6049–5(b)(7).

(ii) Bank deposit interest and similar types of deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) that are from sources within the United States are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See §1.6049–5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also §1.6049–5(b)(11) for applicable documentation exemptions for certain bank deposit interest paid on obligations in bearer form.

(iii) Bank deposit interest (including original issue discount) described in section 861(a)(1)(B) is exempt from withholding under sections 1441(a) as income that is not from U.S. sources. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. Reporting requirements for payments of such interest are governed by section 6049 and the regulations under that section. See §1.6049–5(b)(12) and alternative documentation rules under §1.6049–5(c)(4).

(iv) Interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3) is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See §1.6049–5(b)(12) for applicable documentation for establishing foreign status and §1.6049–5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also §1.6049–5(b)(10) for applicable documentation exemptions for certain obligations in bearer form.

(v) Income from sources without the United States is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 or other applicable provisions of chapter 61 of the Code and backup withholding under section 3406. See, for example, §1.6049–5(b)(6) and (12) and alternative documentation rules under §1.6049–5(c)(4). See also paragraph (b)(5) of this section for cross references to other applicable provisions of the regulations under chapter 61 of the Code.

(vi) Distributions from certain domestic corporations described in section 871(i)(2)(B) or 881(d) are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See §1.6042–3(b)(1)(iii) through (vi).

(vii) Dividends paid by certain foreign corporations that are treated as income from sources within the United States by reason of section 861(a)(2)(B) are exempt from withholding under section 884(e)(3) to the extent that the distributions are paid out of earnings and profits in any taxable year that the corporation was subject to branch profits tax for that year. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See §1.6042-3(b)(1)(iii) through (vii).

(viii) Certain income that is effectively connected with the conduct of a U.S. trade or business is exempt from withholding under section 1441(a). See section 1441(c)(1). Documentation establishing foreign status and status of the income as effectively connected must be furnished for purposes of this withholding exemption to the extent required under the provisions of §1.1441–4(a). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, §1.6041–4(a)(1).

(ix) Certain income with respect to compensation for personal services of an individual that are performed in the United States is exempt from withholding under section 1441(a). See section 1441(c)(4) and §1.1441–4(b). However, such income may be subject to withholding as wages under section 3402. Documentation establishing foreign status must be furnished for purposes of any withholding exemption or reduction to the extent required under §1.1441–4(b) or 31.3401(a)(6)–1(e) and (f) of this chapter. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See §1.6041–4(a)(1).

(x) Amounts described in section 871(f) that are received as annuities from certain qualified plans are exempt from withholding under section 1441(a). See section 1441(c)(7). Documentation establishing foreign status must be furnished for purposes of the with holding exemption as required under §1.1441–4(d). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See §1.6041–4(a)(1).

(xi) Payments to a foreign government (including a foreign central bank of issue) that are excludable from gross income under section 892(a) are exempt from withholding under section 1442. See §1.1441–8(b). Documentation establishing status as a foreign government is required for purposes of this withholding exemption. Payments to a foreign gov-

ernment are exempt from information reporting under chapter 61 of the Code (see §1.6049–4(c)(1)(ii)(F)).

(xii) Payments of certain interest income to a foreign central bank of issue or the Bank for International Settlements that are exempt from tax under section 895 are exempt from withholding under section 1442. Documentation establishing eligibility for such exemption is required to the extent provided in §1.1441–8(c)(1). Payments to a foreign central bank of issue or to the Bank for International Settlements are exempt from information reporting under chapter 61 of the Code (see §1.6049–4(c)(1)(ii)(H) and (M)).

(xiii) Amounts derived by a foreign central bank of issue from bankers'acceptances described in section 871(i)(2)(C) or 881(d) are exempt from tax and, therefore, from withholding. See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is a foreign central bank of issue as defined in §1.861–2(b)(4). See §1.1441–8(c)(2) for withholding procedures. See also §§1.6049–4(c)(1)(ii)(H) and 1.6041–3(q)(8) for a similar exemption from information reporting.

(xiv) Payments to an international organization from investments in the United States of stocks, bonds, or other domestic securities or from interest on deposits in banks in the United States of funds belonging to such international organization are exempt from tax under section 892(b) and, thus, from withholding. Documentation establishing status as an international organization is not required if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is an international organization within the meaning of section 7701(a)(18). See §1.1441–8(d). Payments to an international organization are exempt from information reporting under chapter 61 of the Code (see §1.6049–4(c)(1)(ii)(G)).

(xv) Amounts may be exempt from, or subject to a reduced rate of, withholding under an income tax treaty. Documentation establishing eligibility for benefits under an income tax treaty is required for this purpose as provided under §§1.1441–6. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, §1.6041–4(a)-(1).

(xvi) Amounts of scholarships and grants paid to certain exchange or training program participants that do not represent compensation for services but are not excluded from tax under section 117 are subject to a reduced rate of withholding of 14-percent under section 1441(b). Documentation establishing foreign status is required for purposes of this reduction in rate as provided under §1.1441–4(c). This income is not subject to information reporting under chapter 61 of the Code nor to backup withholding under section 3406. The compensatory portion of a scholarship or grant is reportable as wage income. See §1.6041–3(o).

(xvii) Amounts paid to a foreign organization described in section 501(c) are exempt from withholding under section 1441 to the extent that the amounts are not income includible under section 512 in computing the organization's unrelated business taxable income and are not subject to the tax imposed by section 4948(a). Documentation establishing status as a tax-exempt organization is required for purposes of this exemption to the extent provided in §1.1441–9. Amounts includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding to the extent provided in section 1443(a) and §1.1443–1(a). Gross investment income (as defined in section 4940(c)(2)) of a private foundation is subject to withholding at a 4-percent rate to the extent provided in section 1443(b) and §1.1443–1(b). Payments to a tax-exempt organization are exempt from information reporting under chapter 61 of the Code and the regulations thereunder (see §1.6049–4(c)(1)(ii)(B)(*1*)).

(xviii) Per diem amounts for subsistence paid by the U.S. government to a nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954 are exempt from withholding under section 1441(a). See section 1441(c)(6). Documentation of foreign status is required under §1.1441–4(e) for purposes of establishing eligibility for this exemption. See §1.6041-3(p).

(xix) Interest with respect to tax-free covenant bonds issued prior to 1934 is subject to special withholding procedures set forth in §1.1461–1 in effect prior to January 1, 1999 (see §1.1461–1 as contained in 26 CFR part 1, revised April 1, 1997).

(xx) Income from certain gambling winnings of a nonresident alien individual is exempt from tax under section 871(j) and from withholding under section 1441(a). See section 1441(c)(11). Documentation establishing foreign status is not required for purposes of this exemption but may have to be furnished for purposes of the information reporting provisions of section 6041 and backup withholding under section 3406. See §§1.6041–1 and 1.6041–4(a)(1).

(xxi) Any payments not otherwise mentioned in this paragraph (b)(4) shall be subject to withholding at the rate of 30-percent if it is an amount subject to withholding (as defined in §1.1441–2(a)) unless and to the extent the IRS may otherwise prescribe in published guidance (see §601.601(d)(2) of this chapter) or unless otherwise provided in regulations under chapter 3 of the Code.

(5) *Establishing foreign status under applicable provisions of chapter 61 of the Code.* This paragraph (b)(5) identifies relevant provisions of the regulations under chapter 61 of the Code that exempt payments from information reporting, and therefore, from backup withholding under section 3406, based on the payee's status as a foreign person. Many of these exemptions require that the payee's foreign status be established in order for the exemption to apply. The regulations under applicable provisions of chapter 61 of the Code generally provide that the documentation described in this section may be relied upon for purposes of determining foreign status.

(i) Payments to a foreign person that are governed by section 6041 (dealing with certain trade or business income) are exempt from information reporting under §1.6041–4(a).

(ii) Payments to a foreign person that are governed by section 6041A (dealing with remuneration for services and certain

sales) are exempt from information reporting under §1.6041A–1(d)(3).

(iii) Payments to a foreign person that are governed by section 6042 (dealing with dividends) are exempt from information reporting under §1.6042–3(b)(1)(iii) through (vi).

(iv) Payments to a foreign person that are governed by section 6044 (dealing with patronage dividends) are exempt from information reporting under §1.6044–3(c)(1).

(v) Payments to a foreign person that are governed by section 6045 (dealing with broker proceeds) are exempt from information reporting under §1.6045–1(g).

(vi) Payments to a foreign person that are governed by section 6049 (dealing with interest) to a foreign person are exempt from information reporting under §1.6049–5(b)(6) through (15).

(vii) Payments to a foreign person that are governed by section 6050N (dealing with royalties) are exempt from information reporting under §1.6050N–1(c).

(viii) Payments to a foreign person that are governed by section 6050P (dealing with income from cancellation of debt) are exempt from information reporting under section 6050P or the regulations under that section except to the extent provided in Notice 96–61 (I.R.B. 1996–49); see also §601.601(b)(2) of this chapter.

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in §1.1441–2(a)) shall be deemed to have satisfied any obligation it has under chapter 3 of the Code and the regulations thereunder to withhold and report the amount when it, in turn, pays such amount to another person (whether or not the beneficial owner) to the extent that the payment is associated with a valid withholding certificate described in paragraph (e)(3)(ii), (iii), or (v) of this section that it has furnished to another withholding agent and the intermediary does not know and has no reason to know that the correct amount has not been withheld under chapter 3 of the Code and the regulations thereunder. See §1.1441–5(c)(3)(v) for a similar rule for payments by certain foreign partnerships.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *General rule.* A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in §1.1441–4(a)(2)(i) or (3) to treat the payment as effectively connected income; or

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS; or

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply.

(ii) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter)), establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact, appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation furnished after that date. However, in the case of a withholding certificate or other appropriate documentation received after the date of payment (or after the grace period specified in paragraph (b)(3)(iv) of this section), the district director or the Assistant Commissioner (International) may require additional proof if it is determined that the delays in obtaining the withholding certificate affect its reliability.

(iii) *Liability for interest and penalties.* A withholding agent that has failed to withhold other than based on appropriate reliance on the presumptions described in paragraph (b)(3) of this section or in §1.1441–4(a)(2)(i) or (3) is not relieved from liability for interest under section 6601. Such liability exists even if there is no underlying tax liability due. The interest on the amount that should have been withheld shall be imposed as prescribed under section 6601 beginning on the last date for paying the tax due under section 1461 (which, under section 6601, is the due date for filing the withholding agent's return of tax). The interest shall stop accruing on the earlier of the date that the required withholding certificate or other documentation is provided to the withholding agent and to the extent of the amount of tax that is determined not to be due based on documentation provided, or the date, and to the extent, that the unpaid tax liability under section 871, 881 or under section 1461 is satisfied. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge. However, the withholding agent is not relieved of any applicable penalties. See section 1464.

(iv) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).

(v) *Examples.* The provisions of paragraph (b)(7) of this section are illustrated by the following examples:

Example 1. On June 15, 1999, a withholding agent pays U.S. source interest on an obligation in registered form (issued after July 18, 1984) to a foreign corporation that it cannot reliably associate with a Form W–8 or other appropriate documentation upon which to rely to treat the beneficial owner as a foreign person. The withholding agent does not withhold from the payment. On September 30, 2001, the withholding agent receives from the foreign corporation a valid Form W–8 described in paragraph (e)(2)(ii) of this section. Thus, the interest qualifies as portfolio interest retroactively to June 15, 1999 (the date of payment). See §1.871–14(c)(3). The foreign corporation does not

file a U.S. federal income tax return and does not pay the tax owed. The withholding agent is not liable under section 1461 for the 30-percent tax on the interest income because the receipt of the Form W–8 exempts the interest from tax for purposes of sections 881(a) and 1461. The withholding agent, however, is liable for interest on the amount of withholding that should have been deducted from the payment on June 15, 1999 and deposited. Under paragraph (b)(7)(iii) of this section, the period during which interest may be assessed against the withholding agent runs from March 15, 2000 (the due date for the Form 1042 relating to the payment) until September 30, 2001 (i.e., the date that appropriate documentation is furnished to the withholding agent).

Example 2. On June 15, 1999, a withholding agent pays U.S. source dividends to a foreign corporation that it cannot reliably associate with a Form W–8 or other appropriate documentation upon which to rely to treat the beneficial owner as a foreign person. The withholding agent does not withhold from the payment. On September 30, 2001, the withholding agent receives from the foreign corporation a valid Form W–8 described in paragraph (e)(2)(ii) of this section claiming a reduced 15-percent rate of withholding under a U.S. income tax treaty. The dividend qualifies for the reduced treaty rate retroactively to June 15, 1999, (the date of payment). The foreign corporation does not file a U.S. federal income tax return and does not pay the tax owed. Under section 1461, the withholding agent is liable only for a 15-percent tax on the dividend income because the receipt of the Form W–8 allows the tax rate to be reduced for purposes of sections 881(a) and 1461 from 30-percent to 15-percent. The withholding agent, however, is liable for interest on the full 30-percent amount that should have been deducted and withheld from the payment on June 15, 1999, and deposited, over a period running from March 15, 2000, (the due date for the Form 1042 relating to the payment) until September 30, 2001, (the date that the appropriate documentation is furnished to the withholding agent supporting a reduction in rate under a tax treaty). Additional interest may be assessed relating to the outstanding 15-percent tax liability (i.e., the portion of the 30-percent total tax liability that is not reduced under the treaty). Such additional interest runs from March 15, 2000, until such date as that 15-percent tax liability is satisfied by the withholding agent or the taxpayer (subject to abatement in order to avoid a double interest charge).

(8) *Adjustments, refunds, or credits of overwithheld amounts.* If the amount withheld under section 1441, 1442, or 1443 is greater than the tax due by the withholding agent or the taxpayer, adjustments may be made in accordance with the procedures described in §1.1461–2(a). Alternatively, refunds or credits may be claimed in accordance with the procedures described in §1.1464–1, relating to refunds or credits claimed by the beneficial owner, or §1.6414–1, relating to refunds or credits claimed by the withholding agent. If an amount was withheld under section 3406 or is subsequently determined to have been paid to a foreign person, see paragraph (b)(3)(vii) of this section and §31.6413(a)–3(a)(1) of this chapter.

(9) *Payments to joint owners.* A payment to joint owners that requires documentation in order to reduce the rate of withholding under chapter 3 of the Code and the regulations thereunder does not qualify for such reduced rate unless the withholding agent can reliably associate the payment with documentation from each owner. Notwithstanding the preceding sentence, a payment to joint owners qualifies as a payment exempt from withholding under this section if any one of the owners provides a certificate of U.S. status on a Form W–9 in accordance with paragraph (d)(2) or (3) of this section or the withholding agent can associate the payment with a withholding certificate upon which it can rely to treat the payment as made to a U.S. beneficial owner under paragraph (d)(4) of this section. See §31.3406(h)–2(a)(3)(i)(B) of this chapter.

(c) *Definitions*—(1) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from the payment.

(2) *Foreign and U.S. person.* The term *foreign person* means a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person described in the next sentence. For purposes of the regulations under chapter 3 of the Code, the term *foreign person* also means, with respect to a payment by a withholding agent, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate described in paragraph (e)(3)(ii) of this section. A U.S. person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

(3) *Individual*—(i) *Alien individual.* The term *alien individual* means an individual who is not a citizen or a national of the United States. See §1.1–1(c).

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means a person described in section 7701(b)-(1)(B), an alien individual who is a resident of a foreign country under the residence article of an income tax treaty and §301.7701(b)–7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under §301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(4) *Certain foreign corporations.* For purposes of this section, a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, is not treated as a foreign corporation if the requirements of sections 881(b)(1)(A), (B), and (C) are met for such corporation. Further, a payment made to a foreign government or an international organization shall be treated as a payment made to a foreign corporation for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(5) *Financial institution and foreign financial institution.* For purposes of the regulations under chapter 3 of the Code, the term *financial institution* means a person described in §1.165–12(c)(1)(iv) (not including a person providing pension or other similar benefits or a regulated investment company or other mutual fund, unless otherwise indicated) and the term *foreign financial institution* means a financial institution that is a foreign person, as defined in paragraph (c)(2) of this section.

(6) *Beneficial owner*—(i) *General rule.* In the case of a payment of income, the term beneficial owner means the person who is the owner of the income for tax purposes and who beneficially owns that income. A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Code). Beneficial ownership of income is determined under the provisions of section 7701(l) and the regulations under that section and any other applicable general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction. Thus, a person receiving income in a capacity as a nomi-

nee, agent, custodian for another person is not the beneficial owner of the income. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship. In the case of a payment of an amount that is not income, the beneficial owner determination shall be made under this paragraph (c)(6) as if the amount was income.

(ii) *Special rules for flow-through entities and arrangements*—(A) *General rule.* The beneficial owners of income paid to a partnership or other flow-through arrangements described in paragraph (c)(6)(ii)(C) of this section are those persons who, under U.S. tax principles, are the owners of the income for tax purposes in their separate or individual capacities and who beneficially own that income. For example, a partnership (first tier) that is a partner in another partnership (second tier) is not the beneficial owner of income paid to the second tier partnership since the first tier partnership is not the owner of the income under U.S. tax principles. Rather, the partners of the first tier partnership are the beneficial owners (to the extent they are not themselves partnerships and are not conduits within the meaning of section 7701(l) and the regulations under that section). See §1.1441–5(b) for applicable withholding procedures for payments to a domestic partnership. See also §1.1441–5(c)(3)(ii) for applicable withholding procedures for payments to a foreign partnership where one of the partners (at any level in the chain of tiers) is a domestic partnership. See §1.1441–6(b)(4) for rules governing the eligibility of a payment to an entity or other arrangement for a reduced rate of withholding under an income tax treaty.

(B) *Trusts and estates.* The provisions of paragraphs (c)(6)(i) and (ii)(A) of this section shall not apply to a trust or an estate, whether domestic or foreign. The beneficial owner of income paid to a trust or to an estate shall be determined under the provisions of §1.1441–3(f) and (g) in effect prior to January 1, 1999 (see §1.1441–3(f) and (g) as contained in 26 CFR part 1, revised April 1, 1997).

(C) *Definition of a flow-through entity or arrangement.* For purposes of this paragraph (c)(6)(ii), a flow-through entity means a partnership, estate, or trust. A flow-though arrangement is a contractual arrangement that does not involve an entity and is treated as a partnership for U.S. tax purposes or is a wholly-owned entity that is disregarded for federal tax purposes under §301.7701–2(c)(2) of this chapter as an entity separate from its owner. The term *partnership* means any entity or arrangement (as defined in §301.7701–2(c)(1) of this chapter) whose tax regime is governed by subchapter K of chapter 1 of the Code.

(7) *Withholding agent.* For a definition of the term *withholding agent* and applicable rules, see §1.1441-7.

(8) *Person.* For purposes of the regulations under chapter 3 of the Code, the term *person* shall mean a person described in section 7701(a)(1) and the regulations under that section and a U.S. branch to the extent treated as a U.S. person under paragraph (b)(2)(iv) of this section. For purposes of the regulations under chapter 3 of the Code, the term person does not include a wholly-owned entity that is disregarded for federal tax purposes under §301.7701–2(c)(2) of this chapter as an entity separate from its owner. See paragraph (b)(2)(iii) of this section for procedures applicable to payments to such entities.

(9) *Source of income.* The source of income is determined under the provisions of part I (section 861 and following), subchapter N, chapter 1 of the Code and the regulations under those provisions.

(10) *Chapter 3 of the Code.* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code shall not include references to sections 1445 and 1446, unless the context indicates otherwise.

(11) *Reduced rate.* For purposes of regulations under chapter 3 of the Code, and other withholding provisions of the Code, the term *reduced rate,* when used in regulations under chapter 3 of the Code, shall include an exemption from tax.

(d) *Beneficial owner's or payee's claim of U.S. status*—(1) *In general.* Under paragraph (b)(1) of this section, a withholding agent is not required to withhold under chapter 3 of the Code on payments to a U.S. payee, to a person presumed to be a U.S. payee in accordance with the provisions of paragraph (b)(3) of this section, or to a person that the withholding agent may treat as a U.S. beneficial owner of the payment. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) in order to determine whether to treat a payee or beneficial owner as a U.S. person.

(2) *Payments for which a Form W–9 is otherwise required.* A withholding agent may treat as a U.S. person a payee who is required to furnish a Form W–9 and who furnishes it in accordance with the procedures described in §§31.3406(d)-1 through 31.3406(d)-5 of this chapter (including the requirement that the payee furnish its taxpayer identifying number (TIN)) if the withholding agent meets all the requirements described in §31.3406(h)-3(e) of this chapter regarding reliance by a payor on a Form W–9.

(3) *Payments for which a Form W–9 is not otherwise required.* In the case of a payee who is not required to furnish a Form W–9 under section 3406, the withholding agent may rely on a certificate of U.S. status described in this paragraph (d)(3). A certificate of U.S. status is a certificate described in §31.3406(h)–3(c)(2) of this chapter (relating to forms for exempt recipients) or a Form W–9 (or a substitute form or such other form as the IRS may prescribe) that is signed under penalties of perjury by the payee and contains the name, permanent residence address, and TIN of the payee. The procedures described in §31.3406(h)–2(a) of this chapter shall apply to payments to joint payees. A withholding agent that receives a Form W–9 in order to satisfy this paragraph (d)(3) must retain the form in accordance with the provisions of §31.3406(h)–3(g) of this chapter, if applicable, or of paragraph (e)(4)(iii) of this section (relating to the retention of withholding certificates) if §31.3406(h)–3(g) of this chapter does not apply. The rules of this paragraph (d)(3) are only intended to provide a method by which a withholding agent may determine that a payee is not a foreign person and do not otherwise impose a requirement that documentation be furnished by a person who is otherwise treated as an exempt recipient for purposes of the applicable information reporting provisions under chapter 61 of the Code (e.g., §1.6049–4(c)(1)(ii) for payments of interest).

(4) *Other payments.* This paragraph (d)(4) describes the documentation upon which a withholding agent may rely in order to treat a payment as made to a U.S.

person that is a beneficial owner for purposes of paragraph (b)(1) of this section. The withholding agent may treat the payment as made to a U.S. beneficial owner only if it can reliably associate the payment with documentation prior to the payment, if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and if it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W–9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the payor may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under that section and the regulations under that section for payors who have been notified with regard to such a Form W–9. Payors who have been notified in relation to other Forms W–9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see §601.601(d)(2) of this chapter). A withholding agent may treat a payment as made to a U.S. beneficial owner—

(i) To the extent the withholding agent can reliably associate the payment with a Form W–9 described in paragraph (d)(2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section;

(ii) To the extent the withholding agent can reliably associate a payment to a qualified intermediary with the category of assets described in paragraph (e)(5)(v)(B)(2) of this section that the qualified intermediary has represented, in accordance with paragraphs (e)(3)(ii)(E) and (5)(v) of this section as being allocable to U.S. persons based on the Forms W–9 that they have furnished; or

(iii) To the extent the withholding agent can reliably associate the payment with a Form W–8 from a U.S. branch described in paragraph (e)(3)(v) of this section that evidences an agreement between the U.S. branch and the withholding agent to treat the U.S. branch as U.S. person.

(e) *Beneficial owner's claim of foreign status*—(1) *Withholding agent's reliance*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may treat a payment as made to a foreign beneficial owner in accordance with the provisions of paragraph (e)(1)(ii) of this section. See paragraph (e)(4)(viii) of this section for applicable reliance rules. See paragraph (b)(4) of this section for a description of payments for which a claim of foreign status is relevant for purposes of claiming a reduced rate of withholding for purposes of section 1441, 1442, or 1443. See paragraph (b)(5) of this section for a list of payments for which a claim of foreign status is relevant for other purposes, such as claiming an exemption from information reporting under chapter 61 of the Code.

(ii) *Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner*—(A) *General rule.* The withholding agent may treat a payment as made to a foreign person that is a beneficial owner if it complies with the requirements described in paragraph (e)(1)(ii)(B) of this section and, then, only to the extent—

(*1*) That the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in paragraph (e)(2) of this section furnished by the person whose name is on the certificate or attached to a valid foreign intermediary, flow-through entity, or U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section;

(*2*) That the payment is made outside the United States (within the meaning of §1.6049–5(e)) with respect to an offshore account (within the meaning of §1.6049–5(c)(1)) and the withholding agent can reliably associate the payment with documentary evidence described in §§1.1441–6(c)(3) or (4), or 1.6049–5(c)(1) relating to the beneficial owner;

(*3*) That the withholding agent can reliably associate the payment with the category of assets described in paragraph (e)(5)(v)(B)(*1*) of this section that the qualified intermediary has represented, in accordance with paragraphs (e)(3)(ii)(E) and (5)(v) of this section as being allocable to foreign persons for whom the qualified intermediary is holding valid documentation;

(*4*) That the withholding agent can reliably associate the payment with a withholding certificate described in §1.1441–5(c)(3)(iii) from a foreign partnership claiming that the payment is effectively connected income;

(*5*) That the withholding agent identifies the payee as a U.S. branch described in paragraph (b)(2)(iv) of this section, the payment to which it treats as effectively connected income in accordance with §1.1441–4(a)(2)(ii) or (3);

(*6*) That the withholding agent identifies the payee as an international organization (or any wholly-owned agency or instrumentality thereof) as defined in section 7701(a)(18) that has been designated as such by executive order (pursuant to 22 U.S.C. 288 through 288(f)); or

(*7*) That the withholding agent pays interest from bankers' acceptances and identifies the payee as a foreign central bank of issue (as defined in §1.861–2(b)(4)).

(B) *Additional requirements.* In order for a payment described in paragraph (e)(1)(ii)(A) of this section to be treated as made to a foreign beneficial owner, the withholding agent must hold the documentation (if required) prior to the payment, comply with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section (if required), and must not have been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. If the withholding agent has been so notified, it may rely on the withholding certificate or other documentation only to the extent provided under procedures prescribed by the IRS (see §601.601(d)(2) of this chapter). See paragraph (b)(2)(vii) of this section for rules regarding reliable association of a payment with a withholding certificate or other appropriate documentation.

(2) *Beneficial owner withholding certificate*—(i) *In general.* A beneficial owner withholding certificate is a statement by which the beneficial owner of the payment represents that it is a foreign person and, if applicable, claims a reduced rate of withholding under section 1441. A separate withholding certificate must be submitted to each withholding agent. If the beneficial owner receives more than one type of payment from a single withholding agent, the beneficial owner may have to submit more than one withholding certificate to the single withholding agent

for the different types of payments as may be required by the applicable forms and instructions, or as the withholding agent may require (such as to facilitate the withholding agent's compliance with its obligations to determine withholding under this section or the reporting of the amounts under §1.1461–1(b) and (c)). For example, if a beneficial owner claims that some but not all of the income it receives is effectively connected with the conduct of a trade or business in the United States, it may be required to submit two separate withholding certificates, one for income that is not effectively connected and one for income that is so connected. See §1.1441–6(b)(4)(ii) for special rules for determining who must furnish a beneficial owner withholding certificate when a benefit is claimed under an income tax treaty. See paragraph (e)(4)(ix) of this section for reliance rules in the case of certificates held by another person or at a different branch location of the same person.

(ii) *Requirements for validity of certificate.* A beneficial owner withholding certificate is valid only if it is provided on a Form W–8, or a Form 8233 in the case of personal services income described in §1.1441–4(b) or certain scholarship or grant amounts described in §1.1441–4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section, or such other form as the IRS may prescribe). A Form W–8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address, and TIN (if required), the country under the laws of which the beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii). A person's permanent residence address is an address in the country where the person claims to be a resident for purposes of that country's income tax. In the case of a certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, the residence must be determined in the manner prescribed under the applicable treaty. See §1.1441–6(b)(4)(i). The address of a financial institution with which the beneficial owner maintains an account, a post office box, or an address used solely for mailing purposes is not a residence address for this purpose. If the beneficial owner is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the beneficial owner normally resides. If the beneficial owner is not an individual and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate. See paragraph (f)(2)(i) of this section for continued validity of certificates during a transition period.

(3) *Intermediary, flow-through, or U.S. branch withholding certificate*—(i) *In general.* An intermediary withholding certificate is a Form W–8 by which a payee represents that it is a foreign person and that it is an intermediary with respect to a payment and not the beneficial owner. A flow-through withholding certificate is a Form W–8 furnished by a flow-through entity under §1.1441–5(c)(2) or (3) for a partnership or under §1.1441–5(e) for a foreign estate or trust. See paragraph (c)(6)(ii)(C) of this section for a definition of a flow-through entity. A U.S. branch certificate is a Form W–8 by which the payee represents that it is a U.S. branch described in paragraph (b)(2)(iv)(A) or (E) of this section and that the payment is not effectively connected with the conduct of its trade or business in the United States. An intermediary withholding certificate is used by an intermediary either to make representations regarding the status of beneficial owners of the amount paid or to transmit appropriate documentation to the withholding agent. A flow-through certificate is used by a flow-through entity to establish its status as a foreign person or the status of its partners or beneficiaries, if required, and, if applicable, to claim a reduced rate of withholding. An intermediary means, with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary. See paragraph (e)(4)(viii) of this section for applicable reliance rules.

(ii) *Intermediary withholding certificate from a qualified intermediary.* An intermediary withholding certificate from a person representing to be a qualified intermediary (described in paragraph (e)(5)(ii) of this section) is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by an officer of the qualified intermediary with authority to sign for the intermediary, its validity has not expired, and it contains the following information, statement, and certifications:

(A) The name, permanent residence address (as described in paragraph (e)(2)(ii) of this section), and the employer identification number of the intermediary, and the country under the laws of which the intermediary is created, incorporated, or governed.

(B) A certification that the person whose name is on the Form W–8 is not acting for its own account and is acting as a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section.

(C) A certification that the intermediary has obtained the appropriate certificates (such as Forms W–8 or W–9) or other appropriate documentation in the manner required in its withholding agreement with the IRS for those account holders that are covered by the certificate and whose assets are identified as being allocable to the categories described in paragraph (e)(5)(v)(B)(*1*) or (*2*) (in accordance with paragraph (e)(5)(v) of this section or otherwise).

(D) A certification whether the qualified intermediary is assuming primary withholding responsibility for the amounts to which the certificate relates.

(E) A statement attached to the certificate that provides such information as may be required by the form and accompanying instructions, including sufficient information for the withholding agent to determine the amount required to be withheld from amounts paid to the intermediary and reported to the IRS. See para-

graph (e)(5)(v) of this section for requirement of a statement and rules applicable thereto.

(F) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii).

(iii) *Intermediary withholding certificate from an intermediary that is not a qualified intermediary.* An intermediary withholding certificate from a person that does not represent to be a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section is valid only if it is furnished on a Form W–8 (or an acceptable substitute form, or such other form as the IRS may prescribe), it is signed under penalties of perjury by a person authorized to sign for the intermediary, it contains the information, statement, and certifications described in this paragraph (e)(3)(iii), its validity has not expired, and the withholding certificates and other appropriate documentation for all the persons to whom the certificate relates are attached to the certificate. Appropriate documentation consists of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary withholding certificates described in paragraph (e)(3)(i) of this section, flow-through certificates described in §1.1441–5(c)(2)(iv), (3)(iii), and (e), documentary evidence described in §1.1441–6(b)(2)(i) or in §1.6049–5(c)(1) related to the beneficial owner (or documentary evidence described in §1.6049–5(c)(4) for purposes of information reporting under chapter 61 of the Code), and other documentation or certificate applicable under other provisions of the Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If the intermediary is acting on behalf of another intermediary that is not a qualified intermediary or on behalf of a partnership that is not a withholding foreign partnership described in §1.1441–5(c)(2)(i), then the intermediary must attach to its own withholding certificate the intermediary withholding certificate or the partnership withholding certificate to which all the withholding certificates and other appropriate documentation required to be attached under this paragraph (e)(3)(iii) or in §1.1441–5(c)(3)(iii) or (e) are also attached. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be passed up to the U.S. withholding agent, in which case the intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in §1.871–14(c)(2)(v) furnished in order for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c) or in order for amounts described in §1.1441–6(b)(2)(ii) to qualify as amounts paid to a foreign person. The information and certification required on a Form W–8 described in this paragraph (e)(3)(iii) (or on an acceptable substitute form or such other form as the IRS may prescribe) are as follows:

(A) The name and permanent resident address (as described in paragraph (e)(2)(ii) of this section) of the intermediary, and the country under the laws of which the intermediary is created, incorporated, or governed.

(B) A certification that the person whose name is on the Form W–8 is not acting for its own account and is using the certificate as a form to transmit withholding certificates and other appropriate documentation for the payment to which the form relates.

(C) If furnishing an intermediary certificate to transmit withholding certificates or other appropriate documentation for more than one person, a statement attached to the Form W–8 that provides such information as may be required by the form and accompanying instructions, including sufficient information for the withholding agent to determine the amount required to be withheld from amounts paid to the intermediary. See paragraph (e)(3)(iv) of this section for rules applicable to such a statement.

(D) A certification either that the attached withholding certificates and other appropriate documentation represent all of the persons to whom the intermediary withholding certificate relates or that the amounts allocable to persons covered by the intermediary withholding certificate and for whom withholding certificates or other appropriate documentation are lacking or unreliable are separately identified.

(E) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(iii).

(iv) *Information to the withholding agent regarding assets owned by beneficial owners, etc.*—(A) *General rule.* An intermediary that has not represented that it is acting as a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section must provide information sufficient for the withholding agent to determine the proportion of each payment of reportable amounts (as described in paragraph (e)(3)(vi) of this section) that is allocable to each person to whom the intermediary withholding certificate relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. The withholding agent may rely on such information in order to determine the amount of withholding on the payment and how to report this payment under chapter 3 or 61 of the Code and the regulations thereunder. The sum of all the proportions indicated by the intermediary, expressed as a percentage, must equal, but not exceed, one hundred percent of the payment. The information for persons for whom a withholding certificate or other appropriate documentation is lacking or unreliable may be provided in the aggregate and need not be provided separately for each such person. The foreign intermediary is not required to disclose the names of the persons for whom it collects the payment, unless it has actual knowledge that any such person is a U.S. person that is not an exempt recipient. In such a case, the intermediary must state separately the information for such U.S. person even though such person has not provided a Form W–9 to the intermediary in the manner described in paragraph (d)(2) of this section. The information may be furnished in any manner that the parties choose. For example, if the withholding agent maintains separate accounts for different types of income or withholding rates, the intermediary must provide sufficient information so that the withholding

agent may allocate assets appropriately among the relevant accounts. If the withholding agent does not maintain separate accounts, it may require the intermediary to attach a statement to the intermediary withholding certificate under paragraphs (e)(3)(iii)(C) and (D) of this section providing the information described in this paragraph (e)(3)(iv).

(B) *Updating the information.* The intermediary must update the information furnished to the withholding agent in accordance with paragraph (e)(3)(iv)(A) of this section as often as is necessary in order to enable the withholding agent to withhold at the appropriate rate on each payment and to report such income for purposes of chapter 3 or 61 of the Code and sections 3402, 3405 and 3406 (and the regulations under those provisions). Any update of the information as required under this paragraph (e)(3)(iv)(B) shall be treated as an integral part of the intermediary withholding certificate with which it is associated. See paragraph (e)(4)(ii)(D) of this section regarding how changes in the information described in this paragraph (e)(3)(iv) may affect the validity of withholding certificates. See paragraph (b)(3)(v)(C) of this section for consequences if the information is not updated as required.

(C) *Examples.* The rules of paragraph (e)(3)(iii) of this section and of this paragraph (e)(3)(iv) are illustrated by the following examples:

Example 1. A U.S. withholding agent, W, pays U.S. source dividends to foreign intermediary X who, in turn, pays to foreign intermediary Y, who collects on behalf of foreign beneficial owners, A and B. A and B have each furnished a beneficial owner Form W–8 to Y. Y must furnish to X an intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it must attach the original or copies of A's and B's Forms W–8. X, in turn, must furnish to W its own intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it must attach the original or copies of the intermediary Form W–8 received from Y and A's and B's Forms W–8.

Example 2. A foreign bank, X, acts as an intermediary for five different persons, A, B, C, D, and E, who each own securities from which they receive U.S. source dividends. The distributions are paid by a U.S. financial institution, W, as custodian of the securities for X. A's, B's, C's, D's, and E's respective claimed ownership interest in the securities is 20- percent each. X has furnished to W an intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it has attached a statement described in this paragraph (e)(3)(iv) stating each of A', B's, and C's interest in the securities with respect to which distributions are made periodically. The respective ownership interests of D and E are not stated separately because X has not received a valid withholding certificate or other appropriate documentation from D or E. Therefore, on the statement, D's and E's interest in the securities is stated in the aggregate (i.e., 40-percent attributable to undocumented owners). X has attached a Form W–8 for A and documentary evidence for B (who each claim a reduced rate of withholding under an income tax treaty), and a Form W–9 for C. In determining the amount to be withheld from the amount paid to X, W may rely on X's intermediary Form W–8, the allocation statement attached to the Form W–8, and the attached Form W–8, documentary evidence, and Form W–9 for each of A, B, and C. Based on paragraphs (b)(1), (b)(2)(v), (b)(2)(vii), (d)(4)(i), and (e)(1)(ii)(A)(1) of this section, W may withhold as follows on the payment to X: no withholding on 20-percent of the payment on the basis of C's Form W–9, withholding at the reduced treaty rate on 40-percent of the payment on the basis of A's Form W–8 and B's documentary evidence, and 30-percent on 40- percent of the payment to the undocumented owners group formed by D and E in accordance with the presumptions described in paragraph (b)(3)(v)(B) of this section (i.e., due to the lack of documentation for D and E). Under paragraph (e)(3)(iii) of this section, X is not required to identify D or E to W. For purposes of making a return under §1.1461–1(c), W would prepare a single Form 1042–S for the group of undocumented owners, D and E (if the names are undisclosed, the Form 1042–S should be made in the name of X and state that the return is made for unknown owners (see §1.1461–1(c)(4)(iv)). Because X has not furnished required documentation for D and E, X does not qualify under paragraph (b)(6) of this section for relief from an obligation to make a report on a Form 1042–S (to the extent D and E are presumed to be foreign persons under paragraph (b)(3)(iii) of this section) when X makes the payment to D and E (however, because a full 30-percent amount was withheld under this section, X does not have to withhold an additional amount under the facts of this example). In contrast, under paragraph (b)(6) of this section, X is not required to make a report on Form 1042–S for its payments to A or B. Under §1.6042–3(b)(1)(vi), X is not required to report C's share of the payment on Form 1099 (unless X has actual knowledge that W has not reported the portion of payment allocable to C in accordance with §1.6042–2).

Example 3. The facts are the same as in *Example 2*, except that D's name is D Insurance Company whom X knows is a U.S. person. Because of D's name, X may treat D as an exempt recipient on an eyeball test basis under §§1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii)(A)(1). However, even if those facts are disclosed to W, W must withhold 30-percent of the portion of the payment allocable to D because W is making a payment to a foreign person (X). Under paragraph (b)(1) of this section, W may reduce the rate of withholding only if it can associate the payment with documentation upon which it can rely to treat the beneficial owner as a U.S. person or as a foreign person entitled to a reduced rate of withholding. Because X has not furnished documentation for D, W does not have the proper documentation with which it can associate the payment allocable to D. Thus, insofar as W is concerned, the portion of the payment allocable to D is treated as a payment to an undocumented owner that W must presume to be a foreign person under paragraph (b)(3)(v)(B) of this section. Accordingly, under this paragraph (e)(3)(iv), W need not identify the information for D separately and can aggregate the portion of the payment allocable to D and E. W's reporting requirements for the portion of the payment allocable to D and E are the same as under *Example 2*. When X makes the payment to D, X does not benefit from the relief from reporting under §1.6042–3(b)(1)(vi). However, X is not required to report the payment to D on Form 1099 under section 6042 because, under §1.6042–3(b)(1)(vii), X can treat D as an exempt recipient.

(v) *Withholding certificate from certain U.S. branches.* A U.S. branch certificate is a representation by the U.S. branch whose name is on the certificate that the payment it receives is not effectively connected with the conduct of a trade or business in the United States and that it is using the certificate either to transmit the appropriate documentation for the persons for whom the branch receives the payment (i.e., as an intermediary) or as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W–8 (or an acceptable substitute form, or such other form as the IRS may prescribe), it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information and certifications described in paragraphs (e)(3)(v)(A) through (C) of this section and in paragraphs (e)(3)(iii)(C) and (D) of this section. If the certificate is furnished pursuant to an agreement to treat the U.S. branch as a U.S. person, the information and certification required on the Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe) are limited to the following—

(A) The name of the person of which the branch is a part and the address of the branch in the United States;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States; and

(C) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

(vi) *Reportable amounts.* For purposes of this section, the term reportable

amount means an amount subject to withholding within the meaning of §1.1441–2(a), bank deposit interest (including original issue discount) and similar types of deposit interest described in section 871(i)(2)(A) or 881(d) that are from sources within the United States, and any amount of interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3). For purposes of this paragraph (e)(3)(vi), however, reportable amounts do not include payments with respect to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in §1.6049-5(b)(7), (10) or (11) (relating to certain obligations issued in bearer form). While short-term OID and bank deposit interest are not subject to withholding under chapter 3 of the Code, such amounts may be subject to information reporting under section 6049 if paid to a U.S. person who is not an exempt recipient described in §1.6049–4(c)(1)(ii) and to backup withholding under section 3406 in the absence of documentation. See §1.6049–5(d)(3)(iii) for applicable procedures when such amounts are paid to a foreign intermediary.

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W–8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regrading Form W–9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate.* A withholding certificate (or other acceptable substitute) may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate as provided in section 6061 and the regulations under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns).

(ii) *Period of validity*—(A) *Three-year period.* A withholding certificate described in paragraph (e)(2)(i) of this section, a certificate described in §1.871–14-(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c) or to qualify amounts paid on certain securities described in §1.1441–6(b)(2)(ii) as paid to a foreign person), or documentary evidence described in §1.1441–6(b)(2)(i) or in §1.6049–5(c)(1) shall remain valid until the earlier of the last day of the third calendar year following the year in which the certificate is signed or the documentary evidence is created or the day that a change of circumstances occurs that makes any information on the certificate or documentary evidence incorrect. For example, a certificate signed on September 30, 1999, remains valid through December 31, 2002, unless circumstances change that make the information on the form no longer correct.

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the following certificates or parts of certificates shall remain valid until the status of the person whose name is on the certificate is changed in a way relevant to the certificate or circumstances change that make the information on the certificate no longer correct:

(*1*) A beneficial owner withholding certificate described in paragraph (e)(2)(ii) of this section that is furnished with a TIN if the income for which such certificate is furnished is required to be reported under §1.1461–1(c)(2)(i) or the TIN furnished on the certificate is reported to the IRS under the procedures described in §1.1461–1(d).

(*2*) A certificate described in paragraph (e)(3)(ii) of this section (dealing with a certificate from a person representing to be a qualified intermediary).

(*3*) A certificate described in paragraph (e)(3)(iii) of this section (dealing with a certificate from a person representing to be a non-qualified intermediary), but not including the withholding certificates or documentary evidence required to be attached to the certificate.

(*4*) A certificate described in paragraph (e)(3)(v) of this section (dealing with a certificate from a person representing to be a U.S. branch), but not the withholding certificates or documentary evidence required to be attached to the certificate.

(*5*) A certificate described in §1.1441–5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(*6*) A certificate described in §1.1441–5(c)(3)(iii) (dealing with a certificate from a person representing to be a foreign partnership that is not a withholding foreign partnership), but not including the withholding certificates or documentary evidence required to be attached to the certificate.

(*7*) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of §1.892–2T(a)(2)) in accordance with §1.1441–8(b), or by a person representing to be a foreign central bank of issue (within the meaning of §1.861–2(b)(4)) or the Bank for International Settlements in accordance with §1.1441–8(c)(1).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B)(*1*) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (e)(4)(ii)(A) of this section.

(D) *Change in circumstances.* If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate or new documentation. A certificate or documentation becomes invalid from the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new cer-

tificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. If an intermediary (including a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that passes through certificates to a withholding agent) or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects the payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation whose validity has expired due to the change in circumstances. If a beneficial owner withholding certificate is used to claim foreign status only (and not, also, residence in a particular foreign country for purposes of an income tax treaty), a change of address is a change in circumstances for purposes of this paragraph (e)(4)(ii)(D) only if it changes to an address in the United States. Further, a change of address within the same foreign country is not a change in circumstances for purposes of this paragraph (e)(4)(ii)(D). A change in the circumstances affecting the withholding information provided to the withholding agent in accordance with the provisions in paragraph (e)(3)(iv) or (5)(v) of this section or in §1.1441–5(c)(3)(iv) shall terminate the validity of the withholding certificate with respect to the information that is no longer reliable unless the information is updated. A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of withholding certificate.* A withholding agent must retain each withholding certificate and other documentation for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and §1.1461–1.

(iv) *Electronic transmission of information.* Under procedures issued by the IRS (see §601.601(d)(2) of this chapter), a withholding agent may be permitted to receive in electronic form the information required to be included on a withholding certificate.

(v) *Electronic confirmation of taxpayer identifying number on withholding certificate.* The Commissioner may prescribe procedures in a revenue procedure (see §601.601(d)(2) of this chapter) or other appropriate guidance to require a withholding agent to confirm electronically with the IRS information concerning any TIN stated on a withholding certificate.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W–8 or 8233 (or such other official form as the IRS may prescribe). Such a substitute for an official form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one stated on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claim of benefits under an income tax treaty. A withholding agent who uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may refuse to accept a certificate from a payee or beneficial owner (including the official Form W–8 or 8233) if the certificate is not provided the acceptable substitute form provided by the withholding agent. However, a withholding agent may refuse to accept a certificate provided by a payee or beneficial owner only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the payee or beneficial owner and that the payee or beneficial owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii). A TIN is required to be stated on a beneficial owner certificate if the beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in §1.1441–6(b)(2)(ii)), an exemption from withholding because income is effectively connected with a U.S. trade or business, an exemption under section 871(f) for certain annuities received under qualified plans, or an exemption solely based on a foreign organization's claim of tax exempt status under section 501(c) or private foundation status. Thus, a TIN is not required from a foreign private foundation that is subject to the 4-percent tax under section 4948(a) on income if that income is otherwise exempt under the Code. In addition, a TIN is required to be stated on the withholding certificate from a person representing to be a qualified intermediary described in paragraph (e)(5)(ii) of this section, on the withholding certificate from a person representing to be a withholding foreign partnership described in §1.1441–5(c)(2)(i)), on the withholding certificate from a person representing to be a foreign trust or foreign estate, or from a fiduciary thereof, and on the withholding certificate from a person representing to be a U.S. branch described in paragraph (e)(3)(v) of this section. A TIN is an IRS individual taxpayer identification number, an employer identification number, or a social security number

as described in section 6109 and §301.6109–1 of this chapter, or any other identifier that the Commissioner may designate.

(viii) *Reliance rules.* A withholding agent may rely on the information and certifications stated on withholding certificates or other documentation without having to inquire into the truthfulness of this information or certification, unless it has actual knowledge or reason to know that the same is untrue. In the case of amounts described in §1.1441–6(b)(2)(ii), a withholding agent described in §1.1441–7(b)(2)(ii) has reason to know that the information or certifications on a certificate are untrue only to the extent provided in §1.1441–7(b)(2)(ii). See §1.1441–6(b)(4)(ii) for reliance on representations regarding eligibility for a reduced rate under an income tax treaty. Paragraphs (e)(4)(viii)(A) and (B) of this section provide examples of such reliance.

(A) *Classification.* A withholding agent may rely on the claim of entity classification indicated on the withholding certificate that it receives from or for the beneficial owner, unless it has actual knowledge or reason to know that the classification claimed is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the name of the corporation indicates that the person is a per se corporation described in §301.7701–2(b)(8)(i) of this chapter unless the certificate contains a statement that the person is a grandfathered per se corporation described in §301.7701–2(b)(8) of this chapter and that its grandfathered status has not been terminated. In the absence of reliable representation or information regarding the classification of the payee or beneficial owner, see §1.1441–1(b)(3)(ii) for applicable presumptions.

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution as the beneficial owner, unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (e.g., sub-account numbers or names). If the financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, i.e., a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(ix) *Certificates to be furnished for each account unless exception applies.* Unless otherwise provided in this paragraph (e)(4)(ix), a withholding agent that is a financial institution with which a customer may open an account shall obtain withholding certificates or other appropriate documentation on an account-by-account basis.

(A) *Coordinated account information system in effect.* A withholding agent may rely on the withholding certificate or other appropriate documentation furnished by a customer for a pre-existing account under any one or more of the circumstances described in this paragraph (e)(4)(ix)(A).

(*1*) A withholding agent may rely on documentation furnished by a customer for another account if all such accounts are held at the same branch location.

(*2*) A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a person related to the withholding agent if the withholding agent and the related person are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer. See §31.3406(c)–1(c)(3)(ii) and (iii)(C) of this chapter for an identical procedure for purposes of backup withholding. For purposes of this paragraph (e)(4)(ix)(A), a withholding agent is related to another person if it is related within the meaning of section 267(b) or 707(b).

(*3*) A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a person related to the withholding agent if the withholding agent and the related person are part of an information system other than a universal account system and the information system is described in this paragraph (e)(4)(ix)(A)(*3*). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained in the documentation, and its validity status, and must allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish how and when it has accessed the data regarding the documentation and, if applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation. In addition, the withholding agent or the related party must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation.

(B) *Family of mutual funds.* An interest in a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may, in the discretion of the mutual fund, be represented by one single withholding certificate where shares are acquired or owned in any of the funds. See §31.3406(h)–3(a)(2) of this chapter for an identical procedures for purposes of backup withholding.

(C) *Special rule for brokers.* A withholding agent may rely on the certification of a broker acting as the agent of a beneficial owner that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other documentation for that beneficial owner. The certification must contain the date of expiration of the certificate or documentation and be in writing or in electronic form. For purposes of this paragraph (e)(4)(ix)(C), the term broker shall have the same meaning as in §31.3406(h)-3(d) of this chapter.

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish an intermediary withholding certificate to a withholding agent. Such a certificate certifies on behalf of other persons (such as beneficial owners, intermediaries, flow-through entities described in §1.1441–5, or U.S. payees) for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Code, such as the provisions under chapter 61 of the Code and section 3406 (and the regulations under those provisions). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment or for its shareholders (in the case of claims of benefits under an income tax treaty by a reverse hybrid entity). Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or shareholders pursuant to its agreement with the IRS, it is not required to attach such documentation to the intermediary withholding certificate. However, the qualified intermediary must disclose the names of those U.S. persons for whom the qualified intermediary receives reportable payments (within the meaning of paragraph (e)(3)(vi) of this section) and who are not exempt recipients (as defined in §1.6049–4(c)(1)(ii) or an applicable provision under section 6041, 6042, 6045, or 6050N), irrespective of local secrecy laws. A person may claim qualified intermediary status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may prescribe.

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term *qualified intermediary* means a person that is a party to a withholding agreement with the IRS and such person is—

(A) A foreign financial institution or a foreign clearing organization (as defined in §1.163–5(c)(2)(i)(D)(*8*), without regard to the requirement that the organization hold obligations for members), other than a U.S. branch or U.S. office of such institution or organization;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization (as defined in §1.163–5(c)(2)(i)(D)(*8*), without regard to the requirement that the organization hold obligations for members);

(C) A foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders; or

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement*—(A) *In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter). Under such withholding agreement, a qualified intermediary shall be generally subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Code, and section 3406, and the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. A withholding agreement may apply to the entity as a whole or to certain specified branches of the institution. The determination of the scope of the agreement shall be made on a branch-by-branch basis.

(B) *Terms of the withholding agreement.* Generally, the agreement shall specify the type of certification and documentation upon which the qualified intermediary may rely to ascertain the nationality and residence of beneficial owners and U.S. payees who receive payments collected by the qualified intermediary and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. It shall specify if the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of individual customers. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the qualified intermediary arrangement for purposes of verifying entitlement to such benefits, particularly under an applicable Limitation on Benefits provision. Under the agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in §301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures apply in the context of a qualified intermediary arrangement and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts on behalf of its customers. If relevant, the agreement shall specify the manner in which the qualified intermediary may deal with payments to other intermediaries. In addition, the agreement must specify the manner in which the IRS will verify compliance with the agreement. In appropriate cases, the IRS may agree to rely on audits performed by an intermediary's approved auditor. In such a case, the IRS' audit may be limited to the audit of the auditor's records (including work papers of the auditor and reports prepared by the auditor indicating the methodology employed to verify the entity's compliance with the agreement). For this purpose, the agreement shall specify which auditor or class of auditors is approved. Generally, an auditor will be approved if it is subject to regulatory supervision under the laws of the country in which a significant part of the intermediary activities under the agreement are expected to occur, its internal procedures require it to verify that the intermediary complies with the terms of the withholding agreement and to report non-compliance findings under the agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its relevant records (i.e., work papers and reports) are available to the IRS. The agreement must include provisions for the assessment and collection of tax in the event that failure to comply

with the terms of the agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement shall specify the procedures by which deposits of amounts withheld are to be deposited, if different from normally applicable deposit procedures under the Code and applicable regulations. The agreement shall also specify the assets that the qualified intermediary has in the United States or alternative means of collection, if necessary. To determine the terms of any particular withholding agreement, the IRS will consider appropriate factors including whether or not the foreign person agrees to assume primary responsibility as a withholding agent, the type of local knoW–your-customer laws and practices to which it is subject, the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign person, the volume of investments in U.S. securities (determined in dollar amounts and number of account holders), and financial condition of the foreign person.

(iv) *Assignment of primary withholding responsibility.* A withholding agent making a payment to a qualified intermediary must presume that the withholding agent has full withholding responsibility for that payment, except as otherwise specified in this paragraph (e)(5)(iv). For this purpose, withholding responsibility means the obligation to withhold as required under the provisions of section 1441, 1442, or 1443, and the regulations under those sections, and the related reporting obligations under §1.1461–1(b)-(2)(ii) and (c)(4)(ii) for payments identified or treated as made to foreign persons. Withholding responsibility also means obligations imposed on payors under chapter 61 of the Code (and the regulations under those provisions) and, if applicable, under section 3405 or 3406 (and the regulations under those sections). A qualified intermediary that assumes primary withholding responsibility vis-a-vis a withholding agent must assume such responsibility for all payments made to any one account. Any qualified intermediary may agree with the withholding agent to assume primary withholding responsibility, but only if expressly permitted to do so under its agreement with the IRS. Generally, reporting or withholding liability arising from a payment to a U.S. person (or treated as or presumed to be made to a U.S. person) under any provision of the Code or applicable regulations thereunder may not be assigned to a qualified intermediary except where the qualified intermediary is a foreign branch of a U.S. financial institution or except to the extent that the qualified intermediary has a branch in the United States and establishes to the satisfaction of the IRS that its U.S. branch can adequately fulfill the qualified intermediary's obligations on behalf of the qualified intermediary regarding information reporting under chapter 61 of the Code and the regulations under the applicable provisions of that chapter and, if necessary, backup withholding under section 3406 and the regulations under that section (even though the U.S. branch is not a qualified intermediary).

(v) *Information to withholding agent regarding applicable withholding rates*—(A) *General rule.* The qualified intermediary must separate the assets that generate payments of reportable amounts (as described in paragraph (e)(3)(vi) of this section) that are associated with its withholding certificate furnished to the withholding agent into the categories described in paragraph (e)(5)(v)(B) of this section, and provide that information to the withholding agent so that the withholding agent may determine the applicable withholding rate applicable to each category. The information may be furnished in any manner that the parties choose. For example, if the withholding agent maintains separate accounts for each category of assets described in paragraph (e)(5)(v)(B) of this section, the intermediary must provide information sufficient for the withholding agent to allocate assets appropriately among the various accounts. If the withholding agent does not maintain separate accounts, it may require the intermediary to attach a statement to the intermediary withholding certificate under paragraph (e)(3)(ii)(E) of this section providing the information described in this paragraph (e)(5)(v).

(B) *Categories of assets.* A payment of a reportable amount (as defined in paragraph (e)(3)(vi) of this section) must be associated with one of the three categories of assets set forth in paragraphs (e)(5)(v)(B)(*1*) through (*3*) of this section and may be associated with only one of these three categories. Additional or different categories of assets may be specified, however, under procedures prescribed by the IRS (see §602.602–1(d) of this chapter) or in the qualified intermediary agreement. No information is required regarding assets that do not generate a reportable amount described in paragraph (b)(3)(vi) of this section. The information provided to the withholding agent, and any update thereof, shall be considered an integral part of the intermediary withholding certificate. The three categories of assets required to be identified to the withholding agent are as follows:

(*1*) The first category of assets consists of assets that are associated with non-U.S. payees to which the intermediary certificate relates, and the applicable withholding rate. If different withholding rates apply, the withholding agent must indicate the applicable rate for each class of non-U.S. payees to which different withholding rates apply and the assets associated with each class. In the case of a qualified intermediary that has assumed primary withholding responsibility, the intermediary must simply certify the amount of assets for which it assumes primary withholding responsibility because they are assets for which it holds the appropriate documentation and are not described in the other two categories.

(*2*) The second category of assets consists of assets that are associated with all U.S. payees to which the certificate relates. The qualified intermediary must furnish a Form W–9 (or an acceptable substitute form) for each U.S. payee described in paragraph (d)(2) of this section or, in the absence of a Form W–9, the name and address of the U.S. payee or such information it has available regarding the payee. The identity of U.S. payees described in paragraph (d)(3) of this section need not be disclosed to the withholding agent.

(*3*) The third category of assets consists of assets that are associated with payees for whom the qualified intermediary holds no documentation, or holds documentation that it knows or has reason to know is unreliable and for which it has no actual knowledge that the payees are U.S. persons. A qualified intermediary that has

assumed primary withholding responsibility need not furnish information regarding this category of assets.

(C) *Updating the information.* The intermediary must update the information furnished to the withholding agent in accordance with this paragraph (e)(5)(v) as often as is necessary in order to enable the withholding agent to withhold at the appropriate rate on each payment and to report such income for purposes of chapter 3 or 61 of the Code and sections 3402, 3405 and 3406 (and the regulations under those provisions). See paragraph (e)(4)(ii)(D) of this section regarding how changes in the information affect the validity of a withholding certificate. See §1.1441–1(b)(3)(v)(C) for consequences if the information is not updated as required.

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, a withholding agent that on December 31, 1998, holds a Form W–8, 8233, 1001, 4224, 1078, or a statement described in §1.1441–5 in effect prior to January 1, 1999 (see §1.1441–5 as contained in 26 CFR part 1, revised April 1, 1997) under the regulations in effect prior to January 1, 1999(see 26 CFR parts 1 and 35a, revised April 1, 1997), that is a valid certificate or statement as determined under those regulations may treat the certificate or statement as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 1998.

§1.1441-2 *Amounts subject to withholding.*

(a) *In general.* For purposes of the regulations under chapter 3 of the Internal Revenue Code (Code), the term *amounts subject to withholding* means amounts from sources within the United States that constitute either fixed or determinable annual or periodical income described in paragraph (b) of this section or other amounts subject to withholding described in paragraph (c) of this section. For purposes of this paragraph (a), an amount shall not be treated as not being from sources within the United States merely because the source of the amount cannot be determined at the time of payment. See §1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount. Amounts subject to withholding include amounts that are not fixed or determinable annual or periodical income and upon which withholding is specifically required under a provision of this section or another section of the regulations under chapter 3 of the Code (such as corporate distributions that do not constitute dividend income upon which withholding is required under §1.1441–3(c)(1)). Amounts subject to withholding do not include amounts described in §1.1441–1(b)(4)(i) to the extent they involve interest on obligations in bearer form or on foreign-targeted registered obligations (but, in the case of a foreign-targeted registered obligation, only to the extent of those amounts paid to a registered owner that is a financial institution within the meaning of section 871(h)(5)(B)), amounts described in §1.1441–1(b)(4)(ii) (dealing with bank deposit interest and similar types of interest (including original issue discount) described in section 871(i)(2)(A) or 881(d)), amounts described in §1.1441–1(b)(4)(iv) (dealing with interest or original issue discount on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3)), and amounts described in §1.1441–1(b)(4)(xx) (dealing with income from certain gambling winnings exempt from tax under section 871(j)).

(b) *Fixed or determinable annual or periodical income*—(1) *In general*—(i) *Definition.* For purposes of chapter 3 of the Code and the regulations thereunder, fixed or determinable annual or periodical income is all income included in gross income under section 61 (including original issue discount), except for the items specified in paragraph (b)(2) of this section. Therefore, items of U.S. source income that are excluded from gross income under any provision of law without regard to the identity of the holder, such as interest excluded from gross income under section 103(a), are not fixed or determinable annual or periodical income. See §1.306–3(h) for treating income from the disposition of section 306 stock as fixed or determinable annual or periodical income.

(ii) *Manner of payment.* The term *fixed or determinable annual or periodical* is merely descriptive of the character of a class of income. If an item of income falls within the class of income contemplated in the statute and described in paragraph (a) of this section, it is immaterial whether payment of that item is made in a series of payments or in a single lump sum. Further, the income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, prevent it from being fixed or determinable annual or periodical income (e.g., a lump sum payment). In addition, the fact that the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not disqualify the payment as determinable or periodical. For this purpose, the share of the fixed or determinable annual or periodical income of an estate or trust from

sources within the United States which is required to be distributed currently, or which has been paid or credited during the taxable year, to a nonresident alien beneficiary of such estate or trust constitutes fixed or determinable annual or periodical income.

(iii) *Determinability of amount.* An item of income is fixed when it is to be paid in amounts definitely pre-determined. An item of income is determinable if the amount to be paid is not known but there is a basis of calculation by which the amount may be ascertained at a later time. For example, interest is determinable even if it is contingent in that its amount cannot be determined at the time of payment of an amount with respect to a loan because the calculation of the interest portion of the payment is contingent upon factors that are not fixed at the time of the payment. For purposes of this section, an amount of income does not have to be determined at the time that the payment is made in order to be determinable. An amount of income described in paragraph (a) of this section which the withholding agent knows is part of a payment it makes but which it cannot calculate exactly at the time of payment, is nevertheless determinable if the determination of the exact amount depends upon events expected to occur at a future date. In contrast, a payment which may be income in the future based upon events that are not anticipated at the time the payment is made is not determinable. For example, loan proceeds may become income to the borrower when and to the extent the loan is canceled without repayment. While the cancellation of the debt is income to the borrower when it occurs, it is not determinable at the time the loan proceeds are disbursed to the borrower if the lack of repayment leading to the cancellation of part or all of the debt was not anticipated at the time of disbursement. The fact that the source of an item of income cannot be determined at the time that the payment is made does not render a payment not determinable. See §1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount.

(2) *Exceptions.* For purposes of chapter 3 of the Code and the regulations thereunder, the items of income described in this paragraph (b)(2) are not fixed or determinable annual or periodical income—

(i) Gains derived from the sale of property (including market discount and option premiums), except for gains described in paragraph (b)(3) or (c) of this section;

(ii) Insurance premiums within the meaning of section 4372 paid to a foreign insurer or reinsurer; and

(iii) Any other income that the Internal Revenue Service (IRS) may determine, in published guidance (see §601.601(d)(2) of this chapter), is not fixed or determinable annual or periodical income.

(3) *Original issue discount*—(i) *General rule.* An amount representing original issue discount is fixed or determinable annual or periodical income that is subject to withholding to the extent provided in this paragraph (b)(3) if not otherwise excluded under paragraph (a) of this section. Under sections 871(a)(1)(C) and 881(a)(3), an amount of original issue discount is subject to tax to a foreign beneficial owner of an obligation carrying original issue discount upon a taxable sale or exchange of the obligation or when a payment is made on such obligation. The amount taxable is the amount of original issue discount that accrued while the foreign person held the obligation up to the time that the obligation is sold or exchanged or that a payment is made on the obligation, reduced by any amount of original issue discount that was taken into account prior to that time (due to a payment made on the obligation). In the case of a taxable event due to a payment made on the obligation, the tax due on the amount of taxable original issue discount may not exceed the payment less the tax imposed thereon. A person who is a withholding agent with respect to a payment that, under section 871(a)(1)(C) or 881(a)(3), is taxable to a foreign person holding or disposing of an original issue discount obligation must withhold to the extent provided in this paragraph (b)(3).

(ii) *Amounts actually known to the withholding agent.* A withholding agent must withhold on the taxable amount of original issue discount to the extent that it has actual knowledge of the proportion of the payment that is taxable to the beneficial owner under section 871(a)(1)(C) or 881(a)(3)(A). A withholding agent has actual knowledge if it knows how long the beneficial owner has held the obligation, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent is treated as having knowledge if the information is reasonably available. The information is not considered reasonably available if the withholding agent does not have a direct customer relationship with the foreign beneficial owner or such other person who has actual knowledge of the facts relevant to the determination of the amount taxable to the foreign beneficial owner, and has no access to such information in the ordinary course of its business due to the manner in which the obligation is held (e.g., in street name or through intermediaries). In the case of a withholding agent maintaining a direct account relationship with the beneficial owner, knowledge regarding the beneficial owner's holding period and acquisition premium is considered to be reasonably available to the withholding agent. A withholding agent may rely on the most recently published "List of Original Issue Discount Instruments" (IRS Publication 1212 (available from the IRS Forms Distribution Centers) or similar list) published by the IRS in order to determine the amount of taxable OID in any particular transaction.

(iii) *Amounts for which certain documentation is not furnished.* Notwithstanding lack of knowledge (within the meaning of paragraph (b)(3)(ii) of this section), withholding is required on the entire amount of stated interest, if any, and original issue discount on the obligation as determined as of the date of original issue if the withholding agent, pursuant to the provisions in §1.1441–1(b)(3), treats the payment as made to a foreign payee because it cannot reliably associate the payment with documentation and the amount would qualify as portfolio interest if the withholding agent held documentation described in §1.871–14(c)(2). A withholding agent may rely on the most recently published "List of Original Issue Discount Instruments" (IRS Publication 1212 (available from the IRS Forms Distribution Centers) or similar list) published by the IRS in order to determine the amount of taxable OID in any particular transaction. See

§1.1441–1(b)(8) for adjustments to any amount that has been overwithheld.

(iv) *Exceptions to withholding.* The obligation to withhold under this paragraph (b)(3) shall apply only to obligations issued after December 31, 1998, and payable more than 183 days from the date of original issue. Any exemption from withholding pursuant to this paragraph (b)(3) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6049 and backup withholding under section 3406. See §1.6049–5(b)(7) through (15).

(4) *Securities lending transactions and equivalent transactions.* See §§1.871–7(b)(2) and 1.881–2(b)(2) regarding the character of substitute payments as fixed and determinable annual or periodical income. Such amounts constitute income subject to withholding to the extent they are from sources within the United States, as determined under section §§1.861–2(a)(7) and 1.861–3(a)(6). See §§1.6042–3(a)(2) and 1.6049–5(a)(5) for reporting requirements applicable to substitute dividend and interest payments, respectively.

(c) *Other income subject to withholding.* Withholding is also required on the following items of income—

(1) Gains described in sections 631(b) or (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest; and

(2) Gains subject to the 30-percent tax under section 871(a)(1)(D) or 881(a)(4), relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property.

(d) *Exceptions to withholding where no money or property is paid or lack of knowledge*—(1) *General rule.* A withholding agent who is not related to the recipient or beneficial owner has an obligation to withhold under section 1441 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (d)) and the due date for the filing of return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over, or custody of money or property owned by the recipient or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. The exemption from the obligation to withhold under this paragraph (d) shall not apply, however, to distributions with respect to stock or if the lack of control or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1441, 1442, or 1443. For purposes of this paragraph (d), a withholding agent is related to the recipient or beneficial owner if it is related within the meaning of section 482. Any exemption from withholding pursuant to this paragraph (d) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406. The exemption from withholding under this paragraph (d) is not a determination that the amounts are not fixed or determinable annual or periodical income, nor does it constitute an exemption from reporting the amount under §1.1461–1(b) and (c).

(2) *Cancellation of debt.* A lender of funds who forgives any portion of the loan is deemed to have made a payment of income to the borrower under §1.61–12 at the time the event of forgiveness occurs. However, based on the rules of paragraph (d)(1) of this section, the lender shall have no obligation to withhold on such amount to the extent that it does not have custody or control over money or property of the borrower at any time between the time that the loan is forgiven and the due date (including extensions) of the Form 1042 for the year in which the payment is deemed to occur. A payment received by the lender from the borrower in partial settlement of the debt obligation does not, for this purpose, constitute an amount of money or property belonging to the borrower from which the withholding tax liability can be satisfied.

(3) *Satisfaction of liability following underwithholding by withholding agent.* A withholding agent who, after failing to withhold the proper amount from a payment, satisfies the underwithheld amount out of its own funds may cause the beneficial owner to realize income to the extent of such satisfaction or may be considered to have advanced funds to the beneficial owner. Such determination depends upon the contractual arrangements governing the satisfaction of such tax liability (e.g., arrangements in which the withholding agent agrees to pay the amount due under section 1441 for the beneficial owner) or applicable laws governing the transaction. If the satisfaction of the tax liability is considered to constitute an advance of funds by the withholding agent to the beneficial owner and the withholding agent fails to collect the amount from the beneficial owner, a cancellation of indebtedness may result, giving rise to income to the beneficial owner under §1.61–12. While such income is annual or periodical fixed or determinable, the withholding agent shall have no liability to withhold on such income to the extent the conditions set forth in paragraphs (d)(1) and (2) of this section are satisfied with respect to this income. Contrast the rules of this paragraph (d)(3) with the rules in §1.1441–3(f)(1) dealing with a situation in which the satisfaction of the beneficial owner's tax liability itself constitutes additional income to the beneficial owner. See, also, §1.1441–3(c)(2)(ii)(B) for a special rule regarding underwithholding on corporate distributions due to underestimating an amount of earnings and profits.

(e) *Payment*—(1) *General rule.* A payment is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. For example, realization of income from cancellation of debt results in a deemed payment. A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. A payment is considered made whether it is made directly to the beneficial owner or to another person for the benefit of the beneficial owner (e.g., to the agent of the beneficial owner). Thus, a payment of income is considered made to a beneficial owner if it is paid in complete or partial satisfaction of the beneficial owner's debt to a creditor. In the event of a conflict between the rules of this paragraph (e)(1) governing whether a payment has occurred and its timing and the rules of

§31.3406(a)–4 of this chapter, the rules in §31.3406(a)–4 of this chapter shall apply to the extent that the application of section 3406 is relevant to the transaction at issue.

(2) *Income allocated under section 482.* A payment is considered made to the extent income subject to withholding is allocated under section 482. Further, income arising as a result of a secondary adjustment made in conjunction with a reallocation of income under section 482 from a foreign person to a related U.S. person is considered paid to a foreign person unless the taxpayer to whom the income is reallocated has entered into a repatriation agreement with the IRS and the agreement eliminates the liability for withholding under this section. For purposes of determining the liability for withholding, the payment of income is deemed to have occurred on the last day of the taxable year in which the transactions that give rise to the allocation of income and the secondary adjustments, if any, took place.

(3) *Blocked income.* Income is not considered paid if it is blocked under executive authority, such as the President's exercise of emergency power under the Trading with the Enemy Act (50 U.S.C. App. 5), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq).. However, on the date that the blocking restrictions are removed, the income that was blocked is considered constructively received by the beneficial owner (and therefore paid for purposes of this section) and subject to withholding under §1.1441–1. Any exemption from withholding pursuant to this paragraph (e)(3) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e)(3) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(4) *Special rules for dividends.* For purposes of sections 1441 and 6042, in the case of stock for which the record date is earlier than the payment date, dividends are considered paid on the payment date. In the case of a corporate reorganization, if a beneficial owner is required to exchange stock held in a former corporation for stock in a new corporation before dividends that are to be paid with respect to the stock in the new corporation will be paid on such stock, the dividend is considered paid on the date that the payee or beneficial owner actually exchanges the stock and receives the dividend. See §31.3406(a)–4(a)(2) of this chapter.

(5) *Certain interest accrued by a foreign corporation.* For purposes of sections 1441 and 6049, a foreign corporation shall be treated as having made a payment of interest as of the last day of the taxable year if it has made an election under §1.884–4(c)(1) to treat accrued interest as if it were paid in that taxable year.

(6) *Payments other than in U.S. dollars.* For purposes of section 1441, a payment includes amounts paid in a medium other than U.S. dollars. See §1.1441–3(e) for rules regarding the amount subject to withholding in the case of such payments.

(f) *Effective date.* This section applies to payments made after December 31, 1998.

Par. 8. Section 1.1441-3 is amended by:

1. Revising the section heading, and paragraphs (a) through (f) and (h).

2. Removing paragraphs (g) and (i).

3. Redesignating paragraph (j) as paragraph (g).

4. Removing the language "(j)" and adding "(g)" in its place in the fourth sentence of newly designated paragraph (g)(1) and in the first sentence of newly designated paragraph (g)(2).

5. Removing the language "§1.1441–7(d)" in the last sentence of newly designated paragraph (g)(1) and adding "§1.1441–7(f)" in its place.

6. Removing the authority citation at the end of the section

The revisions read as follows:

§1.1441-3 Determination of amounts to be withheld.

(a) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under §1.1441–1 is the gross amount of income subject to withholding that is paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under §1.1441–4(b)(6).

(b) *Withholding on payments on certain obligations*—(1) *Withholding at time of payment of interest.* When making a payment on an interest-bearing obligation, a withholding agent must withhold under §1.1441–1 upon the gross amount of stated interest payable on the interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income within the meaning of section 61. To the extent an amount was withheld on an amount of capital rather than interest, see the rules for adjustments, refunds, or credits under §1.1441–1(b)(8).

(2) *No withholding between interest payment dates*—(i) *In general.* A withholding agent is not required to withhold under §1.1441–1 upon interest accrued on the date of a sale of debt obligations when that sale occurs between two interest payment dates (even though the amount is treated as interest under §1.61–7(c) or (d) and is subject to tax under section 871 or 881). See §1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. See §1.61–7(c) regarding the character of payments received by the acquirer of an obligation subsequent to such acquisition (that is, as a return of capital or interest accrued after the acquisition). Any exemption from withholding pursuant to this paragraph (b)(2)(i) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6045 or 6049 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (b)(2) is not a determination that the accrued interest is not fixed or determinable annual or periodical income under section 871(a) or 881(a) nor does it constitute an exemption from reporting under §1.1461–1(b) and (c) the amount of accrued interest paid.

(ii) *Anti-abuse rule.* The exemption in paragraph (b)(2)(i) of this section does not apply if the sale of securities is part of a plan the principal purpose of which is to avoid tax by selling and repurchasing securities and the withholding agent has actual knowledge or reason to know of such plan.

(c) *Corporate distributions*—(1) *General rule.* A corporation making a distribution with respect to its stock or any intermediary (described in §1.1441–1(e)(3)(i)) making a payment of such a distribution is required to withhold under section 1441, 1442, or 1443 on the entire amount of the distribution, unless it elects to reduce the amount of withholding under the provisions of paragraph (c)(2) of this section. The exemption from withholding provided by this paragraph (c) applies without any requirement to furnish documentation to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6042 or 6045 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (c) does not constitute a determination that the exempted amounts are not fixed or determinable annual or periodical income under sections 871(a) or 881(a) nor does it constitute an exemption from reporting under §1.1461–1(b) and (c) the amount of the distribution.

(2) *Exception to withholding on distributions*—(i) *In general.* An election described in paragraph (c)(1) of this section is made by actually reducing the amount of withholding at the time that the payment is made. An intermediary that makes a payment of a distribution is not required to reduce the withholding based on the distributing corporation's estimate of earnings and profits, even if the distributing corporation itself elects to reduce the withholding on payments of distributions that it itself makes to foreign persons. Conversely, an intermediary may elect to reduce the amount of withholding with respect to the payment of a distribution even if the distributing corporation does not so elect for the payments of distributions that it itself makes of distributions to foreign persons. The amounts with respect to which a distributing corporation or intermediary may elect to reduce the withholding are as follows:

(A) A distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a nontaxable distribution payable in stock or stock rights.

(B) A distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a distribution in part or full payment in exchange for stock.

(C) A distributing corporation or intermediary may elect to not withhold on a distribution (actual or deemed) to the extent it is not paid out of accumulated earnings and profits or current earnings and profits, based on a reasonable estimate determined under paragraph (c)(2)(ii) of this section.

(D) A regulated investment company or intermediary may elect to not withhold on a distribution representing a capital gain dividend (as defined in section 852(b)(3)(C)) or an exempt interest dividend (as defined in section 852(b)(5)(A)) based on the applicable procedures described under paragraph (c)(3) of this section.

(E) A U.S. Real Property Holding Corporation (defined in section 897(c)(2)) or a real estate investment trust (defined in section 856) or intermediary may elect to not withhold on a distribution to the extent it is subject to withholding under section 1445 and the regulations under that section. See paragraph (c)(4) of this section for applicable procedures.

(ii) *Reasonable estimate of accumulated and current earnings and profits on the date of payment*—(A) *General rule.* A reasonable estimate for purposes of paragraph (c)(2)(i)(C) of this section is a determination made by the distributing corporation at a time reasonably close to the date of payment of the extent to which the distribution will constitute a dividend, as defined in section 316. The determination is based upon the anticipated amount of accumulated earnings and profits and current earnings and profits for the taxable year in which the distribution is made, the distributions made prior to the distribution for which the estimate is made and all other relevant facts and circumstances. A reasonable estimate may be made based on the procedures described in §31.3406(b)(2)–4(c)(2) of this chapter.

(B) *Procedures in case of underwithholding.* A distributing corporation or intermediary that is a withholding agent with respect to a distribution and that determines at the end of the taxable year in which the distribution is made that it underwithheld under section 1441 on the distribution shall be liable for the amount underwithheld as a withholding agent under section 1461. However, for purposes of this section and §1.1461–1, any amount underwithheld paid by a distributing corporation, its paying agent, or an intermediary shall not be treated as income subject to additional withholding even if that amount is treated as additional income to the shareholders unless the additional amount is income to the shareholder as a result of a contractual arrangement between the parties regarding the satisfaction of the shareholder's tax liabilities. In addition, no penalties shall be imposed for failure to withhold and deposit the tax if—

(*1*) The distributing corporation made a reasonable estimate as provided in paragraph (c)(2)(ii)(A) of this section; and

(*2*) Either—

(*i*) The corporation or intermediary pays over the underwithheld amount on or before the due date for filing a Form 1042 for the calendar year in which the distribution is made, pursuant to §1.1461–2(b); or

(*ii*) The corporation or intermediary is not a calendar year taxpayer and it files an amended return on Form 1042X (or such other form as the Commissioner may prescribe) for the calendar year in which the distribution is made and pays the underwithheld amount and interest within 60 days after the close of the taxable year in which the distribution is made.

(C) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether the payment of a corporate distribution is a dividend, a withholding agent that is not the distributing corporation may, absent actual knowledge or reason to know otherwise, rely on representations made by the distributing corporation regarding the reasonable estimate of the anticipated accumulated and current earnings and profits made in accordance with paragraph (c)(2)(ii)(A) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the distributing corporation to reasonably estimate the portion of the distribution treated as a dividend or to properly communicate the information to the withholding agent shall be imputed to the distributing corporation. In such a case, the Internal Revenue Service (IRS) may collect from the distributing corporation any underwithheld amount and sub-

ject the distributing corporation to applicable interest and penalties as a withholding agent.

(D) *Example.* The rules of this paragraph (c)(2) are illustrated by the following example:

Example. (i) *Facts.* Corporation X, a publicly traded corporation with both U.S. and foreign shareholders and a calendar year taxpayer, has an accumulated deficit in earnings and profits at the close of 2000. In 2001, Corporation X generates $1 million of current earnings and profits each month and makes an $18 million distribution, resulting in a $12 million dividend. Corporation X plans to make an additional $18 million distribution on October 1, 2002. Approximately one month before that date, Corporation X's management receives an internal report from its legal and accounting department concerning Corporation X's estimated current earnings and profits. The report states that Corporation X should generate only $5.1 million of current earnings and profits by the close of the third quarter due to costs relating to substantial organizational and product changes, but these changes will enable Corporation X to generate $1.3 million of earnings and profits monthly for the last quarter of the 2002 fiscal year. Thus, the total amount of current and earnings and profits for 2002 is estimated to be $9 million.

(ii) *Analysis.* Based on the facts in paragraph (i) of this *Example*, including the fact that earnings and profits estimate was made within a reasonable time before the distribution, Corporation X can rely on the estimate under paragraph (c)(2)(ii)(A) of this section. Therefore, Corporation X may treat $9 million of the $18 million of the October 1, 2002, distribution to foreign shareholders as a non-dividend distribution.

(3) *Special rules in the case of distributions from a regulated investment company*—(i) *General rule.* If the amount of any distributions designated as being subject to section 852(b)(3)(C) or (5)(A) exceeds the amount that may be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding if the designations were based on a reasonable estimate (made pursuant to the same procedures as are described in paragraph (c)(2)(ii)(A) of this section) and the adjustments to the amount withheld are made within the time period described in paragraph (c)(2)(ii)(B) of this section. Any adjustment to the amount of tax due and paid to the IRS by the withholding agent as a result of underwithholding shall not be treated as a distribution for purposes of section 562(c) and the regulations thereunder. Any amount of U.S. tax that a foreign shareholder is treated as having paid on the undistributed capital gain of a regulated investment company under section 852(b)(3)(D) may be claimed by the foreign shareholder as a credit or refund under §1.1464–1.

(ii) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether a payment is a distribution designated as subject to section 852(b)(3)(C) or (5)(A), a withholding agent that is not the distributing regulated investment company may, absent actual knowledge or reason to know otherwise, rely on the designations that the distributing company represents have been made in accordance with paragraph (c)(3)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the regulated investment company to reasonably estimate the required amounts or to properly communicate the relevant information to the withholding agent shall be imputed to the distributing company. In such a case, the IRS may collect from the distributing company any underwithheld amount and subject the company to applicable interest and penalties as a withholding agent.

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i)(A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs, see paragraph (c)(4)(i)(C) of this section.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 10-percent, unless the applicable treaty specifies an applicable lower rate for distributions from a USRPHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections 1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(*1*) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(*2*) Withhold under section 1445(e)(3) and §1.1445–5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with §1.1445–5(e)(2)(iv).

(C) *Coordination with REIT withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT that is not designated as a capital gain dividend or return of basis. Withholding is required under section 1445 on the portion of the distribution designated by a REIT as a capital gain dividend. See §1.1445–8.

(ii) *Intermediary reliance rule.* A withholding agent that is not the distributing USRPHC must withhold under paragraph (c)(4)(i) of this section, but may, absent actual knowledge or reason to know otherwise, rely on representations made by the USRPHC regarding the determinations required under paragraph (c)(4)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the distributing USRPHC to make these determinations in a reasonable manner or to properly communicate the determinations to the withholding agent shall be imputed to the distributing USRPHC. In such a case, the IRS may collect from the distrib-

uting USRPHC any underwithheld amount and subject the distributing USRPHC to applicable interest and penalties as a withholding agent.

(d) *Withholding on payments that include an undetermined amount of income*—(1) *In general.* Where the withholding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding agent must withhold an amount under §1.1441–1 based on the entire amount paid that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that will subsequently be determined to be from sources within the United States or to be income subject to tax. The amount so withheld shall not exceed 30 percent of the amount paid. In the alternative, the withholding agent may make a reasonable estimate of the amount from U.S. sources or of the taxable amount and set aside a corresponding portion of the amount due under the transaction and hold such portion in escrow until the amount from U.S. sources or the taxable amount can be determined, at which point withholding becomes due under §1.1441–1. See §1.1441–1(b)(8) regarding adjustments in the case of overwithholding. The provisions of this paragraph (d)(1) shall not apply to the extent that other provisions of the regulations under chapter 3 of the Internal Revenue Code (Code) specify the amount to be withheld, if any, when the withholding agent lacks knowledge at the time of payment (e.g., lack of reliable knowledge regarding the status of the payee or beneficial owner, addressed in §1.1441–1(b)(3), or lack of knowledge regarding the amount of original issue discount under §1.1441–2(b)(3)).

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in §1.1441–2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under §1.1441–1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See §1.1441–1(b)(8) regarding adjustments in the case of overwithholding.

(e) *Payments other than in U.S. dollars*—(1) *In general.* The amount of a payment made in a medium other than U.S. dollars is measured by the fair market value of the property or services provided in lieu of U.S. dollars. The withholding agent may liquidate the property prior to payment in order to withhold the required amount of tax under section 1441 or obtain payment of the tax from an alternative source. However, the obligation to withhold under section 1441 is not deferred even if no alternative source can be located. Thus, for purposes of withholding under chapter 3 of the Code, the provisions of §31.3406(h)–2(b)(2)(ii) of this chapter (relating to backup withholding from another source) shall not apply. If the withholding agent satisfies the tax liability related to such payments, the rules of paragraph (f) of this section apply.

(2) *Payments in foreign currency.* If the amount subject to withholding tax is paid in a currency other than the U.S. dollar, the amount of withholding under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and converting the amount withheld into U.S. dollars on the date of payment at the spot rate (as defined in §1.988–1(d)(1)) in effect on that date. A withholding agent making regular or frequent payments in foreign currency may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner. The U.S. dollar amount so determined shall be treated by the beneficial owner as the amount of tax paid on the income for purposes of determining the final U.S. tax liability and, if applicable, claiming a refund or credit of tax.

(f) *Tax liability of beneficial owner satisfied by withholding agent*—(1) *General rule.* In the event that the satisfaction of a tax liability of a beneficial owner by a withholding agent constitutes income to the beneficial owner and such income is of a type that is subject to withholding, the amount of the payment deemed made by the withholding agent for purposes of this paragraph (f) shall be determined under the gross-up formula provided in this paragraph (f)(1). Whether the payment of the tax by the withholding agent constitutes a satisfaction of the beneficial owner's tax liability and whether, as such, it constitutes additional income to the beneficial owner, must be determined under all the facts and circumstances surrounding the transaction, including any agreements between the parties and applicable law. The formula described in this paragraph (f)(1) is as follows:

$$\text{Payment} = \frac{\text{Gross payment without withholding}}{\text{1-(tax rate)}}$$

(2) *Example.* The following example illustrates the provisions of this paragraph (f):

Example. College X awards a qualified scholarship within the meaning of section 117(b) to foreign student, FS, who is in the United States on an F visa. FS is a resident of a country that does not have an income tax treaty with the United States. The scholarship is $20,000 to be applied to tuition, mandatory fees and books, plus benefits in kind consisting of room and board and roundtrip air transportation. College X agrees to pay any U.S. income tax owed by FS with respect to the scholarship. The fair market value of the room and board measured by the amount College X charges non-scholarship students is $6,000. The cost of the roundtrip air transportation is $2,600. Therefore, the total fair market value of the scholarship received by FS is $28,600. However, the amount taxable is limited to the fair market value of the benefits in kind ($8,600) because the portion of the scholarship amount for tuition, fees, and books is not included in gross income under section 117. The applicable rate of withholding is 14 percent under section 1441(b). Therefore, under the gross-up formula, College X is deemed to make a payment of $10,000 ($8,600 divided by (1–.14). The U.S. tax that must be deducted and withheld from the payment under section 1441(b) is $1,400 (.14 × $10,000). College X reports scholarship income of $30,000 and $1,400 of U.S. tax withheld on Forms 1042 and 1042–S.

* * * * *

(h) *Effective date.* Except as otherwise provided in paragraph (g) of this section, this section applies to payments made after December 31, 1998.

Par. 9. Section 1.1441–4 is amended by:

1. Revising the section heading, and paragraph (a).

2. Paragraph (b)(1) is amended by:

a. Revising of paragraphs (b)(1)(i) and (b)(1)(ii).

b. Removing the period at the end of paragraph (b)(1)(iii) and adding a semicolon in its place.

c. Removing the language "or" at the end of paragraph (b)(1)(iv) and adding a semicolon in its place.

d. Removing the period at the end of paragraph (b)(1)(v) and adding " ; or" in its place.

e. Adding paragraph (b)(1)(vi).

3. Adding four sentences at the end of paragraph (b)(2)(i).

4. Paragraph (b)(2)(ii) is amended by:

a. Revising paragraph (b)(2)(ii) heading and introductory text, and paragraph (b)(2)(ii)(A).

b. Redesignating paragraph (b)(2)(ii)(H) as paragraph (b)(2)(ii)(J) and amending newly designated paragraph (b)(2)(ii)(J) by removing the period and adding "; and" in its place.

c. Redesignating paragraphs (b)(2)(ii)(B), (C), (D), (E), (F) and (G) as paragraphs (b)(2)(ii)(D), (E), (F), (G), (H) and (I), respectively.

d. Adding new paragraphs (b)(2)(ii)(B), (C), and (K).

e. Removing the period at the end of newly designated paragraph (b)(2)(ii)(D) and the comma at the end of newly designated paragraphs (b)(2)(ii)(E), (F), (G), and (H) and adding a semicolon in each place.

f. Removing the language ", and" and adding a semicolon in its place in newly designated paragraph (b)(2)(ii)(I).

5. Removing the concluding text immediately following paragraph (b)(2)(iv)(C).

6. Revising paragraph (b)(2)(v).

7. Removing the language "statement" and adding the language "withholding certificate" in each place in paragraph (b)(2)(i).

8. Removing the language "Director of the Foreign Operations District" in paragraphs (b)(2)(i) fourth sentence, (b)(2)(iii) fourth and fifth sentences, and (b)(3) first sentence, and adding the language "Assistant Commissioner (International)" in each place.

9. Adding paragraph (b)(6).

10. Revising paragraphs (c), (d), (e), (f), and (g) .

11. Removing paragraphs (h) and (i).

12. Removing the OMB parenthetical and the authority citation at the end of the section.

The revisions and additions read as follows:

§1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) *Certain income connected with a U.S. trade or business*—(1) *In general.* No withholding is required under section 1441 on income otherwise subject to withholding if the income is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the taxable year. For purposes of this paragraph (a), an amount is not deemed to be includible in gross income if the amount is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and the beneficial owner claims an exemption from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States. To claim a reduced rate of withholding because the income is not attributable to a permanent establishment, see §1.1441–6(b)(1). This paragraph (a) does not apply to income of a foreign corporation to which section 543(a)(7) applies for the taxable year or to compensation for personal services performed by an individual. See paragraph (b) of this section for compensation for personal services performed by an individual.

(2) *Withholding agent's reliance on a claim of effectively connected income*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim of exemption based upon paragraph (a)(1) of this section if, prior to the payment to the foreign person, the withholding agent can reliably associate the payment with a Form W–8 upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii). For purposes of this paragraph (a), a withholding certificate is valid only if, in addition to other applicable requirements, it includes the taxpayer identifying number of the person whose name is on the Form W–8 and represents, under penalties of perjury, that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States. In the absence of a reliable claim that the income is effectively connected with the conduct of a trade or business in the United States, the income is presumed not to be effectively connected, except as otherwise provided in paragraph (a)(2)(ii) or (3) of this section. See §1.1441–1(e)(4)(ii)(C) for the period of validity applicable to a certificate provided under this section and §1.1441–1(e)(4)(ii)(D) for changes in circumstances arising during the taxable year indicating that the income to which the certificate relates is not, or is no longer expected to be, effectively connected with the conduct of a trade or business within the United States. A withholding certificate shall be effective only for the item or items of income specified therein. The provisions of §1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(ii) *Special rules for U.S. branches of foreign persons*—(A) *U.S. branches of certain foreign banks or foreign insurance companies.* A payment to a U.S. branch described in §1.1441–1(b)(2)(iv)(A) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate, unless the U.S. branch provides a U.S. branch withholding certificate described in §1.1441–1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See §1.1441–1(b)(2)(iv) and (6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See §1.1441–1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the district director or the Assistant Commissioner (International).

(3) *Income on notional principal contracts*—(i) *General rule.* A withholding

agent that pays amounts attributable to a notional principal contract described in §1.863–7(a) or 1.988–2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under §1.1461–1(b) and (c) reporting the income that it must treat as paid to a foreign person and as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must so treat the income unless it can reliably associate the payment with a withholding certificate upon which it can rely to treat the payment as an amount that is not effectively connected. Income on a notional principal contract does not include the amount characterized as interest under the provisions of §1.446–3(g)(4).

(ii) *Exception for certain payments*. A payment to a foreign financial institution (within the meaning of §1.165–12(c)-(1)(iv)) shall not be treated as effectively connected with the conduct of a trade or business within the United States for purposes of paragraph (a)(3)(i) of this section even if no withholding certificate is furnished if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example an International Swaps and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a U.S. person or a non-U.S. branch of a foreign person.

(b) * * * (1) * * *

(i) Such compensation is subject to withholding under section 3402 (relating to withholding on wages) and the regulations under that section;

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (not including paragraph (a)(6) of that section) and the regulations under that section. This paragraph (b)(1)(ii) does not apply to payments to a nonresident alien individual from any trust described in section 401(a), any annuity plan described in section 403(a), or any annuity, custodial account, or retirement income account described in section 403(b). Instead, these payments are subject to withholding under this section to the extent they are exempted from the definition of wages under section 3401(a)(12) or to the extent they are from an annuity, custodial account, or retirement income account described in section 403(b). Thus, for example, payments to a nonresident alien individual from a trust described in section 401(a) are subject to withholding under section 1441 and not under section 3405 or 3406;

* * * * *

(vi) Compensation that is exempt from withholding under section 3402 by reason of section 3402(e), provided that the employee and his employer enter into an agreement under section 3402(p) to provide for the withholding of income tax upon payments of amounts described in §31.3401(a)–3(b)(1) of this chapter. An employee who desires to enter into such an agreement should furnish his employer with Form W–4 (withholding exemption certificate) (or such other form as the Internal Revenue Service (IRS) may prescribe). See section 3402(f) and the regulations thereunder and §31.3402(p)–1 of this chapter.

(2) * * * (i) * * * The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date in light of facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

(ii) *Withholding certificate claiming withholding exemption.* The statement claiming an exemption from withholding shall be made on Form 8233 (or an acceptable substitute or such other form as the IRS may prescribe). Form 8233 shall be dated, signed by the beneficial owner under penalties of perjury, and contain the following information—

(A) The individual's name, permanent residence address, taxpayer identifying number (or a copy of a completed Form W–7 or SS-5 showing that a number has been applied for), and the U.S. visa number, if any;

(B) The individual's current immigration status and visa type;

(C) The individual's original date of entry into the United States;

* * * * *

(K) Any other information as may be required by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (b)(2)(ii).

* * * * *

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the Assistant Commissioner (International), within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

* * * * *

(6) *Personal exemption*—(i) *In general.* To determine the tax to be withheld at source under §1.1441–1 from remuneration paid for personal services performed within the United States by a nonresident alien individual and from scholarship and fellowship income described in paragraph (c) of this section, a withholding agent may take into account one personal exemption pursuant to sections 873(b)(3) and 151 regardless of whether the income is effectively connected. For purposes of withholding under section 1441 on remuneration for personal services, the exemption must be prorated upon a daily basis for the period during which the personal services are performed within the United States by the nonresident alien individual by dividing by 365 the number of days in the period during which the individual is present in the United States for the purpose of performing the services and multiplying the result by the amount of the personal exemption in effect for the tax-

able year. See §31.3402(f)(6)–1 of this chapter.

(ii) *Multiple exemptions.* More than one personal exemption may be claimed in the case of a resident of a contiguous country or a national of the United States under section 873(b)(3). In addition, residents of a country with which the United States has an income tax treaty in effect may be eligible to claim more than one personal exemption if the treaty so provides. Claims for more than one personal exemption shall be made on the withholding certificate furnished to the withholding agent. The exemption must be prorated on a daily basis in the same manner as described in paragraph (b)(6)(i) of this section.

(iii) *Special rule where both certain scholarship and compensation income are received.* The fact that both non-compensatory scholarship income and compensation income (including compensatory scholarship income) are received during the taxable year does not entitle the taxpayer to claim more than one personal exemption amount (or more than the additional amounts permitted under paragraph (b)(6)(ii) of this section). Thus, if a nonresident alien student receives non-compensatory taxable scholarship income from one withholding agent and compensation income from another withholding agent, no more than the total personal exemption amount permitted under the Internal Revenue Code or under an income tax treaty may be taken into account by both withholding agents. For this purpose, the withholding agent may rely on a representation from the beneficial owner that the exemption amount claimed does not exceed the amount permissible under this section.

(c) *Special rules for scholarship and fellowship income*—(1) *In general.* Under section 871(c), certain amounts paid as a scholarship or fellowship for study, training, or research in the United States to a nonresident alien individual temporarily present in the United States as a nonimmigrant under section 101(a)(15)(F), (J), (M), or (Q) of the Immigration and Nationality Act are treated as income effectively connected with the conduct of a trade or business within the United States. The amounts described in the preceding sentence are those amounts that do not represent compensation for services. Such amounts (as described in the second sentence of section 1441(b)) are subject to withholding under section 1441, but at the lower rate of 14 percent. That rate may be reduced under the provisions of an income tax treaty. Claims of a reduced rate under an income tax treaty shall be made under the procedures described in §1.1441–6(b)(1). Therefore, claims for reduction in withholding under an income tax treaty on amounts described in this paragraph (c)(1) may not be made on a Form 8233. However, if the payee is receiving both compensation for personal services (including compensatory scholarship income) and non-compensatory scholarship income described in this paragraph (c)(1) from the same withholding agent, claims for reduction of withholding on both types of income may be made on Form 8233.

(2) *Alternate withholding election.* A withholding agent may elect to withhold on the amounts described in paragraph (c)(1) of this section at the rates applicable under section 3402, as if the income were wages. Such election shall be made by obtaining a Form W–4 (or an acceptable substitute or such other form as the IRS may prescribe) from the beneficial owner. The fact that the withholding agent asks the beneficial owner to furnish a Form W–4 for such fellowship or scholarship income or to take such income into account in preparing such Form W–4 shall serve as notice to the beneficial owner that the income is being treated as wages for purposes of withholding tax under section 1441.

(d) *Annuities received under qualified plans.* Withholding is not required under section §1.1441–1 in the case of any amount received as an annuity if the amount is exempt from tax under section 871(f) and the regulations under that section. The withholding agent may exempt the payment from withholding if, prior to payment, it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner in accordance with §1.1441–1(e)(1)(ii). A beneficial owner withholding certificate furnished for purposes of claiming the benefits of the exemption under this paragraph (d) is valid only if, in addition to other applicable requirements, it contains a taxpayer identifying number.

(e) *Per diem of certain alien trainees.* Withholding is not required under section 1441(a) and §1.1441–1 on per diem amounts paid for subsistence by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended (22 U.S.C. chapter 24). This rule shall apply even though such amounts are subject to tax under section 871. Any exemption from withholding pursuant to this paragraph (e) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6041 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(f) *Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.* See applicable procedures described in §1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or does not act in accordance with applicable presumptions described in paragraph (a)(2)(i), (2)(ii), or (3) of this section.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* A withholding agent that on December 31, 1998, holds a Form 4224 or 8233 that is a valid certificate as determined under the regulations in effect prior to January 1, 1999 (see CFR part 1 revised, April 1, 1997), may treat the certificate as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity pe-

riod of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

§1.1441-4T [Removed]

Par. 10. Section 1.1441–4T is removed.

Par. 11. Sections 1.1441–5 and 1.1441–6 are revised to read as follows:

§1.1441–5 Withholding on payments to partnerships, trusts, and estates.

(a) *Rules of withholding applicable to payments to partnerships.* This paragraph (a) describes the determinations that a withholding agent must make when making a payment to a person that may be a partnership (as defined in §1.1441–1(c)(6)(ii)(C)). Such determinations are made in order to determine a withholding agent's obligations under chapters 3 and 61 of the Internal Revenue Code (Code) and sections 3402, 3405, and 3406 (and applicable regulations under those provisions) to withhold and report payments of amounts subject to withholding under chapter 3 of the Code and the regulations thereunder. The reliance provisions stated in this paragraph (a) are subject to the presumptions described in §1.1441–1(b)(3) and paragraph (d) of this section, including §1.1441–1(b)(3)(ix) regarding the withholding agent's actual knowledge or reason to know that the presumptions are not correct. For similar presumptions for reporting and withholding on amounts not subject to withholding under chapter 3 of the Code (e.g., foreign source income, broker proceeds) that may be paid to a foreign partnership, see §1.6049–5(d)(2) through (5).

(1) The withholding agent must determine whether the payee is a U.S. or a foreign person. For this purpose, the withholding agent may treat the payee as U.S. or foreign if it can reliably associate the payment with a Form W–9 described in §1.1441–1(d) or a Form W–8 described in §1.1441–1(e)(2)(i) or (3)(i). In the absence of documentation, see §1.1441–1(b)(3) and paragraph (d) of this section for applicable presumptions of foreign or U.S. status and other relevant characteristics.

(2) If the payee is determined to be a foreign person, the withholding agent must determine whether the foreign payee is acting for its own account or for the account of others (i.e., as an intermediary, as defined in §1.1441–1(e)(3)(i)). The withholding agent may treat the payee as a foreign intermediary if it can reliably associate the payment with a Form W–8 described in §1.1441–1(e)(3)(ii), (iii), or (v), within the meaning of §1.1441–1(b)(3)(v)(A).

(3) If the foreign payee is determined to act as an intermediary described in §1.1441–1(e)(3)(i), the withholding agent must determine whether or not the payee is a qualified intermediary. The withholding agent may treat the payee as a qualified intermediary only if it can reliably associate the payment with a Form W–8 described in §1.1441–1(e)(3)(ii). A foreign payee that is treated as an intermediary with respect to a payment is subject to the provisions applicable to intermediaries in §1.1441–1(e)(3) or (5). In such a case, the provisions of paragraph (c) of this section do not apply to the payment.

(4) If the foreign payee is determined to act for its own account (or is so presumed), the withholding agent must determine the status of the payee as a partnership. The withholding agent may treat the payee as a domestic or as a foreign partnership if it can reliably associate the payment with a Form W–9 furnished in accordance with §1.1441–1(d)(2) or (4) (for a domestic partnership) or a Form W–8 described in paragraph (c)(2)(iv) or (3)(iii) of this section (for a foreign partnership). See §1.1441–1(e)(4)(viii) for reliance on the payee's representations on a Form W–8. In the absence of documentation, see §1.1441–1(b)(3)(ii) and paragraph (d)(2) of this section for applicable presumptions of status.

(5) If the foreign payee is determined to be a foreign partnership and the withholding agent has determined (or presumes) that the partnership is acting for the account of its partners, then the withholding agent must determine whether the payment represents income effectively connected with the partnership's conduct of a U.S. trade or business. The withholding agent may treat the payment as effectively connected if it can reliably associate the payment with a Form W–8 described in paragraph (c)(3)(iii) of this section representing that the income is effectively connected or if it so presumes in accordance with the provisions in §1.1441–4(a)(2)(ii) or (3). In the absence of documentation, the payment is generally presumed to be non-effectively connected. See §1.1441–4(a)(2)(i). See §§1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(6) If the withholding agent cannot reliably treat the payment as effectively connected income nor presume that it is so connected, then the withholding agent must determine whether the partnership is a withholding foreign partnership described in paragraph (c)(2)(i) of this section. The withholding agent may treat the foreign partnership as a withholding partnership if it can reliably associate the payment with a Form W–8 described in paragraph (c)(2)(iv) of this section. In the absence of a reliable Form W–8, the foreign partnership is presumed to be a nonwithholding foreign partnership described in paragraph (c)(3)(i) of this section. In such a case, under paragraph (c)(1)(i) of this section, the withholding agent must treat the partners, rather than the partnership, as payees. See paragraph (d) of this section for determining the status of the partners as U.S. or foreign persons in the absence of documentation. See §§1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(7) If the withholding agent determines that the payee is a U.S. partnership, or so presumes in accordance with paragraph (d)(2) of this section in the absence of documentation, the withholding agent is not required to withhold under paragraph (b)(1) of this section because the partnership is treated as a U.S. payee. See paragraph (b)(2) of this section for withholding requirements applicable to a domestic partnership with foreign partners. See §§1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(8) In order to determine whether to rely on a claim for a reduced rate under a tax treaty by a person that the withholding agent treats as a partnership or as a partner in a partnership, the withholding agent must apply the provisions of §1.894–1T(d). For applicable procedures regarding reliance by a withholding agent on a claim for benefits under a tax treaty in such a situation, see §1.1441–6(b)(4).

(b) *Domestic partnerships*—(1) *Exemption from withholding on payment to domestic partnerships.* A payment to a person that the withholding agent may treat as a domestic partnership is treated as a payment to a U.S. payee. Therefore, a payment to a domestic partnership is not subject to withholding under section 1441 even though it may have partners that are foreign persons. A withholding agent may treat the person to whom the payment is made as a domestic partnership if it can reliably associate the payment with a Form W–9 furnished by the partnership in accordance with the procedures under §1.1441–1(d)(2) or (4) or based upon the presumptions described in paragraph (d)(2) of this section.

(2) *Withholding by a domestic partnership*—(i) *In general.* A domestic partnership is required to withhold under §1.1441–1 as a withholding agent on the gross amount of items of income subject to withholding that are includible in the distributive share of income of a partner that is a foreign person. Pursuant to the authority provided under section 702(a), each partner shall take into account separately its distributive share of amounts subject to withholding, and thus the partnership, pursuant to section 703(a)(1), shall separately state these amounts when computing its taxable income. A partnership shall withhold when any distributions that include amounts subject to withholding are made or when guaranteed payments are made. To the extent a foreign partner's distributive share of an amount subject to withholding has not been actually distributed, the partnership is required to withhold on the partner's distributive share of that amount on the earlier of the date that the statement required under section 6031(b) and §1.6031(b)–1Tto be provided to that partner is mailed or otherwise furnished to the partner or the due date for furnishing that statement as provided under §1.6031(b)–1T. If a partnership withholds on a distributive share before the amount is actually distributed to the partner, then withholding is not required when the amount is subsequently distributed. Withholding on items of income that are effectively connected income in the hands of the partners who are foreign persons is governed by section 1446 and not by this section. In such a case, partners in a domestic partnership are not required to furnish a withholding certificate in order to claim an exemption from withholding under section 1441(c)(1) and §1.1441–4.

(ii) *Determination by the domestic partnership of the partners' status.* For purposes of determining whether the partners or some other persons are the payees of the partners' distributive shares of any payment made to the partnership and the status of the partners, the partnership shall apply the rules of §1.1441–1(b)(2) and (3), and of paragraphs (c)(1) and (d) of this section (in the case of a partner that is a foreign partnership) and of paragraph (e) of this section (in the case of a partner that is a foreign estate or a foreign trust) in the same manner as if the partnership were making a payment directly to the partners other than in their capacity as partners.

(iii) *Reliance on a partner's claim for reduced withholding.* Absent actual knowledge or reason to know otherwise, a domestic partnership may rely on a claim for reduced withholding under chapter 3 of the Code by a partner, if prior to the time the partnership is required to withhold, the partnership can reliably associate the partner's distributive share of the partnership items with documentation upon which it may rely to treat the partner or another person as a U.S. person under §1.1441–1(d)(2) or (3), as a U.S. beneficial owner under §1.1441–1(d)(4), or as a foreign beneficial owner under §1.1441–1(e)(1)(ii).

(iv) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see §1.1441–1(b)(2)(vii).

(v) *Coordination with chapter 61 of the Internal Revenue Code and section 3406.* A domestic partnership is not a payor for purposes of chapter 61 of the Code or section 3406 with respect to payments to its partners in their capacity as partners. Thus, it is not required to make an information return on Form 1099 nor to backup withhold with respect to its partners' distributive share of partnership items. However, it must file returns under section 6031. Such returns are in lieu of making returns under §1.1461–1(b) and (c). See §1.1461–1(c)(2)(ii)(A).

(c) *Foreign partnerships*—(1) *Determination of payee*—(i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, a payment to a person that the withholding agent may treat as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section is treated as a payment to the partners (looking through partners that are foreign flow-through entities) as follows—

(A) If the withholding agent can reliably associate the partner's distributive share of the payment with a Form W–9, a Form W–8, or other appropriate documentation upon which it can rely to treat the payment as made to a U.S. or foreign beneficial owner under §1.1441–1(d)(4) or (e)(1)(ii), then the beneficial owner so identified is treated as the payee;

(B) If the withholding agent can reliably associate the partner's distributive share with an intermediary certificate described in §1.1441–1(e)(3)(ii), (iii), or (v), then the rules of §1.1441–1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary;

(C) If the withholding agent can reliably associate the partner's distributive share with a partnership certificate described in paragraph (c)(2)(iv) or (3)(iii) of this section, then the rules of paragraph (c)(1)(i) or (ii) of this section shall apply to determine whether the payment is treated as made to the partners of the higher-tier partnership under this paragraph (c)(1)(i) or to the higher tier partnership (under the rules of paragraph (c)(1)(ii) of this section), in the same manner as if the partner's distributive share of the payment had been paid directly to such foreign partnership;

(D) If the withholding agent can reliably associate the partner's distributive share with a withholding certificate described in §1.1441–1(e)(3)(i) regarding a foreign trust or estate, then the rules of

paragraph (e) of this section shall apply to determine who the payees are; and

(E) If the withholding agent cannot reliably associate the partner's distributive share with a withholding certificate or other appropriate documentation, the partners are considered to be the payees and the presumptions described in paragraph (d)(3) of this section shall apply to determine the status of the partners.

(ii) *Payments treated as made to the partnership.* A payment to a person that the withholding agent may treat as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section is treated as a payment to the foreign partnership and not to its partners only if—

(A) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(2)(iv) of this section (dealing with a certificate from a person representing to be a withholding foreign partnership); or

(B) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section certifying that the payment is income that is effectively connected with the conduct of a trade or business in the United States.

(iii) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see §1.1441–1(b)(2)(vii). In the absence of documentation, see §1.1441–1(b)(3) and paragraph (d) of this section for applicable presumptions.

(iv) *Example.* The rules of paragraphs (c)(1)(i) and (ii) of this section are illustrated by the following example:

Example. (i) *Facts.* A foreign partnership, P, has two partners, a corporation, C, and a partnership, P1, both organized in country X. P1 has three partners, a foreign pension fund, a domestic partnership, P2, and a foreign partnership, P3, organized in country Y. P2's partners are foreign pension funds. Pholds U.S. Treasury obligations in registered form, on which it receives interest from U.S. custodian, Z. P1 is not a withholding foreign partnership and it does not certify that the interest is effectively connected with the conduct of a U.S. trade or business. P3 is a withholding foreign partnership. P has furnished a valid withholding certificate described in paragraph (c)(3)(iii) of this section to which it has attached valid withholding certificates for C (beneficial owner Form W–8 described in §1.1441–1(e)(2)(i)), P1, and P1's three partners (a Form W–9 for P2, a withholding certificate described in paragraph (c)(2)(iv) of this section for P3 and a beneficial owner Form W–8 described in §1.1441–1(e)(2)(i) for the foreign pension fund). P has furnished appropriate information in accordance with paragraph (c)(3)(iv) of this section upon which the withholding agent can rely to determine which portion of the payment is associated with each withholding certificate.

(ii) *Analysis.* The payment to P is treated as a payment to its partners because none of the conditions described in paragraph (c)(1)(ii) exist under the facts to treat Pas the payee (i.e., it is not a withholding foreign partnership and, although it has furnished a withholding certificate described under paragraph (c)(3)(iii) of this section, it is not claiming that the interest is effectively connected with the conduct of a U.S. trade or business). Under paragraph (c)(1)(i)(A) of this section, C, as a partner of P, is treated as a payee because it is not a flow-through entity or an intermediary (based on the documentation furnished for C). Under paragraph (c)(1)(i)(C) of this section, P1 is not treated as a payee because it is a foreign partnership and none of the conditions described under paragraph (c)(1)(ii) of this section exist under the facts to treat P as the payee. Instead, P2 (under paragraph (c)(1)(i)(A) of this section), P3 (under paragraph (c)(1)(ii)(A) of this section), and the foreign pension fund that is a partner of P1 (under paragraph (c)(1)(i)(A) of this section), are treated as the payees of P1's distributive share of the payment to P. P2 is a payee because, although a flow-through entity, it is a domestic partnership (see paragraph (b)(1) of this section). P3 is treated as a payee under paragraph (c)(1)(ii)(A) of this section, irrespective of who its partners are, because it has furnished a valid withholding certificate as a withholding foreign partnership. The foreign pension fund is treated as a payee under paragraph (c)(1)(i)(A) of this section because it has furnished a beneficial owner Form W–8 described in §1.1441–1(e)(2)(i).

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the Internal Revenue Service (IRS), as described in paragraph (c)(2)(ii) of this section. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapter 3 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it is not required to attach such documentation to the partnership withholding certificate.

(ii) *Withholding agreement*—(A) *In general.* A foreign partnership may claim withholding foreign partnership status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may issue. A withholding foreign partnership must file a partnership return under section 6031(a) to the extent required under the regulations under that section and furnish statements on Form K–1 to its partners under section 6031(b) to the extent required under the regulations under that section. See §§1.6031–1 and 1.6031(b)–1T. See §1.1461–1(c)-(2)(ii)(A) for an exemption from filing Forms 1042 and 1042-S. A foreign withholding partnership that wishes to also be a qualified intermediary under §1.1441–1(e)(5) for payments it receives for persons other than its partners may combine both agreements into one single agreement.

(B) *Terms of withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter). Under such withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Code, and section 3406, and the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. In particular, the agreement must include provisions for reporting of information on Form 1065 and furnishing K–1 statements to the partners in the manner required under section 6031 and the regulations under that section. Under the agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in §301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures apply to the foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim re-

funds of overwithheld amounts on behalf of its customers. In addition, the agreement must specify the manner in which the IRS will audit the foreign partnership's books and records in order to verify the accuracy of the Forms 1065 filed by the partnership and K–1 statements furnished to the partners as required under section 6031 and the regulations under that section. The agreement shall also specify the assets that the foreign partnership has in the United States or alternative means of collection, if necessary.

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility for all payments that are made to it and, therefore, is not required to provide information to the withholding agent regarding each partner's distributive share of the payment (see paragraph (c)(3)(iv) of this section for the requirement to provide distributive share information to the withholding agent in the case of other foreign partnerships). The partnership shall be a withholding agent with respect to each of its partner's distributive share of income subject to withholding that is paid to the partnership. Therefore, the withholding agent is not required to withhold any amount under chapter 3 of the Code on a payment to a foreign partnership that has furnished a withholding certificate representing that it is a withholding foreign partnership, unless it has actual knowledge or reason to know that the certificate is incorrect. The foreign partnership shall withhold the payments under the same procedures and at the same time as is prescribed for withholding by a domestic partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4)(iv) of this section shall apply and paragraph (b)(2)(ii) of this section shall not apply.

(iv) *Withholding certificate from a withholding foreign partnership.* The rules of §1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(2)(iv). A withholding certificate furnished by a withholding foreign partnership is valid with regard to any partner on whose behalf the certificate is furnished only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (c)(2)(iv) as follows—

(A) The name, permanent residence address (as described in §1.1441–1(e)-(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed;

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section; and

(C) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(2)(iv).

(3) *Other foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(3)(iii) of this section may treat the person to whom it makes the payment as a foreign partnership that is not a withholding foreign partnership. Such reliance is permitted for purposes of withholding under chapter 3 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. For purposes of this paragraph (c)(3)(i), a payment that the withholding agent can reliably associate with a withholding certificate described in paragraph (c)(3)(iii) of this section that would be valid except for the fact that some or all of the withholding certificates or other appropriate documentation required to be attached are lacking or are unreliable, or that information for allocating the payment among the partners is lacking or is unreliable, shall nevertheless be treated as a payment to a foreign partnership.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign partnership that is not a withholding foreign partnership. To the extent that a withholding agent treats a payment to a foreign partnership as a payment to its partners in accordance with paragraph (c)(1) of this section, it may rely on a claim for reduced withholding by a partner if, prior to the payment, the withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section pertaining to the partner unless the withholding agent has actual knowledge or reason to know that the withholding certificate is unreliable. The certificate will be considered to pertain to the partner if the appropriate withholding certificate for the partner is attached to the partnership's withholding certificate. An appropriate withholding certificate for a partner includes a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) or, if applicable, documentary evidence described in §1.1441–6(b)(2)(i) or in §1.6049–5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of §1.1441–1(c)(6)), the applicable certificates described in §1.1441–1(d)(2) or (3) (for a partner claiming to be a U.S. payee), an intermediary withholding certificate described in §1.1441–1(e)(3)(ii) or (iii), a U.S. branch withholding certificate described in §1.1441–1(e)(3)(v), or a partnership withholding certificate described in paragraph (c)(2)(iv) or (3)(iii) of this section. Except where the partnership certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of the partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single partnership withholding certificate to which the partners' certificates are attached. Where the partnership certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, the claim may be presented without having to identify the partner's distributive share of the payment if the certificate contains the certification described in paragraph (c)(3)(iii)(E) of this section.

(iii) *Withholding certificate from a foreign partnership that is not a withholding foreign partnership.* A withholding cer-

tificate furnished by a foreign partnership that is not a withholding foreign partnership is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, it contains the information, statement, and certifications described in this paragraph (c)(3)(iii), and the withholding certificates or other appropriate documentation for all of the partners are attached (except that certificates for partners are not required to be attached for a certificate furnished solely for income claimed to be effectively connected with the conduct of a trade or business in the United States, regardless of any partner's status as a U.S. person). The rules of §1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(3)(iii). The information, statement, and certifications required on the withholding certificate are as follows:

(A) The name, permanent residence address (as described in §1.1441–1(e)-(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed.

(B) A representation that the person whose name is on the certificate is a foreign partnership.

(C) A statement attached to the certificate that provides such information as may be required by the form and accompanying instructions, including sufficient information to the withholding agent to determine the amount required to be withheld from amounts paid to the partnership, such as each partner's distributive share of amounts to which the certificate relates, prepared in the manner described in paragraph (c)(3)(iv) of this section. No statement is required for a certificate furnished for income claimed to be effectively connected with the conduct of a trade or business in the United States.

(D) If the withholding certificates are required to be attached to the partnership's withholding certificate, a statement either that the attached withholding certificates represent all of the partners or that the partners for whom withholding certificates are lacking are separately identified in the statement required under paragraph (c)(3)(iv) of this section.

(E) A certification that the income is effectively connected with the conduct of a trade or business in the United States, if applicable.

(F) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(3)(iii).

(iv) *Information to the withholding agent regarding each partner's distributive share.* The partnership must furnish information sufficient for the withholding agent to determine each partner's distributive share of reportable amounts (described in §1.1441–1(e)(3)(vi)). The sum of all partners' distributive shares, expressed as a percentage, must equal, but not exceed one hundred percent. For purposes of this paragraph (c)(3)(iv), the rules of §1.1441–1(e)(3)(iv) regarding the information to furnish to the withholding agent shall apply.

(v) *Withholding by a foreign partnership.* A foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding under chapter 3 of the Code shall be deemed to have satisfied any obligation under such chapter to withhold on the amount with respect to any partner to the extent that the partner's distributive share of the payment can be reliably associated with a withholding certificate described in paragraph (c)(3)(iii) of this section pertaining to the partner that the partnership has furnished to a withholding agent and the partnership does not know and has no reason to know that the correct amount has not been withheld under chapter 3 of the Code and the regulations under such chapter.

(d) *Presumptions regarding payee's status in the absence of documentation*—(1) *In general.* This paragraph (d) contains the applicable presumptions for determining the status of the partnership and its partners in the absence of documentation. The provisions of §1.1441–1(b)(3)(iv) (regarding the 90-day grace period) and §1.1441–1(b)(3)(vii) through (ix) shall apply for purposes of this paragraph (d).

(2) *Determination of partnership status as domestic or foreign in the absence of documentation.* In the absence of a valid representation of domestic partnership status in accordance with paragraph (b)(1) of this section and of foreign partnership status in accordance with paragraph (c)(2)(i) or (3)(i) of this section, the withholding agent shall determine the status of the payee as a corporation, a partnership or otherwise, based upon the presumptions set forth in §1.1441–1(b)-(3)(ii). If, based upon these presumptions, the withholding agent treats the payee as a partnership, the partnership shall be presumed to be a foreign partnership if the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98," if the withholding agent's communications with the payee are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in §1.6049–5(e)). For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see §1.1441–1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If the withholding agent treats the payee as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section, the presumptions described in this paragraph (d)(3) shall apply when the withholding agent cannot reliably associate a payment with partner documentation. The provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section are not relevant to a payment that a withholding agent can reliably associate with a withholding certificate described in paragraph (c)(2)(iv) of this section.

(i) *Documentation regarding the status of a partner is lacking or unreliable.* Any portion of a payment that the withholding agent cannot reliably associate with a partner because a withholding certificate or other appropriate documentation for that partner is lacking or unreliable is presumed to be made to foreign payee. Therefore, under §1.1441–1(b)(1), the withholding agent must withhold 30 percent from payments to the partnership of amounts subject to withholding that are allocable to such partner or group of partners.

(ii) *Information regarding the allocation of payment is lacking or unreliable.* If a withholding agent can reliably associate a payment with a group of partners but lacks reliable information to determine

how much of the payment is allocable to each partner in the group, the payment, to the extent it cannot reliably be allocated, is presumed to be allocable entirely to the partner in the group with the highest applicable withholding rate or, if the rates are equal, to the partner in the group with the highest U.S. tax liability, as the withholding agent shall estimate, based on its knowledge and available information. If a withholding certificate attached to the partnership certificate is another partnership certificate or an intermediary certificate described in §1.1441–1(e)(3)(iii), the rules of this paragraph (d)(3)(ii) apply by treating the share of the payment allocable to the other partnership or the intermediary certificate as if the payment were made directly to the foreign partnership or intermediary.

(iii) *Certification that the foreign partnership has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.* If the certification required under paragraph (c)(3)(iii)(D) of this section (that the attached withholding certificates and other appropriate documentation represent all of the partners in the partnership) is lacking or is unreliable and, as a result, the withholding agent cannot reliably determine how much of the payment is allocable to each of the partners or group of partners for which the withholding agent holds a withholding certificate or other appropriate documentation, then none of the payment can reliably be associated with any one partner and the entire payment is presumed to be made to a foreign payee.

(iv) *Determination by a withholding foreign partnership of the status of its partners.* For purposes of determining whether the partners or some other persons are the payees of the partners' distributive shares of any payment made to a withholding foreign partnership, the partnership shall apply the rules of §1.1441–1(b)(2), and of paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership) and of paragraph (e) (in the case of a partner that is a foreign estate or a foreign trust), in the same manner as if the partnership were making a payment directly to the partners other than in their capacity as partners. Further, the provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on the amount, it cannot reliably associate the amount with documentation for any one or more of its partners. See §§1.6031–1 and 1.6031–1T for reporting and filing requirements applicable to a withholding foreign partnership.

(4) *Examples.* The rules of this paragraph (d) may be illustrated by the following examples:

Example 1. (i) *Facts.* FPis a foreign partnership receiving U.S. source interest that would qualify as portfolio interest described in section 871(h)(2)(B) if the statement described in section 871(h)(5) were furnished. FP has three partners, A, B, and C. FP furnishes to the withholding agent a partnership withholding certificate described in paragraph (c)(3)(iii) of this section to which it attaches a Form W–9 for A and a beneficial owner Form W–8 for B. Nothing on A's Form W–9 indicates that A is an exempt recipient within the meaning of §1.6049–4(c)(1)(i). No documentation is attached for C. The partnership has one single account with the withholding agent. It furnishes a statement to the withholding agent under paragraph (c)(3)(iv) of this section indicating that A's, B's, and C's respective distributive shares of the payments are 40%, 40%, and 20% and represents, in accordance with paragraph (c)(3)(iii)(D) of this section, that there are only three partners.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely on FP's withholding certificate and A's Form W–9 to treat A as a U.S. beneficial owner under §1.1441–1(d)(4)(i) and as a U.S. payee under paragraph (c)(1)(i)(A) of this section to the extent of 40 percent of the payment. Under §1.1441–1(b)(1), the withholding agent is not required to withhold on A's share of the payment. Under §1.6049–4(a), the withholding agent must comply with information reporting obligations (i.e., file a Form 1099) with respect to A who is treated as a U.S. payee under paragraph (c)(1)(i)(A) of this section and §1.6049–5(d)(1) for purposes of the information reporting provisions of chapter 61 of the Code and the regulations thereunder. Absent actual knowledge or reason to know otherwise, the withholding agent may also rely on FP's withholding certificate and B's Form W–8 to treat B as a foreign beneficial owner under §1.1441–1(e)(1)(ii)(A)(1) and paragraph (c)(1)(i)(A) of this section. Thus, under §1.1441–1(b)(1), the withholding agent may rely on B's claim for portfolio interest treatment for B's share of the payment. Under §1.1461–1(b)(1) and (c)(1), the withholding agent must report the payment to B on Forms 1042 and 1042-S unless, under section 6031 and the regulations under that section, the partnership is required to file a return. Because the withholding agent cannot associate the documentation (as defined in §1.1441–1(b)(3)(vii)) for C's share of the interest income, the withholding agent must, under paragraph (d)(3)(i) of this section, treat that amount as a payment made to an unidentified foreign partner and withhold 30 percent under section 1441 in accordance with §1.1441–1(b)(1).

Example 2. The facts are the same as in *Example 1*, but the partnership has furnished no information under paragraph (c)(3)(iv) of this section regarding how much of the payment to the foreign partnership is attributable to A and C. Under paragraph (d)(3)(ii) of this section, the payment allocable to group A-C is presumed made entirely to A or to C, depending of who of A or C is subject to the highest withholding rate. A is not subject to withholding because it has furnished a valid Form W–9. C is subject to a 30-percent withholding rate under §1.1441–1(b)(1) because it is presumed to be an unidentified foreign partner under paragraph (d)(3)(i) of this section. Therefore, under paragraph (d)(3)(ii) of this section, the portion of the payment that the withholding agent can associate with A and C is subject to withholding at a 30-percent rate. The withholding agent may ignore the fact that A has furnished a valid Form W–9 supporting his claim of exemption from withholding as a U.S. person because it has no reliable information on how much of the payment is allocable to A. Because the withholding agent has a Form W–9 for the U.S. individual partner, it must also report A's distributive share on a Form 1099. To the extent that A's exact share is not known, the entire amount should be reported on the Form 1099.

(e) *Trusts and estates.* [Reserved]

(f) *Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.* See applicable procedures described in §1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in §1.1441–1(b)(3) or in paragraph (d) or (e) of this section.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* A withholding agent that on December 31, 1998, holds a withholding certificate that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the

three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

§1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country. See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also §1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) (not including §1.1441–1(e)(1)(ii)(B) relating to documentary evidence). Except as otherwise provided in paragraph (b)(2) or (3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) is valid only if it includes the beneficial owner's taxpayer identifying number and certifies that the taxpayer has complied with the advance ruling requirements described in paragraph (e) of this section (if applicable), and, if the beneficial owner is a person related to the withholding agent within the meaning of section 482, that the beneficial owner will file the statement required under §301.6114–1(d) of this chapter (if applicable). The requirement to file an information statement under section 6114 for income subject to withholding applies only to amounts received during the calendar year that, in the aggregate, exceed $500,000. See §301.6114–1(d) of this chapter. The Internal Revenue Service (IRS) may apply the provisions of §1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. A beneficial owner's taxpayer identifying number on a withholding certificate is valid for purposes of establishing proof of residence in a treaty country only if the taxpayer identifying number is certified by the IRS in accordance with the procedures set forth in paragraph (c) of this section. However, absent actual knowledge or reason to know otherwise, a withholding agent may rely on a taxpayer identifying number without having to inquire as to whether the taxpayer identifying number is certified, if the number appears correct on its face and the permanent residence address on the certificate is in the country whose tax treaty with the United States is invoked. See §1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of §1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(2) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income*—(i) *General rule.* In the case of income described in paragraph (b)(2)(ii) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section even if the person whose name is on the certificate has not provided a taxpayer identifying number. In the case of payments made outside the United States (as defined in §1.6049–5(e)) with respect to an offshore account (as defined in §1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with §1.1441–1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the certifications described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (b)(2)(i) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

(ii) *Income to which special rules apply.* The income to which paragraph (b)(2)(i) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were, upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933(15 U.S.C. 77a) and amounts paid with respect to loans of securities described in this paragraph (b)(2)(ii). For purposes of this paragraph (b)(2)(ii), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and §1.1092(d)–1 when documentation is provided.

(3) *Competent authority agreements.* The procedures described in this section may be modified to the extent the U.S. competent authority may agree with the competent authority of a country with which the United States has an income tax treaty in effect.

(4) *Eligibility for reduced withholding*

under an income tax treaty in the case of a payment to a person other than an individual—(i) *General rule.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the payment, and all other applicable requirements for benefits under the treaty are satisfied. A payment received by an entity is treated as derived by a resident of an applicable treaty jurisdiction to the extent that the payment is subject to tax in the hands of a resident of that jurisdiction. For this purpose, a payment received directly by an entity that is treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of the jurisdiction to the extent that the interest holders in the entity are residents of the jurisdiction. For purposes of the preceding sentence, interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities by the applicable treaty jurisdiction. A payment received by an entity that is not treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of such jurisdiction only if the entity is itself a resident of that jurisdiction. If the entity is a wholly-owned entity that is disregarded for federal tax purposes under §301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single member is a foreign person, amounts paid to such entity may nevertheless be treated as derived by a resident of a treaty country if the entity is treated by the applicable treaty country as deriving the income as a resident of that country. The provisions of §1.894–1T(d)(1) through (4) shall apply for purposes of determinations made under this paragraph (b)(4).

(ii) *Withholding certificates*—(A) *In general.* The type of withholding certificate or other appropriate documentation that must be furnished by a person claiming a reduced rate of withholding under an income tax treaty depends upon the status of the entity under the laws of the applicable treaty jurisdiction. For example, if the person receiving the payment is a foreign entity but the persons eligible for benefits under the applicable income tax treaty are the entity's interest holders in the foreign entity receiving the payment, rather than the entity itself, then the entity shall be treated as a foreign partnership for purposes of determining which withholding certificate is appropriate irrespective of the fact that the entity may be treated as a corporation for U.S. tax purposes. If, conversely, the person eligible for benefits under an income tax treaty is the entity rather than the interest holders, then the entity shall be treated as a corporation for purposes of determining which withholding certificate is appropriate irrespective of the fact that the entity may be treated as a partnership for U.S. tax purposes. In the event of a claim for dual treatment described in paragraph (b)(4)(iii) of this section, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (e.g., portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the representations on the certificate that the beneficial owner derives the income and is a resident of the applicable treaty country, within the meaning of §1.894–1T(d) and the applicable income tax treaty, without having to inquire into the truthfulness of these representations or to research foreign law.

(B) *Certification by qualified intermediary.* A foreign corporation that is a qualified intermediary described in §1.1441–1(e)(5)(ii)(C) for purposes of claiming reduced rates of withholding under an income tax treaty for its shareholders (who are treated as deriving the income paid to the corporation as resident of an applicable treaty jurisdiction) may furnish a single Form W–8 for its shareholders for amounts for which it claims the benefit of a reduced rate of withholding under an applicable income tax treaty. The Form W–8 shall be one described under §1.1441–1(e)(3)(ii).

(iii) *Multiple claims of treaty benefits.* A withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity for the same or for another portion of the payment. In the case of concurrent and inconsistent claims of treaty benefits for the same amount, the withholding agent may choose to reject the claim and request that a consistent claim be submitted or it may choose which reduction to apply. In the case of concurrent and consistent claims (e.g., the entity that is paid the amount claims a reduced rate for a portion of the payment and an interest holder claims a different reduced rate for the balance of the payment), the withholding agent may, at its option, accept such dual claim based, as appropriate, on withholding certificates furnished by such persons with respect to their respective shares of such payment, even though the withholding agent holds different withholding certificates that requires it to treat the entity inconsistently with respect to different payments or with respect to different portions of the same payment. See paragraph (b)(4)(iv) *Example 2* of this section. If the withholding agent does not accept claims of reduced rate presented by any one or more of the interest holders, or by the entity, any interest holder or the entity may subsequently claim a refund or credit of any amount so withheld to the extent the holder's or entity's share of such withholding exceeds the amount of tax due under section 894 (in the case of a foreign person) or under section 1 or 11 (in the case of a U.S. person).

(iv) *Examples.* This paragraph (b)(4) is illustrated by the following examples:

Example 1. (i) *Facts.* Entity A is a business organization formed under the laws of country Y that has an income tax treaty with the United States. A receives U.S. source royalties from withholding agent R and claims a reduced rate of withholding under the U.S.–Ytax treaty on its own behalf (rather than on behalf of its interest holders). A furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that A is a resident of country Y (within the meaning of the U.S.–Ytax treaty) and the beneficial owner of the royalties (within the meaning of the U.S.–Y tax treaty).

(ii) Analysis. Absent actual knowledge or reason to know otherwise, R may rely on the representation that A is a resident of country Y and a beneficial owner of the royalty income within the meaning of the U.S.-Y tax treaty.

Example 2. (i) *Facts.* The facts are the same as under Example 1, except that one of A's interest holders, T, is an entity organized in country Z. The U.S.–Z tax treaty reduces the rate on royalties to

zero whereas the rate on royalties under the U.S.–Y tax treaty is only reduced to 5 percent. T furnishes a beneficial owner withholding certificate to A that represents that T is deriving its distributive share of the royalty income paid to A as a resident of country Z (within the meaning of §1.894–1T(d)(1) and the U.S.–Z tax treaty) and is the beneficial owner of the royalty income (within the meaning of the U.S.-Z tax treaty). A furnishes to R an intermediary withholding certificate described in §1.1441–1(e)(3)(iii) to which it attaches T's beneficial owner withholding certificate for the portion of the payment that T claims as its distributive share of the royalty income. A also furnishes to R a beneficial owner withholding certificate for itself for the portion of the payment that T does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the documentation furnished by A in order to treat the royalty payment to a single foreign entity (A) as derived by different residents of tax treaty countries as a result of concurrent and consistent claims presented under different treaties. R may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.–Z treaty on the portion of the royalty payment that T claims to derive as a resident of country Z and a reduced rate of 5 percent under the U.S.–Ytreaty for the balance. However, under paragraph (b)(4)(iii) of this section, R may, at its option, treat A as the only relevant person deriving the royalty and grant benefits under the U.S.–Y treaty only.

Example 3. (i) *Facts.* Entity A is a business organization formed under the laws of the United States and is classified as a partnership for U.S. tax purposes. A's partners are S and T. S is an entity organized in country Z. T is an entity organized in country X. Under the laws of country Z, A is treated as an entity taxable at the entity level. Therefore, S is treated as a shareholder for purposes of the laws of country Z and is not required to take A's income into account for purposes of determining its tax liability under those laws. Distributions from A are treated as distributions from a corporate entity for purposes of the tax laws of Country Z. Under the laws of country X, A is treated as a fiscally transparent entity and T is required to take into account its distributive share of A's income for purposes of determining its tax liability under those laws. A receives U.S. source royalties that are not connected with a trade or business. The United States has a tax treaty with countries Z and X under which the rate on royalties is reduced to zero. Both S and T furnish a beneficial owner certificate to A representing that they are resident of their respective countries and a beneficial owner of their respective distributive share of royalty income. A has actual knowledge of the tax treatment of S and T in their respective countries.

(ii) *Analysis.* Because A is a partnership for U.S. tax purposes, S and T are each taxable on their respective distributive share of the royalty income under section 881(a). However, under §1.1441–5(b)(1), the payment of royalty to A is not a payment subject to withholding. Instead, under §1.1441–5(b)(2), A must withhold on each partner's distributive share of U.S. source royalty income and may apply the rules of this section to determine the extent to which the 30-percent withholding rate under section 1442 should be reduced under the income tax treaties with countries Z and X. Because A has actual knowledge of the tax treatment of S in country Z as a shareholder of A and not as a partner (or owner of a fiscally transparent entity), A may not rely on the certificate furnished by S in order to reduce the rate of withholding under the U.S.–Z tax treaty. Therefore, it withholds 30 percent of S's distributive share of royalty income. A may rely on T's certificate to treat T as deriving its distributive share of A's royalty income as a resident of country X and as a beneficial owner. Therefore, A withholds on T's distributive share of royalty income at the reduced rate under the U.S.–X tax treaty.

Example 4. (i) *Facts.* Entity A is a business organization formed under the laws of country Y. A receives from withholding agent R U.S. source royalties and U.S. source interest income that is potentially eligible for the portfolio interest exemption under section 871(h) and 881(c). A's interest holders are S, an individual who resides in country Y, T, an individual who resides in country Z, and U, an individual resident in the United States. The United States has a tax treaty with both country Y and country Z. The U.S.–Ytax treaty reduces the rate on royalties to 5 percent, and the U.S.–Z tax treaty reduces the rate to zero. A is classified as a partnership under U.S. tax principles. Under the tax laws of country Y, A is treated as a fiscally transparent entity and S is required to include in income his distributive share of A's income. A furnishes to R an intermediary withholding certificate described in §1.1441–5(c)(3)(iii) to which it attaches—

(A) A Form W–9 for U; and

(B) Beneficial owner withholding certificates for S and T that represent that S and T are foreign persons. For purposes of claiming the reduced rate under each applicable tax treaty, each of S's and T's certificates represents that S and T are deriving their distributive share of the royalty income as a resident of their respective countries (within the meaning of §1.894–1T(d)(1) and of the applicable tax treaty) and as a beneficial owner (within the meaning of the applicable tax treaty).

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the representations that S and T derive a distributive share of the royalty income as resident of their respective countries and are the beneficial owners of the income. Therefore, R may withhold on S's distributive share of the royalty income paid to A at the 5-percent rate under the U.S.–Ytax treaty. R may withhold on T's distributive share of the royalty income paid to A at the zero rate under the U.S.–Z tax treaty, even though A is not organized in, or a resident of, country Z. R may rely on U's Form W–9 to treat U as a U.S. person. Therefore, R does not withhold on U's share of the royalty payment. R also does not withhold on any portion of the interest paid to A because S and T have furnished beneficial owner certificates and U has furnished a Form W–9.

Example 5. (i) *Facts.* The facts are the same as in *Example 4*, except that A represents that it derives the royalty income it receives from R as a resident of country Y (within the meaning of §1.894–1T(d)(1) and the U.S.–Ytax treaty) and as a beneficial owner of the income (within the meaning of the U.S.–Ytax treaty). Neither T nor S represent to derive the royalty income as resident of their respective country. A furnishes an intermediary withholding certificate described in §1.1441–1(e)(3)(iii) to which it attaches a Form W–9 for U and beneficial owner withholding certificates for S and T. No claims of reduced rate under a tax treaty are made on S's or T's certificates. A also furnishes to R its own beneficial withholding certificate in order to claim the reduced rate under the U.S.–Y tax treaty for the royalty income.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on A's intermediary certificate and the certificates attached thereto in order to treat S and T as foreign beneficial owners for purposes of treating the interest as portfolio interest and to treat U as a U.S. payee. Therefore, R does not withhold on the payment of interest to A. In addition, absent actual knowledge or reason to know otherwise, R may rely on A's beneficial owner certificate in order to reduce the rate of withholding on the royalty income under the U.S.–Y tax treaty.

(5) *Claim of benefits under an income tax treaty by a U.S. person.* In certain cases, a U.S. person may claim the benefit of an income tax treaty. For example, under certain treaties, a U.S. citizen residing in the treaty country may claim a reduced rate of U.S. tax on certain amounts representing a pension or an annuity from U.S. sources. Claims of treaty benefits by a U.S. person may be made by furnishing a Form W–9 to the withholding agent or such other form as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter).

(c) *Proof of tax residence in a treaty country and certification of entitlement to treaty benefits*—(1) *In general.* A beneficial owner establishes proof of its tax residence in a treaty country for purposes of its claim to the withholding agent that a reduced rate of tax applies under an income tax treaty by complying with the procedures described in this paragraph (c) or with such other procedures as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter). For purposes of this section, the residence of a beneficial owner must be determined in accordance with the provisions of the applicable U.S. income tax treaty as may be clarified by any applicable regulations thereunder, or technical explanations thereof, or other published guidance.

(2) *Certification of taxpayer identifying number*—(i) *In general.* A taxpayer may certify its taxpayer identifying number as required under paragraph (b)(1) of this section by having the number certified by the IRS either directly as provided under paragraph (c)(2)(ii) of this section or through a qualified intermediary as provided in paragraph (c)(2)(iii) of this section.

(ii) *IRS-certified TIN.* The IRS shall certify a taxpayer identifying number (TIN) upon a certificate of residence described in paragraph (c)(3) of this section to which it shall attach the certifications described in paragraphs (c)(5)(i) and (ii) of this section, if applicable. The taxpayer may provide documentary evidence described in paragraph (c)(4) of this section instead of a certificate of residence. However, a taxpayer (other than a person organized as a corporate body in the ap-

plicable treaty jurisdiction) may furnish documentary evidence instead of a certificate of residence only if a certificate of residence is not available to the taxpayer. A certificate of residence is not available for purposes of this paragraph (c)(2)(ii) if the tax administration of the country where the taxpayer claims to be a resident does not have a procedure in effect by which such certificates are routinely issued or the taxpayer establishes that obtaining such certificate would require an unreasonable amount of time or costs relative to the taxpayer's circumstances (e.g., amount of investments in the United States). A person organized as a corporate body in the applicable treaty jurisdiction may, instead of a certificate of residence, furnish a certificate of incorporation, articles of incorporation, or other official document reflecting the taxpayer's status as a corporate body in that jurisdiction, regardless of whether a certificate of residence described in paragraph (c)(3) of this section is otherwise available. The certificate or documentary evidence must be furnished to the IRS by, or on behalf of, the beneficial owner upon application for the taxpayer identifying number or at any other time, as permitted under such procedures as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter). If the tax residence of the beneficial owner changes, the beneficial owner shall notify the IRS of that change within 30 days thereof. This requirement is in addition to the notification requirements described in §1.1441–1(e)-(4)(ii)(D) regarding notification to a withholding agent in the event of changes in the beneficial owner's circumstances. The IRS may, under the exchange of information provisions of an applicable income tax treaty, exchange information with the relevant foreign competent authority for the purpose of confirming with appropriate tax officials of the other country that the beneficial owner continues to be a tax resident of that country. The IRS may from time to time, in its discretion, request that the beneficial owner reconfirm its residence in the treaty country.

(iii) *Special rules for qualified intermediaries.* The IRS may certify a taxpayer identifying number based upon the certification of a qualified intermediary described in §1.1441–1(e)(5)(ii) regarding the tax residence of any of its account holders, under procedures agreed upon with the IRS. If a new account holder has a TIN at the time it opens an account, the qualified intermediary may rely on a statement by the account or interest holder that appropriate proof of tax residence in the treaty jurisdiction was previously provided to the IRS. In such case, the qualified intermediary must notify the IRS each time that the account or interest holder's address changes to another country or when the account or interest holder terminates its relationship with the qualified intermediary within 30 days of that change.

(3) *Certificate of residence.* A certificate of residence referred to in paragraph (b)(2)(i) or (c)(2)(ii) of this section is a certification issued by the competent authority (or another appropriate tax official) of the treaty country of which the taxpayer claims to be a resident that the taxpayer has filed its most recent income tax return as a resident of that country (within the meaning of the applicable tax treaty). A certificate of residence is valid for a period of three years or such longer period as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter). The competent authorities may agree to a different procedure for certifying residence, in which case such procedure shall govern for payments made to a person claiming to be a resident of the country with which such an agreement is in effect.

(4) *Documentary evidence establishing residence in the treaty country*—(i) *Individuals.* For purposes of this paragraph (c)(4), documentary evidence establishes the residence of an individual in a treaty country if it includes the name, address, and photograph of the person seeking to prove residence, is an official document issued by an authorized governmental body (i.e., a government or agency thereof, or a municipality), and has been issued no more than three years prior to presentation to the IRS or the withholding agent. A document older than three years may be relied upon as proof of residence only if it is accompanied by additional evidence of the person's residence in the treaty country (e.g., a bank statement, utility bills, or medical bills). Documentary evidence must be in the form of original documents or certified copies thereof. Documentary evidence must be accompanied by an affidavit of the taxpayer signed under penalties of perjury that the documentary evidence submitted is true and complete.

(ii) *Persons other than individuals.* For purposes of this paragraph (c)(4), documentary evidence establishes the residence in a treaty country of a person other than an individual if it includes the name of the entity and the address of its principal office in the treaty country, and is an official document issued by an authorized governmental body (e.g., a government or agency thereof, or a municipality).

(5) *Certifications regarding entitlement to treaty benefits*—(i) *Certification regarding conditions under a Limitation on Benefits Article.* A taxpayer that is not an individual must certify to the IRS by way of an affidavit attached to its request for certification of its employer identification number that it meets one or more of the conditions set forth in the Limitation on Benefits Article (if any, or in a similar provision) contained in the applicable tax treaty. The affidavit must describe sufficient facts for the IRS to determine which condition the taxpayer claims to satisfy. The affidavit must be signed by the taxpayer under penalties of perjury.

(ii) *Certification regarding whether the taxpayer derives the income.* A taxpayer that is not an individual shall certify to the IRS by way of an affidavit attached to its request for certification of its employer identification number that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself as a resident of the applicable treaty jurisdiction within the meaning of §1.894–1T(d)(1). The affidavit must be signed under penalties of perjury. This requirement does not apply if the taxpayer furnishes a certificate of residence that certifies that fact.

(d) *Joint owners.* In the case of a payment to joint owners, each owner must furnish a withholding certificate or, if applicable, documentary evidence or a certificate of residence. The applicable rate of tax on a payment of income to joint owners shall be the highest applicable rate.

(e) *Related party dividends under U.S.-Denmark income tax treaty.* Article VI(3) of the income tax treaty between the United States and Denmark (see 1950–1 C.B. 77; see also §601.601(d)(2) of this chapter) reduces the rate of tax on dividends between related corporations to 5 percent subject to the condition that the relationship between the domestic and foreign corporations was not arranged or maintained for the purpose of securing the reduced rate. A domestic corporation that makes a distribution derived by a resident of Denmark may treat this condition as satisfied if, prior to the payment, a request has been made to the IRS for a private letter ruling determining that the relationship between the corporation and the Danish resident was not arranged or maintained for such purpose and the IRS has either issued a favorable ruling (and the ruling has not been revoked) or is considering the ruling request.

(f) *Failure to receive withholding certificate timely.* See applicable procedures described in §1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form 1001 or 8233 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under §1.894-1T(d). Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section. Certificates issued prior to April 1, 1998, that expire at any time after March 31, 1998 (other than by reason of changes in the circumstances of the person whose name is on the certificate) shall remain valid until December 31, 1998.

Par. 12. Section 1.1441–7 is amended by

1. Revising paragraphs (a) through (c).
2. Redesignating paragraph (d) as paragraph (f).
3. Adding new paragraph (d), and paragraphs (e) and (g).
4. Removing the language "(j)" and adding "(g)" in its place in the first sentence of newly designated paragraph (f)(1).
5. Removing the language "(d)" and adding "(f)" in its place in the first sentence of newly designated paragraph (f)(1), in the first sentence of newly designated paragraph (f)(2)(i), and in the first sentence of newly designated paragraph (f)(3).
6. Removing the authority citation at the end of the section.

The revisions read as follows:

§1.1441–7 General provisions relating to withholding agents.

(a) *Withholding agent defined.* For purposes of chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter, the term withholding agent means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in §1.1441–1(e)(3)(i), a foreign partnership, or a U.S. branch describe din §1.1441–1(b)(2)(iv)(A) or (E). See §1.1441–1(b)(1) and (2) for determining whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under §1.1461–1(a) and to make the returns prescribed by §1.1461–1(b) and (c), as modified by the terms of an agreement with a qualified intermediary (in the case of a qualified intermediary) or, in the case of a foreign partnership, to make the returns prescribed under section 6031 and the regulations thereunder. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and, generally, only one return (on Form 1042, as required under §1.1461–1(b)), is required to be made. See §1.1461–1(b)(2) and (c)(4) for filing procedures when multiple withholding agents are involved. In the case of a withholding agent paying to partners of a withholding foreign partnership described in §1.1441–5(c)(2)(i), the withholding agent may arrange with the partnership to withhold if it is provided the information by the partnership, in which case the partnership does not have to withhold. However, the partnership must still file a partnership return under section 6031(a) and the regulations under that section. The withholding agent does not have to file Forms 1042–S (but does have to file a Form 1042) since the withholding foreign partnership furnishes Forms K–1 to its partners pursuant to section 6031(b) and §1.6031(b)-1T. For purposes of this section and any requirement to withhold under chapter 3 of the Code and the regulations thereunder, a person who, as a nominee described in §1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished under §1.6031(c)–1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(b) *Standards of knowledge*—(1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual

knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or attached to, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are not correct and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See §1.1441–1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in §§1.1441–1(b)(3), 1.1441–4(a), 1.1441-5(d) and (e), or 1.1441–9(b)(3) may also be liable for tax, interest, and penalties. See §1.1441–1(b)(3)(ix) and (7).

(2) *Reason to know*—(i) *In general.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made.

(ii) *Limits on reason to know in certain cases.* Except as otherwise provided in paragraph (b)(3) of this section, a withholding agent that is a financial institution (including a regulated investment company) with which a customer may open an account has a reason to know with respect to payments of amounts described in §1.1441–6(b)(2)(ii) that a beneficial owner withholding certificate or documentary evidence for a beneficial owner is not reliable only if any one or more of the circumstances described in this paragraph (b)(2)(ii) exist for a withholding certificate. In such a case, the withholding agent may require a new withholding certificate. In the absence of a new certificate, a withholding agent may rely on the withholding certificate only after documentation is provided in support of the claim of foreign status, classification, or reduced rate of tax under a tax treaty.

(A) The permanent residence address on the withholding certificate is an address in the United States. In the case of an individual, trust, or estate, the withholding agent may rely on information in its files that is less than three years old and that supports the beneficial owner's claim of foreign status, despite a U.S. address (for example, a bank has evidence of the diplomatic status of a customer). In the absence of evidence in the withholding agent's files, the agent meets its due diligence obligation for purposes of this paragraph (b)(2)(ii)(A) if it contacts the beneficial owner or its agent in the United States and obtains an explanation in writing supporting the foreign status of the beneficial owner (for example, the beneficial owner is a nonresident alien individual temporarily present in the United States as a teacher; see §301.7701-(b)–3(b)(3) of this chapter) and documentation supporting the claim of foreign status is attached to the beneficial owner's statement (for example, in the case of a nonresident alien individual teacher, a copy of the relevant pages of the beneficial owner's passport showing the individual's U.S. visa status or a copy of relevant INS documents). In the case of a beneficial owner other than an individual, trust, or estate, the withholding agent must inquire as to whether the person whose name is on the certificate is actually organized or created under the laws of a foreign country.

(B) The payment is directed to a P.O. Box, an in-care-of address, or a U.S. address. In the case of an individual, the withholding agent may rely, for example, on documentary evidence of a type described in §1.1441–6(c)(3) or (4) supporting the beneficial owner's claim of residence in a foreign country to ascertain that the individual is a nonresident alien individual. In the case of a person other than an individual, the withholding agent may rely on other evidence to ascertain that the person whose name is on the certificate is not a U.S. person.

(C) In the case of income for which benefits are claimed under an income tax treaty, the permanent residence address or mailing address is not in the corresponding treaty country. In such a case, the withholding agent may rely, for example, on documentary evidence of a type described in §1.1441–6(c)(3) or (4) supporting the beneficial owner's claim of residence in the country whose benefits under an income tax treaty with the United States are invoked.

(D) The mailing address on the withholding certificate is in the United States or the beneficial owner notifies the withholding agent of a new address for mailing or residential purposes that is in the United States, a P.O. box, or an in-care-address, or, in the case of income for which benefits are claimed under an income tax treaty, the mailing address on the certificate or the new mailing or residential address notified to the withholding agent is not in the treaty country. The withholding agent may, however, rely on documentary evidence of a type described in §1.1441–6(c)(3) or (4) supporting the beneficial owner's claim of residence in a foreign country.

(E) The name of the person on the withholding certificate or documentary evidence indicates that the person's status is a corporation, partnership, trust, estate, or an individual, and the person's claim of status is not consistent with such indication. For example, a person whose name indicates that it is a per se corporation described in §301.7701–2(b)(8)(i) of this chapter represents on a Form W–8 that it is a partnership.

(F) Such other circumstances as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter).

(3) *Coordinated account information systems.* See §1.1441–1(e)(4)(ix) for application of these rules other than on an account-by-account basis so that a withholding agent that relies on a coordinated account information system for documentation is considered to know or have reason to know the facts recorded in the system.

(c) *Authorized agent*—(1) *In general.* The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to

the withholding agent on whose behalf it is acting. However, if the agent is a foreign person, a withholding agent that is a U.S. person may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of this section, but only if the agent is an authorized foreign agent, as defined in paragraph (c)(2) of this section. An authorized foreign agent cannot apply the provisions of this paragraph (c) to appoint another person its authorized foreign agent with respect to the payments it receives from the withholding agent.

(2) *Authorized foreign agent.* An agent is an authorized foreign agent only if—

(i) There is a written agreement between the withholding agent and the foreign person acting as agent;

(ii) The notification procedures described in paragraph (c)(3) of this section have been complied with;

(iii) Books and records and relevant personnel of the foreign agent are available (on a continuous basis, including after termination of the relationship) for examination by the IRS in order to evaluate the withholding agent's compliance with the provisions of chapters 3 and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available, including under common law principles of agency in order to avoid tax liability under the Internal Revenue Code.

(3) *Notification.* A withholding agent that appoints an authorized agent to act on its behalf for purposes of §1.871–14(c)(2), the withholding provisions of chapter 3 of the Code, section 3406 or other withholding provisions of the Internal Revenue Code, or the reporting provisions of chapter 61 of the Code, is required to file notice of such appointment with the Office of the Assistant Commissioner (International). Such notice shall be filed before the first payment for which the authorized agent acts as such. Such notice shall acknowledge the withholding agent liability as provided in paragraph (c)(2)(iv) of this section.

(4) *Liability of U.S. withholding agent.* An authorized foreign agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. In particular, an authorized foreign agent does not benefit from the special procedures or exceptions that may apply to a qualified intermediary. A withholding agent acting through an authorized foreign agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the U.S. withholding agent. For this purpose, the foreign agent's actual knowledge or reason to know shall be imputed to the U.S. withholding agent. The U.S. withholding agent's liability shall exist irrespective of the fact that the authorized foreign agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

(5) *Filing of returns.* See §1.1461–1(b)(2)(iii) and (c)(4)(iii) regarding returns required to be made where a U.S. withholding agent acts through an authorized foreign agent.

(d) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States is assumed and discharged by—

(1) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt;

(2) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise;

(3) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise; or

(4) Such other person as may be designated by the IRS.

(e) *Assumed obligations.* If, in connection with the sale of a corporation's property, payment on the bonds or other obligations of the corporation is assumed by a person, then that person shall be a withholding agent to the extent amounts subject to withholding are paid to a foreign person. Thus, the person shall withhold such amounts under §1.1441–1 as would be required to be withheld by the seller or corporation had no such sale or assumption been made.

* * * * *

(g) *Effective date.* Except as otherwise provided in paragraph (f)(3) of this section, this section applies to payments made after December 31, 1998.

Par. 13. Section 1.1441–8T is redesignated as §1.1441–8 and amended as follows:

1. The section heading and paragraph (b) are revised.

2. Paragraphs (c), (d), (e) and (f) are added.

The revisions and additions read as follows:

§1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(b) *Reliance on claim of exemption by foreign government.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely upon a claim of exemption made by the foreign government if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner in accordance with §1.1441–1(e)(1)(ii). A Form W–8 furnished by a foreign government for purposes of claiming an exemption under this paragraph (b) is valid only if, in addition to other applicable requirements, it certifies that the income is, or will be, exempt from taxation under section 892 and the regulations under that section and whether the person whose name is on the certificate is an integral part of a foreign government (as defined in §1.892–2T(a)(2)) or a controlled entity (as defined in §1.892–2T(a)(3)).

(c) *Income of a foreign central bank of issue or the Bank for International Settlements*—(1) *Certain interest income.* Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from interest on deposits with persons carrying on the banking business if the bank is the owner of the obligations or de-

posits and does not hold the obligations or deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity by such bank. See §1.895–1. Absent actual knowledge or reason to know that a foreign central bank of issue, or the Bank for International Settlements, is operating outside the scope of the exclusion granted by section 895 and the regulations under that section, the withholding agent may rely on a claim of exemption if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the foreign central bank of issue or the Bank for International Settlements as the beneficial owner of the payment in accordance with §1.1441–1(e)(1)(ii). A Form W–8 furnished by a foreign central bank of issue or the Bank for International Settlements for purposes of claiming an exemption under this paragraph (c)(1) is valid only if, in addition to other applicable requirements, it certifies that the person whose name is on the certificate is a foreign central bank of issue, or the Bank for International Settlements, and that the bank does not, and will not, hold the obligations or the bank deposits covered by the Form W–8 for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) *Bankers' acceptances.* Interest derived by a foreign central bank of issue from bankers' acceptances is exempt from tax under sections 871(i)(2)(C) and 881(d) and §1.861–2(b)(4). With respect to bankers' acceptances, a withholding agent may treat a payee as a foreign central bank of issue without requiring a withholding certificate if the name of the payee and other facts surrounding the payment reasonably indicate that the payee or beneficial owner is a foreign central bank of issue, as defined in §1.861–2(b)(4).

(d) *Exemption for payments to international organizations.* A payment to an international organization (within the meaning of section 7701(a)(18)) is exempt from withholding on any payment. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the transaction reasonably indicate that the international organization is the beneficial owner of the payment.

(e) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in §1.1441–1(b)(7) in the event the withholding agent does not hold a valid withholding certificate described in paragraph (b) or (c)(1) of this section or other appropriate documentation at the time of payment. Further, the provisions of §1.1441–1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form 8709 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR part 1, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 14. Section 1.1441–9 is added to read as follows.

§1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

(a) *Exemption from withholding for exempt income.* No withholding is required under section 1441(a) or 1442, and the regulations under those sections, on amounts paid to a foreign organization that is described in section 501(c) to the extent that the amounts are not income includible under section 512 in computing the organization's unrelated business taxable income. See, however, §1.1443–1 for withholding on payments of unrelated business income to foreign tax-exempt organizations and on payments subject to tax under section 4948. For a foreign organization to claim an exemption from withholding under section 1441(a) or 1442 based on its status as an organization described in section 501(c), it must furnish the withholding agent with a withholding certificate described in paragraph (b)(2) of this section. A foreign organization described in section 501(c) may choose to claim a reduced rate of withholding under the procedures described in other sections of the regulations under section 1441 and not under this section. In particular, if an organization chooses to claim benefits under an income tax treaty, the withholding procedures applicable to claims of such a reduced rate are governed solely by the provisions of §1.1441–6 and not of this section.

(b) *Reliance on foreign organization's claim of exemption from withholding*—(1) *General rule.* A withholding agent may rely on a claim of exemption under this section only if, prior to the payment, the withholding agent can reliably associate the payment with a valid withholding certificate described in paragraph (b)(2) of this section.

(2) *Withholding certificate.* A withholding certificate under this paragraph (b)(2) is valid only if it is a Form W–8 and if, in addition to other applicable requirements, the Form W–8 includes the taxpayer identifying number of the organization whose name is on the certificate, and it certifies that the Internal Revenue Service (IRS) has issued a favorable determination letter (and the date thereof) that is currently in effect, what portion, if any, of the amounts paid constitute income includible under section 512 in computing the organization's unrelated business taxable income, and, if the organization is described in section 501(c)(3), whether it is a private foundation described in section 509. Notwithstanding

the preceding sentence, if the organization cannot certify that it has been issued a favorable determination letter that is still in effect, its withholding certificate is nevertheless valid under this paragraph (b)(2) if the organization attaches to the withholding certificate an opinion that is acceptable to the withholding agent from a U.S. counsel concluding that the organization is described in section 501(c). If the determination letter or opinion of counsel to which the withholding certificate refers concludes that the organization is described in section 501(c)(3), and the certificate further certifies that the organization is not a private foundation described in section 509, an affidavit of the organization setting forth sufficient facts concerning the operations and support of the organization for the Internal Revenue Service (IRS) to determine that such organization would be likely to qualify as an organization described in section 509(a)(1), (2), (3), or (4) must be attached to the withholding certificate. An organization that provides an opinion of U.S. counsel or an affidavit may provide the same opinion or affidavit to more than one withholding agent provided that the opinion is acceptable to each withholding agent who receives it in conjunction with a withholding certificate. Any such opinion of counsel or affidavit must be renewed whenever the certificate to which it is attached is required to be renewed.

(3) *Presumptions in the absence of documentation.* Notwithstanding paragraph (b)(1) of this section, if the organization's certification with respect to whether amounts paid constitute income includible under section 512 in computing the organization's unrelated business taxable income is not reliable or is lacking but all other certifications are reliable, the withholding agent may rely on the certificate but the amounts paid are presumed to be income includible under section 512 in computing the organization's unrelated business taxable income. If the certification regarding private foundation status is not reliable, the withholding agent may rely on the certificate but the amounts paid are presumed to be paid to a foreign beneficial owner that is a private foundation.

(4) *Reason to know.* Reliance by a withholding agent on the information and certifications stated on a withholding certificate is subject to the agent's actual knowledge or reason to know that such information or certification is incorrect as provided in §1.1441–7(b). For example, a withholding agent must cease to treat a foreign organization's claim for exemption from withholding based on the organization's tax-exempt status as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not an organization described in section 501(c) or the date on which the IRS gives notice to the public that such foreign organization is not an organization described in section 501(c). Similarly, a withholding agent may no longer rely on a certification that an amount is not subject to tax under section 4948 beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is subject to tax under section 4948 or the date on which the IRS gives notice that such foreign organization is a private foundation within the meaning of section 509(a).

(c) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in §1.1441–1(b)(7) in the event the withholding agent does not hold a valid withholding certificate or other appropriate documentation at the time of payment. Further, the provisions of §1.1441–1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form W–8, 1001 or 4224 or a statement that is valid under the regulations in effect prior to January 1, 1999,(see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998, by reason of the immediately preceding sentence). The rule in this paragraph(d)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 15. Sections 1.1442–1 and 1.1442–2 are revised to read as follows:

§1.1442–1 Withholding of tax on foreign corporations.

For regulations concerning the withholding of tax at source under section 1442 in the case of foreign corporations, foreign governments, international organizations, foreign tax-exempt corporations, or foreign private foundations, see §§1.1441–1 through 1.1441–9.

§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.

Par. 16. Section 1.1442–3 is added to read as follows:

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

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.

Par. 17. Section 1.1443–1 is revised to read as follows:

§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 or-

ganization 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, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds an affidavit or opinion of counsel described in §1.1443–1(b)(4)(i) in effect prior to January 1, 1999 (see §1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1997) that is valid under these provisions may treat it as a valid withholding certificate until December 31, 1999. 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 and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 18. Section 1.1445-5 is amended by revising the second sentence of paragraph (b)(1) to read as follows:

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

* * * * *

(b) *** (1) *** For rules coordinating the withholding under section 1441 (or section 1442 or 1443) and under section 1445 on distributions from a corporation, see §1.1441–3(b)(4). ***

* * * * *

Par. 19. Sections 1.1461–1 and 1.1461–2 are revised to read as follows:

§1.1461–1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax with a Federal reserve bank or authorized financial institution as provided in §1.6302–2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to paragraph (b) of this section has not been deposited pursuant to §1.6302–2, the withholding agent shall pay the balance of tax due for such year at such place as the Internal Revenue Service (IRS) shall specify. The tax shall be paid when filing the return required under paragraph (b)(1) of this section for such year, unless the IRS specifies otherwise. See paragraph (b)(2) of this section when there are multiple withholding agents.

(2) *Penalties for failure to pay tax.* For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 3 of the Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042–S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and §1.6011–1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042–S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations

thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in §1.1461–2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) *Multiple withholding agents*—(i) *General rule.* Except as otherwise provided in paragraph (b)(2)(ii), (iii), (iv), or (v) of this section, no Form 1042 is required to be filed under paragraph (b)(1) of this section if a return is filed by another withholding agent reporting the same income in compliance with the provisions of this paragraph (b) and any remaining tax due is paid by such other withholding agent with the return in accordance with the provisions of paragraph (a) of this section.

(ii) *Payment to a qualified intermediary.* A U.S. withholding agent making a payment to a qualified intermediary (as defined in §1.1441–1(e)(5)(ii)) must file a return under paragraph (b)(1) of this section, regardless of whether the qualified intermediary assumes primary withholding responsibility for the payment, as described in §1.1441–1(e)(5)(iv) and regardless of whether the qualified intermediary is also required to file a return under the terms of its agreement with the IRS. A qualified intermediary's agreement with the IRS shall specify the extent, if any, to which the intermediary is subject to filing requirements under this section.

(iii) *Payment to a non-qualified intermediary.* A withholding agent making a payment to a foreign intermediary that is not a qualified intermediary described in §1.1441–1(e)(5)(ii) must file a return under paragraph (b)(1) of this section to report such payments. The foreign intermediary is not required to make a return to report the payments that it itself makes to the persons for whom it collects the payments to the extent that the withholding agent represents to the intermediary that it will file such a return or that it has done so.

(iv) *Payment to or through an authorized foreign agent.* Both the U.S. withholding agent making a payment to or through an authorized foreign agent (defined in §1.1441–7(c)) and the authorized foreign agent are required to file a return under paragraph (b)(1) of this section.

(v) *Payments to foreign partnerships.* A withholding agent making a payment to a foreign partnership shall file a return under paragraph (b)(1) of this section in the same manner as is required for a withholding agent making a payment to a qualified intermediary.

(vi) *Payments to a U.S. branch of certain foreign banks, securities dealers, or insurance companies.* A withholding agent making a payment to a U.S. branch described in §1.1441–1(b)(2)(iv) must file a return under paragraph (b)(1) of this section, irrespective of the fact that the branch is treated as a U.S. person or is presumed to receive income that is effectively connected with its conduct of a trade or business in the United States.

(3) *Payments to wholly-owned entities.* A withholding agent making a payment to a wholly-owned entity that is disregarded for Federal tax purposes under §301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall file a return under paragraph (b)(1) of this section.

(4) *Amended returns.* An amended return may be filed on a Form 1042X or such other form as the IRS may prescribe. An amended return must include such information as the form or accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to the payment) must make an information return on Form 1042–S (or such other form as the IRS may prescribe) to report the amounts specified in paragraph (c)(2) of this section that were paid during the preceding calendar year. One Form 1042–S shall be prepared for each beneficial owner (except as otherwise provided in paragraph (c)(4) of this section regarding multiple withholding agents). The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the item of income was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and to the transmittal form. Withholding certificates or other statements or documentation provided to a withholding agent are not required to be attached to the information return. Another copy of the Form 1042–S shall be furnished to the payee on or before March 15 of the calendar year following the year in which the item of income was paid. The withholding agent shall retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates.

(ii) *Joint owners.* In the case of joint owners, a single Form 1042–S may be prepared. However, upon request of any one of the owners, the withholding agent shall furnish to such owner its own Form 1042–S. Where more than one Form 1042–S is issued with respect to a single payment to joint owners, the aggregate amount of items paid and tax withheld reported on the Forms 1042–S cannot exceed the amounts paid to the joint owners and tax withheld thereon. If a single Form 1042–S is prepared, the form shall state the name of only one owner and that name shall be that of any person whose status the withholding agent relied upon to determine the applicable rate of withholding tax.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, the amounts required to be reported on a Form 1042–S are amounts paid to foreign persons (including persons who are presumed to be foreign) that consist of amounts subject to withholding (as defined in §1.1441–2(a)) under section 1441, 1442, or 1443. This includes (but is not limited to)—

(A) The entire amount of corporate distributions (whether deemed or actual) paid to a foreign person, irrespective of any estimate of the portion of the distribution that represents a taxable dividend;

(B) Amounts deemed paid to a foreign person as described in §1.1441–2(d) (dealing with exceptions to withholding where no money or property is paid), except where the amount is exempt from withholding due to lack of knowledge;

(C) Amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in the United States, irrespective of the fact that no withholding certificate is required to be furnished by the payee or beneficial owner. In the case of amounts paid on a notional principal contract described in §1.1441–4(a)(3) that are presumed to be effectively connected with the conduct of a trade or business in the United States, the amount required to be reported is limited to the net income from the notional principal contract as described in §1.446–3(d). Effectively connected nonperiodic payments are reportable for the year in which an actual payment is made;

(D) Interest (including original issue discount) that is not exempt from reporting as provided under §1.6049–8, dealing with certain interest on deposits with banks paid to Canadian residents;

(E) Amounts representing interest paid on an obligation that is sold between interest payment dates;

(F) Amounts paid to foreign governments, international organizations, or the Bank for International Settlements, whether or not documentation must be provided;

(G) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations described in §1.871–14(e)(2) to the extent the documentation requirements described in §1.871–14(e)(3) and (4) are satisfied (taking into account the provisions of §1.871–14(e)(4)(ii), if applicable).

(ii) *Exceptions to reporting*. The amounts listed in paragraphs (c)(2)(ii)(A) through (G) of this section are not required to be reported on a Form 1042–S—

(A) Any item paid by a partnership, trust or estate to the extent the item is required to be reported by the partnership under section 6031 or by the trust or estate under sections 6012(a) and 6034A, and the regulations under those sections;

(B) Any item required to be reported on a Form W–2, including an item required to be shown on Form W–2 solely by reason of §1.6041–2 (relating to return of information as to payments to employees) or §1.6052–1 (relating to information regarding payment of wages in the form of group-term life insurance);

(C) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050P and the regulations under these sections;

(D) Amounts paid on a notional principal contract described in §1.1441–4(a)(3)(i) that are not effectively connected with the conduct of a trade or business in the United States (or treated as not effectively connected pursuant to §1.1441–4(a)(3)(ii));

(E) Amounts required to be reported on Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) or Form 8804 (Annual Return for Partnership Withholding Tax (Section 1446)). A withholding agent that must report a distribution partly on a Form 8288 or 8804 and partly on a Form 1042–S may elect to report the entire amount on a Form 8288 or 8804;

(F) Original issue discount for which no withholding is required under §1.1441–2(b)(3); and

(G) Amounts described in §1.1441–1(b)(4)(xviii) (dealing with certain amounts paid by the U.S. government).

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the beneficial owner (e.g., a beneficial owner withholding certificate or documentary evidence), as corrected and supplemented based on the withholding agent's actual knowledge. The Form 1042–S must include the following information, if applicable—

(i) The name, address, and taxpayer identifying number of the withholding agent;

(ii) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars;

(iii) The rate of withholding applied;

(iv) The name and permanent residence address of the beneficial owner (or of the payee if the beneficial owner is unknown, or of the person receiving the amount if the payee is also unknown);

(v) The taxpayer identifying number of the beneficial owner if required under §1.1441–1(e)(4)(vii) to be stated on a beneficial owner withholding certificate (or if actually known to the withholding agent making the return). In the case of a financial institution, actual knowledge exists with respect to accounts maintained for customers only if such taxpayer identifying number was stated on a Form W–8 furnished for another payment made through the same account or through another account, the information for which can be retrieved through a centralized account information system (as described in §1.1441–1(e)(4)(ix)) containing both accounts; and

(vi) Such information as the form or the instructions may require in addition to, or in lieu of, information required under this paragraph (c)(3).

(4) *Multiple withholding agents*—(i) *In general.* Except as otherwise provided in this paragraph (c)(4), no information return is required to be made under paragraph (c)(1)(i) of this section if a return is filed by another withholding agent reporting the same amount pursuant to the provisions of this paragraph (c).

(ii) *Payments to a qualified intermediary or a withholding foreign partnership.* A withholding agent making a payment to a qualified intermediary (described in §1.1441–1(e)(5)(ii)) or to a withholding foreign partnership (described in §1.1441–5(c)(2)(i)) must report the payment on a single Form 1042–S or as otherwise directed by the form or the accompanying instructions to the form and must provide a copy of the Form 1042–S to the intermediary or partnership (but is not required to provide the Form 1042–S to the beneficial owners or partners). The Form 1042–S must report the different categories of payments based on different types of income and applicable withholding rates.

(iii) *Payments to an authorized foreign agent*—(A) *Filing obligation of foreign authorized agent.* An authorized foreign agent (as described in §1.1441–7(c)(2)) is subject to the filing requirements described in paragraph (c)(1)(i) of this section because it is a withholding agent. Therefore, to the extent the U.S. withholding agent for which it is acting is not reporting the information required under this paragraph (c), it must report the information required to be reported under paragraph (c)(3) or (4)(vi) of this section.

(B) *Filing obligations of the U.S. withholding agent.* A U.S. withholding agent

making a payment to an authorized foreign agent is exempted from the requirement under paragraph (c)(4)(iv) of this section to make a return on Form 1042–S for each beneficial owner and may, instead, make a return on a single Form 1042–S to report the payment made to the authorized foreign agent. The exemption in this paragraph (c)(4)(iii)(B) shall apply only to the extent the authorized foreign agent complies with the filing requirements under paragraph (c)(4)(iii)(A) of this section.

(iv) *Payments to other intermediaries or foreign partnerships.* Payment of an amount to a foreign intermediary described in §1.1441–1(e)(3)(i) that is not a qualified intermediary or to a foreign partnership that is not a withholding foreign partnership described in §1.1441–5(c)(2)(i) may not be shown on a single Form 1042–S but must be reported on separate Forms 1042–S for each beneficial owner or payee whose name appears on a withholding certificate attached to the intermediary's or partnership withholding certificate that is from a qualified intermediary or a withholding foreign partnership. Payments to an intermediary for the account of undocumented owners or to a foreign partnership for the account of undocumented partners should be reported on a single Form 1042–S made out to the intermediary and bearing the mention "unknown owners".

(v) *Payments to a U.S. branch of certain foreign entities.* Payment of an amount to the U.S. branch of a foreign entity described in §1.1441–1(b)(2)(iv) shall be reported—

(A) On a single Form 1042-S as effectively connected income if the withholding agent cannot reliably associate documentation with the payment to the U.S. branch;

(B) On a single Form 1042-S as an amount paid to an intermediary if the withholding agent can reliably associate the payment with a U.S. branch withholding certificate described in §1.1441–1(e)(3)(v) furnished as evidence of an agreement between the branch and the withholding agent to treat the branch as a U.S. person; or

(C) On separate Forms 1042-S for each beneficial owner or payee whose name appears on a withholding certificate or other appropriate documentation attached to the U.S. branch withholding certificate.

(vi) *Required information.* An information return on a Form 1042–S by a withholding agent reporting payments to an intermediary, to a foreign partnership, or to a U.S. branch must contain the information contained in this paragraph (c)(4)(vi). The information on the Form 1042–S must be based upon the withholding certificates furnished by the payee, as corrected and supplemented by the withholding agent based on its actual knowledge or reason to know other facts:

(A) The name, address, and taxpayer identifying number of the withholding agent.

(B) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars.

(C) The rate of withholding applied.

(D) The basis for not withholding or withholding at a reduced rate.

(E) The name, address, and taxpayer identifying number of the payee.

(F) In the case of payments described in paragraph (c)(4)(iv) of this section, the information described in paragraphs (c)(3)(iv) and (v) of this section regarding the person for whom a Form 1042–S is required to be prepared under paragraph (c)(4)(iv).

(G) Such information as the form or instructions may require in addition to, or in lieu of, the information required under this paragraph (c)(4)(vi).

(5) *Payments to single-member entity.* A withholding agent that, upon reliance on a valid withholding certificate, treats a payment as made to a wholly-owned entity that is disregarded to federal tax purposes under §301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall make an information return on Form 1042–S in the name of the foreign single owner, using the owner's taxpayer identifying number if such a number is required to be stated on the form.

(6) *Special rules in the case of claims of treaty benefits by hybrid entities or their interest holders.* A withholding agent must make an information return on a Form 1042–S for each beneficial owner (within the meaning of the applicable tax treaty) upon whose withholding certificate or other appropriate documentation the withholding agent relies to reduce the rate of withholding under a tax treaty. Therefore, in the case of concurrent and consistent claims of reduced rates under several tax treaties by the entity and by one or more interest holders, the withholding agent must make an information return for the entity and for each of the interest holders claiming to derive an allocable share of amounts paid to the entity as a resident of an applicable treaty country.

(7) *Effect of grace period on filing requirements.* A withholding agent who relies on the provisions of §1.1441–1(b)(3)(iv) to treat the payee as a foreign person during a 90-day grace period while awaiting the documentation must make an information return on a Form 1042–S to report all payments to such person during the grace period even if such person is (or is presumed to be) a U.S. person based upon documentation furnished to the withholding agent when the grace period expired or subsequently, or based upon applicable presumptions in §1.1441–1(b)(3).

(8) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See §301.6011–2 of this chapter for requirements applicable to a withholding agent that files Forms 1042–S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

(d) *Report of taxpayer identifying numbers.* When so required under procedures that the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter), a withholding agent must attach to the Form 1042 a list of all the taxpayer identifying numbers (and corresponding names) that have been furnished to the withholding agent and upon which the withholding agent has relied to grant a reduced rate of withholding and that are not otherwise required to be reported on a Form 1042–S under the provisions of this section.

(e) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. A

withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 3 of the Code and the regulations under that chapter is treated for purposes of section 1461 and this paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. In addition, a withholding agent is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the grace period provisions set forth in §1.1441–1(b)(3)(iv). This paragraph (e) does not apply to relieve a withholding agent from tax liability under chapter 3 of the Code or the regulations under that chapter.

(f) *Amounts paid not constituting gross income.* Any amount withheld in accordance with §1.1441–3 shall be reported and paid in accordance with this section, even though the amount paid to the beneficial owner may not constitute gross income in whole or in part. For this purpose, a reference in this section and §1.1461–2 to an amount shall, where appropriate, be deemed to refer to the amount subject to withholding under §1.1441–3.

(g) *Extensions of time to file Forms 1042 and 1042–S.* The IRS may grant an extension of time in which to file a Form 1042 or a Form 1042–S. Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns (or such other form as the IRS may prescribe), must be used to request an extension of time for a Form 1042. Form 8809, Request for Extension of Time to File Information Returns (or such other form as the IRS may prescribe) must be used to request an extension of time for a Form 1042–S. The request must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require. It must be mailed or delivered not later than March 15 of the year following the end of the calendar year for which the return will be filed.

(h) *Penalties.* For penalties and additions to the tax for failure to file returns or furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections.

(i) *Effective date.* This section shall apply to returns required for payments made after December 31, 1998.

§1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax—*(1) *In general.* A withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code (Code) and made a deposit of the tax as provided in §1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(2) or (3) of this section. After such time, an adjustment to the amount overwithheld can only be claimed by the beneficial owner with the Internal Revenue Service (IRS) pursuant to the procedures described in chapter 65 of the Code. For purposes of this section, the term overwithholding means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income pursuant to chapter 3 of the Code or the regulations thereunder in excess of the actual tax liability due, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(2) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under §1.6302–2(a)-(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The withholding agent states, on a timely filed (not including extensions) Form 1042–S for the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayment; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with §1.6414–1.

(ii) *Record maintenance.* If the beneficial owner is repaid an amount of withholding tax under the provisions of this paragraph (a)(2), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment and the withholding agent must provide a copy of such receipt to the beneficial owner. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(3) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code or the regulations thereunder to be withheld from income paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code and the regulations thereunder.

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 1999, a domestic corporation C pays a dividend of $100 to N, at which time C withholds $30 and remits the balance of $70 to N. On February 10, 2000, prior to the time that C files its Form 1042, N furnishes a valid Form W–8 described in §1.1441–1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15 percent under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only $15 and not $30 and requests reimbursement of $15. Although C has already deposited the $30 that was withheld, as required by §1.6302–2(a)(1)(iv), C repays N in the amount of $15.

(ii) During 1999, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2000, shows total tax withheld of $30, an adjusted total tax withheld of $15, and $30 previously paid for such year. Pursuant to §1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 1999. Accordingly, it is permitted to reduce by $15 any deposit required by §1.6302–2 to be made of tax withheld during the calendar year 2000. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to N in 1999 is required to show tax withheld of $30 and tax released of $15.

Example 2. The facts are the same as in *Example 1*. In addition, during 2000, C makes payments to N upon which it is required to withhold $200 under chapter 3 of the Code, all of which is withheld in June 2000. Pursuant to §1.6302–2(a)(1)(iii), C deposits the amount of $185 on July 15, 2000 ($200 less the $15 for which credit is claimed on the Form 1042 for 1999). On March 15, 2001, C Corporation files its return on Form 1042 for calendar year 2000, which shows total tax withheld of $200, $185 previously deposited by C, and $15 allowable credit.

Example 3. The facts are the same as in *Example 1.* Under §1.6032–2(a)(1)(ii)), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of $100 between February 8 and February 15, 2000, and deposits $75 [($100 x 90 percent) less $15] of the withheld tax within 3 banking days after February 15, 2000, and by depositing $10 [($100 - $15) less $75] within 3 banking days after March 15, 2000.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments made to a beneficial owner the tax that should have been withheld from previous payments to such beneficial owner. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See §1.6302–2 for making deposits of tax or §1.1461–1(a) for making payment of the balance due for a calendar year.

(c) *Definition.* For purposes of this section, the term payment period means the period for which the withholding agent is required by §1.6302–2(a)(1) to make a deposit of tax withheld under chapter 3 of the Code.

(d) *Effective date.* This section applies to payments made after December 31, 1998.

§§1.1461–3 and 1.1461–4 [Removed]

Par. 20. Sections 1.1461–3 and 1.1461–4 are removed.

Par. 21. Sections 1.1462–1 and 1.1463–1 are revised to read as follows:

§1.1462–1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in §1.1441–3(f)(1)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code (Code) on payments to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. Further, if a partnership withholds an amount under chapter 3 of the Code with respect to the distributive share of a partner that is a partnership or with respect to the distributive share of partners in an upper tier partnership, such amount is deemed to have been withheld by the upper tier partnership.

(c) *Effective date.* This section applies to payments made after December 31, 1998.

§1.1463–1 Tax paid by recipient of income.

(a) *Tax paid.* If the tax required to be withheld under chapter 3 of the Internal Revenue Code is paid by the beneficial owner of the income or by the withholding agent, it shall not be re-collected from the other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable. See §1.1441–7(b)(7) for additional applicable rules.

(b) *Effective date.* This section applies to failures to withhold occurring after December 31, 1989.

Par. 23. Section 1.6041–1 is amended by:

1. Revising paragraph (a)(1).

2. Adding a sentence at the end of paragraph (a)(2) .

3. Revising paragraphs (d)(1) introductory text and (d)(3).

4. Adding a heading for paragraphs (d)(2) and (d)(4).

5. Adding paragraph (d)(5).

The additions and revisions read as follows:

§1.6041–1 Return of information as to payments of $600 or more

(a) *General rule*—(1) *Information returns required*—(i) *Payments required to be reported.* Except as otherwise provided in §§1.6041–3 and 1.6041–4, every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i)(A) or (B) of this section. For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.

(A) Salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating $600 or more.

(B) Interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $600 or more.

(ii) *Information returns required under other provisions of the Internal Revenue Code.* The payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a) (relating to dividends), section 6043(a)(2) (relating to distributions in liquidation),

section 6044(a) (relating to patronage dividends), section 6045 (relating to brokers' transactions with customers), sections 6049(a)(1) and (2) (relating to interest), section 6050N(a) (relating to royalties), or section 6050P(a) or (b) (relating to cancellation of indebtedness). In addition, the payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include amounts excepted from the definition of dividends under section 6042(b)(2) and §1.6042–3(b)(1), amounts described in section 6044(b), amounts excepted from reporting under §1.6045–1(g), amounts excepted from the definition of interest under section 6049(b)(2)(C) or (D), §1.6049–4(c), or 1.6049–5(b)(6) through (15). Notwithstanding the preceding sentence, interest with respect to a notional principal contract excluded from the definition of interest under §1.6049–5(b)(15) is reportable under this section. The term interest as used in this paragraph (a)(1)(ii) otherwise includes all interest, other than interest coming within the definition of interest provided in §1.6049–5(a). For example, a closely held corporation borrows money from one of its officers on a promissory note not in registered form bearing annual stated interest of $300. The corporation also pays royalties to the officer amounting to $400 a year. An information return is required under this paragraph (a)(1) to report the payments to the officer because the interest does not come within the definition of interest in §1.6049–5(a) and the aggregate of interest and royalties exceeds $600.

(2) * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and §301.6011–2 of this chapter (Procedure and Administration Regulations).

* * * * *

(d) * * * (1) *In general.* Amounts paid in respect of life insurance, endowment, or annuity contracts are required to be reported in returns of information under this section–

* * * * *

(2) *Professional fees.* * * *

(3) *Prizes and awards.* Amounts paid as prizes and awards that are required to be included in gross income under section 74 and §1.74–1 when paid in the course of a trade or business are required to be reported in returns of information under this section.

(4) *Disability payments.* * * *

(5) *Notional principal contracts.* Amounts paid after December 31, 1998, with respect to notional principal contracts referred to in §§ 1.863–7 or 1.988–2(e) to persons who are not described in §1.6049–4(c)(1)(ii) are required to be reported in returns of information under this section. However, a payment made outside the United States (as defined in §1.6049–5(e)) by a non-U.S. payor or a non-U.S. middleman, or by a U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business) or is a foreign branch of a U.S. bank is not reportable under this section if, in the case of a person that is a U.S. payor, a U.S. middleman, or a foreign branch of a U.S. institution, the payor has no actual knowledge that the payee is a U.S. person. The amount required to be reported under this paragraph (d)(5) is limited to the net income from the notional principal contract as described in §1.446–3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of §1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see §1.6049–5(b)(15)). See §1.6041–4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, §1.1461–1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of §1.6049–5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See §1.6049–4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in §1.6049–4(f)(4). See §1.6049–5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

* * * * *

Par. 24. Section 1.6041–2 is amended by revising paragraph (c) to read as follows:

§1.6041–2 Return of information as to payments to employees.

* * * * *

(c) *Payments to foreign persons.* See §1.6041–4 for reporting exemptions regarding payments to foreign persons. See §1.6049–5(d) for determining whether a payment is made to a foreign person.

Par. 25. Section 1.6041–3 is amended by:

1. Revising the introductory text of the section.
2. Revising paragraphs (a) and (b).
3. Removing the semicolon at the end of paragraphs (d) through (f), and (h) through (j), and adding a period in its place; and removing the language "; and" at the end of paragraph (o), and adding a period in its place.
4. Removing paragraphs (c) and (l).
5. Redesignating paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (m), (n), (o), and (p) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively.
6. Revising newly designated paragraphs (f), and (j).
7. Adding new paragraphs (o) and (p), and paragraph (q).

The addition and revisions read as follows:

§1.6041–3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§1.6041–1 and 1.6041–2 for payments described in paragraphs (a) through (q) of this section. See §1.6041–4 for reporting exemptions regarding payments to foreign persons. See §1.6041–4 for reporting exemptions regarding foreign persons.

(a) Payments of income required to be reported on Forms 1120–S, 941, W–2, and W–3, (however, see §1.6041–2(a) with respect to Forms W–2 and W–3).

(b) Payments by a broker to his customer (but for reporting requirements as to certain of such payments, see sections 6042, 6045, and 6049 and the regulations thereunder in this part).

* * * * *

(f) Compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see §1.6031–1).

* * * * *

(j) Payments of interest on corporate bonds (but for reporting requirements as to payments of interest on certain corporate bonds, see §1.6049–5).

* * * * *

(o) Payments to individuals as scholarships or fellowship grants within the meaning of section 117(b)(1), whether or not "qualified scholarships" as described in section 117(b). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services within the meaning of section 117(c). Instead, these amounts are required to be reported as wages on Form W–2 . See §1.1461–1(c) for applicable reporting requirements for amounts paid to foreign persons.

(p) Per diem of certain alien trainees described under section 1441(c)(6).

(q) Payments made to the following persons:

(1) A corporation described in §1.6049–4(c)(1)(ii)(A), except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. However, no reporting is required where payment is made to a hospital or extended care facility described in section 501(c)(3) which is exempt from taxation under section 501(a) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United States, or a political subdivision, agency or instrumentality of any of the foregoing. For reporting requirements as to payments by cooperatives, and to certain other payments, see sections 6042, 6044, and 6049 and the regulations thereunder in this part.

(2) An organization exempt from taxation under section 501(a), as described in §1.6049–4(c)(1)(ii)(B)(*1*), or an individual retirement plan, as described in §1.6049–4(c)(1)(ii)(C).

(3) The United States, as described in §1.6049–4(c)(1)(ii)(D).

(4) A State, the District of Columbia, a possession of the United States, or any political subdivision of any of the foregoing, as described in §1.6049–4(c)(1)(ii)(E).

(5) A foreign government or political subdivision of a foreign government, as described in §1.6049–4(c)(1)(ii)(F).

(6) An international organization, as described in §1.6049–4(c)(1)(ii)(G).

(7) A foreign central bank of issue, as described in §1.6049–4(c)(1)(ii)(H) and the Bank for International Settlements.

(8) Any wholly owned agency or instrumentality of any person described in paragraph (q)(2), (3), (4), (5), (6), or (7) of this section.

Par. 26. Section 1.6041-4 is revised to read as follows:

§1.6041–4 Foreign-related items and other exceptions

(a) *Exempted foreign-related items*—(1) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049-5(d)(2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (a)(1), the provisions in §1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See §1.1441–1(b)-(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) made by a non-U.S. payor or non-U.S. middleman outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(3) Returns of information are not required for amounts paid by a foreign intermediary described in §1.1441–1(e)-(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in §1.1441–1(e)-(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under §1.6041–1 and were not so reported.

(4) Returns of information are not required for amounts paid with respect to notional principal contracts referred to in §1.863–7 or 1.988–2(e) which the payor may treat as effectively connected income of a foreign payee under the provisions of §1.1441–4(a)(3) or if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swap and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a foreign person. See, however, §1.1461–1(c)(2)(i) for applicable reporting requirements.

(5) Returns of information are not required for the period that the amounts paid represent assets blocked as described in §1.1441–2(e)(3). The exemption in this paragraph (a)(5) shall terminate when payment is deemed to occur in accordance with the provisions of §1.1441–2-(e)(3)

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor

or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(c) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see §1.6049–4(d)(3)(i).

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 1998.

Par. 27. Section 1.6041–7 is amended by revising the section heading and adding a sentence to the end of paragraph (a) to read as follows:

§1.6041–7 Magnetic media requirement.

(a) * * * High-volume filers of information returns must file their returns on magnetic media. See section 6011(e) and §301.6011–2 of this chapter (Procedure and Administration Regulations) for the requirements for filing on magnetic media.

* * * * *

Par. 28. Section 1.6041–8 is added to read as follows:

§1.6041-8 Cross-reference to penalties.

For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041(a) or (b), see §301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041(d), see §301.6722–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 29. Section 1.6041A–1 is added to read as follows:

§1.6041A–1 Returns regarding payments of remuneration for services and certain direct sales.

(a) through (c) [Reserved].

(d) *Exceptions to return requirement.* [Reserved].

(1) and (2) [Reserved].

(3) *Foreign transactions*—(i) *In general.* No return shall be required under section 6041A with respect to payments described in this paragraph (d)(3).

(A) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (d)(3)(i)(A), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent.*

(B) Returns of information are not required for payments of remuneration for services and certain direct sales from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) if payments made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(ii) *Payor.* The term *payor* has the same meaning as described in §1.6049–4(a)(2).

(iii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (d)(3)(i) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (d)(3)(i)(A) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(iv) *Conversion into United States dollars of amount paid in foreign currency.* For rules concerning foreign currency conversion, see §1.6049–4(d)(3)(i).

(v) *Effective date.* The provisions of this paragraph (d)(3) apply to payments made after December 31, 1998.

(e) [Reserved].

(f) *Statements to be furnished to persons with respect to whom information is required to be furnished*—(1) [Reserved].

(2) *Time for furnishing statement.* [Reserved].

(3) *Contents of statement.* [Reserved].

(g) [Reserved].

(h) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041A(a) or (b), see §301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041A(e), see §301.6722–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 30. Section 1.6042–2 is amended by:

1. Revising the section heading, adding introductory text to paragraph (a)(1), and revising paragraphs (a)(1)(i) and (a)(1)(ii).

2. Removing the language "1099M" in the first sentence of paragraph (a)(1)(iii) and adding "1099A" in its place.

3. Removing the language "1087" each time it appears in the second sentence of paragraph (a)(4) and adding "1099" in each place, and removing the last sentence.

4. Revising paragraph (d).

5. Revising the heading of paragraph (e) and adding a sentence to the end of paragraph (e).

The revisions and addition read as follows:

§1.6042–2 Returns of information as to dividends paid.

(a) *Requirement of reporting*—(1) An

information return on Form 1099 shall be made under section 6042(a) by—

(i) Every person who makes a payment of dividends (as defined in §1.6042–3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in §1.6049–4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to §31.6413(a)–3 of this chapter.

(ii) Every person, except to the extent that he acts as a nominee described in paragraph (a)(1)(iii) of this section, who receives payments of dividends as a nominee on behalf of another person shall make a return of information under this section for the calendar year of the payment . The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identification number of the person on whose behalf the dividends are received, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of the dividends received on behalf of the other person during the calendar year aggregates less than $10. However, a return of information is not required under this section if—

(A) The record owner is, pursuant to section 6012(a)(3) or (4) and §1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406;

(B) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is, pursuant to section 6012(a)(3) or (4) and §1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and the actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406; or

(C) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return but only if the name, address, and identifying number of the record owner are included on or with the annual return filed for the tax exempt organization).

* * * * *

(d) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6042(a), see §301.6721–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and §301.6011–2 of this chapter (Procedure and Administration Regulations).

Par. 31. Section 1.6042–3 is amended by:

1. Revising paragraphs (a) introductory text and (a)(2).

2. Removing the concluding text immediately following paragraph (a)(2).

3. Adding paragraph (a)(3).

4. Revising paragraph (b).

5. Removing the authority citation at the end of the section.

The addition and revision read as follows:

§1.6042–3 Dividends subject to reporting.

(a) *In general.* Except as provided in paragraph (b) of this section, the term dividend for purposes of this section and §§1.6042–2 and 1.6042–4 means the amounts described in the following paragraphs (a)(1) through (3) of this section—

* * * * *

(2) Any payment made by a stockbroker to any person as a substitute for a dividend. Such a payment includes any payment made in lieu of a dividend to a person whose stock has been borrowed. See §1.6045–2(h) for coordination of the reporting requirements under sections 6042 and 6045(d) with respect to such payments; and

(3) A distribution from a regulated investment company (irrespective of the fact that any part of the distribution may not represent ordinary income (i.e., may, for example, represent a capital gain dividend as defined in section 852(b)(3)(C)).

(b) *Exceptions*—(1) *In general.* For purposes of §§1.6042–2 and 1.6042–4, the amounts described in paragraphs (b)(1)(i) through (vii) of this section are not dividends.

(i) Amounts paid by an insurance company to a policyholder, other than a dividend upon its capital stock.

(ii) Payments (however denominated) by a mutual savings bank, savings and loan association, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares. See, however, section 6049 and the regulations under that section for provisions requiring reporting of these payments.

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (b)(1)(iii), the provisions in §1.6049–5(c)

(regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code).

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman. For a definition of non-U.S. payor and non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(v) Distributions or payments for the period that the amounts represent assets blocked as described in §1.1441–2(e)(3). The exemption in this paragraph (b)(1)(v) shall terminate when payment is deemed to occur in accordance with the rules of §1.1441–2(e)(3).

(vi) Payments made by a foreign intermediary described in §1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under §1.6042–2 and were not so reported.

(vii) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in §1.6049–4(c)(1)(ii), unless a tax is withheld under section 3406 and is not refunded by the payor in accordance with §31.6413(a)–3 of this chapter (Employment Tax Regulations).

(2) *Payor.* The term *payor* has the same meaning as described in §1.6049–4(a)(2).

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (b)(3), the grace period described in §1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(4) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see §1.6049–4(d)(3)(i).

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 1998.

(ii) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which it is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the preceding sentence). The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

* * * * *

Par. 32. Section 1.6042–4 is amended by revising paragraphs (d)(2)(i)(F) and (f) to read as follows:

§1.6042–4 Statement to recipients of dividend payments.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(F) Any document concerning the solicitation of the Form W–9, as described in §31.3406(h)–3(a) of this chapter, or of the Form W–8 as described in §1.1441–1(e)(1).

* * * * *

(f) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6042(c), see §301.6722–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

§1.6043–2 [Amended]

Par. 33. In §1.6043–2, paragraph (a), the first, second, and last sentences are amended by removing the reference to "1099L" and adding "966" in each place.

Par. 34. Section 1.6044–2 is amended by:

1. Revising the section heading
2. Adding two sentences at the end of paragraph (a)(1).
3. Revising paragraph (e).
4. Revising the heading for paragraph (f) and adding a sentence at the beginning of paragraph (f).

The revisions and additions read as follows:

§1.6044–2 Returns of information as to payments of patronage dividends.

(a) *Requirement of reporting*—(1) *In general.*

* * * The organization is required to make an information return regardless of

the amount of the payment if the tax imposed by section 3406 is required to be withheld. Thus, in the case of any amount subject to backup withholding under section 3406 and not refunded by the payor before the due date of the information return in accordance with the regulations under section 3406, an information return shall be made even if the payment is not generally reportable because it is made to an exempt recipient described in §1.6049–4(c)(1)(ii) or the amount paid during the calendar year to the recipient aggregates less than $10.

* * * * *

(e) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6044(a), see §301.6721–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(f) *Magnetic media requirement.* For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and §301.6011–2 of this chapter (Procedure and Administration Regulations). * * *

Par. 35. In §1.6044–3, paragraph (c) is revised to read as follows:

§1.6044-3 Amounts subject to reporting.

* * * * *

(c) *Exceptions.* An amount described in paragraph (a) of this section does not include—

(1) Any amount described in §1.6042–3(b); or

(2) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in §1.6049–4(c)(1)(ii).

* * * * *

Par. 36. In §1.6044-5, paragraph (c) is revised to read as follows:

§1.6044-5 Statements to recipients of patronage dividends.

* * * * *

(c) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6044(e), see §301.6722–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

Par. 37. Section 1.6045–1 is amended by:

1. Revising the heading of paragraph (a), paragraph (a) introductory text, and paragraph (a)(1).

2. Removing paragraph (a)(12) and redesignating paragraph (a)(13) as paragraph (a)(12).

3. Adding new paragraph (a)(13).

4. Paragraph (b) is amended by redesignating *Example (1)* through *Example (8)* as *Example 1* through *Example 8*, respectively; removing newly designated *Example 1*(ii); and redesignating *Example 1*(iii) through (vi) as *Example 1*(ii) through (v), respectively.

5. Paragraph (c) is amended by:

a. Redesignating paragraphs (c)(5)(i)-(*a*) through (c)(5)(i)(*f*) as paragraphs (c)(5)(i)(A) through (c)(5)(i)(F), respectively.

b. Redesignating paragraph (c)(5)(ii) and *Example (1)* through *Example (4)* as paragraph (c)(5)(iii) and *Example 1* through *Example 4*, respectively.

c. Adding new paragraph (c)(5)(ii).

6. Paragraph (c)(6) is amended by:

a. Redesignating paragraphs (c)(6)-(i)(*a*) and (c)(6)(i)(*b*) as paragraphs (c)(6)(i)(A) and (c)(6)(i)(B), respectively.

b. Redesignating paragraphs (c)(6)-(ii)(*a*) and (c)(6)(ii)(*b*) as paragraphs (c)(6)(ii)(A) and (c)(6)(ii)(B), respectively.

7. Revising paragraphs (d)(4), (d)(6), (f)(2)(iii) last sentence of introductory text, and (g).

8. In paragraph (h)(2), redesignating *Example (1)* and *Example (2)* as paragraph (h)(2) *Example 1* and *Example 2*, respectively.

9. Revising paragraphs (j), (k), and (l).

10. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section, §1.6045–2, and §5f.6045–1 of this chapter:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in §1.6049–5(c)(5). In addition, a broker does not include an international organization described in §1.6049–4(c)-(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

* * * * *

(13) The term *person* includes any governmental unit and any agency or instrumentality thereof.

* * * * *

(c) * * *

(5) * * *

(ii) *Determination of profit or loss from foreign currency contracts.* A broker effecting a closing transaction in foreign currency contracts (as defined in section 1256(g)) shall report information with respect to such contracts in the manner prescribed in paragraph (c)(5)(i) of this section. If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the spot price for the contract currency at the time and place specified in the contract. If a foreign currency contract is closed by entry into an offsetting contract, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the price of the offsetting contract. The net unrealized profit or loss in a foreign currency contract for pur-

poses of paragraphs (c)(5)(i)(C) and (D) of this section is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.

* * * * *

(d) * * *

(4) *Sale date.* With respect to sales of property that are reportable under this section, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

* * * * *

(6) *Conversion into United States dollars of proceeds paid in foreign currency*—(i) *Conversion rules.* When a payment is made in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in §1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under §1.988–5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(6)(i) of this section, the amount subject to reporting shall be the integrated amount computed under §1.988–5(a), (b) or (c) if—

(*1*) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in §1.988–1(c)) and hedges all or a part of such sale as provided in §1.988–5(a), (b) or (c) with the same broker; and

(*2*) The taxpayer complies with the requirements of §1.988–5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective date.* The provisions of this paragraph (d)(6)(ii) apply to transactions entered into after December 31, 1998.

* * * * *

(f) * * *

(2) * * *

(iii) *Definition.* * * * A barter exchange may treat a member or client as a corporation (and therefore as a corporate member or client) if such member or client provides an exemption certificate as described in §31.3406(h)–3(a) of this chapter or provided that—

* * * * *

(g) *Exempt foreign persons*—(1) *Brokers.* No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph (g)(1). A broker may treat a customer as an exempt foreign person under the circumstances described in paragraphs (g)(1)(i) through (iii) of this section.

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can prior to the payment, associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii), or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2), (3), or (4) or (5). For purposes of this paragraph (g)(1)(i), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman) shall apply. The provisions of §1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of §1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee.* For purposes of this paragraph (g)(1)(i), the broker may rely on a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) only to the extent that the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains.

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on which is described in §1.6049–5(b)(6), (7), (10), or (11) or the dividends on which are described in §1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) With respect to a sale effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked as described in §1.1441–2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of §1.1441–2(e)(3).

(2) *Barter exchange.* No return of information is required by a barter exchange with respect to a client or a member that the barter exchange may treat as a foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) *Applicable rules*—(i) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g)(1)(i) or (2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in §1.6049–5-

(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is.* For purposes of this paragraph (g), the determination of who the customer is shall be made on the basis of the provisions in §1.6049–5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer.*

(iii) *Place of effecting sale*—(A) *Sale outside the United States.* For purposes of this paragraph (g), a sale is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(*1*) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(*2*) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States.* For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(*1*) The customer has opened an account with a United States office of that broker;

(*2*) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(*3*) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in §1.6049-5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(*4*) The confirmation of the sale is mailed to a customer at an address in the United States; or

(*5*) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in §1.1441–1(e)(3)(i), is an exempt foreign person, except when the broker has actual knowledge or reason to know (within the meaning of §1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person. For an example of this exception, see §1.6049–5(d)(3)(iv) *Example 7*. In addition, if a foreign intermediary (acting as an intermediary) or a U.S. branch receives a payment from a payor or middleman, which payment the payor or middleman can associate with a valid withholding certificate described in §1.1441–1(e)(3)(ii), (iii), or (v), or in §1.1441–5(c)(3)(iii) furnished by such intermediary or U.S. branch, then the intermediary or U.S. branch is not required to report such payment when it, in turn, pays the amount to the person whose name is on the certificate furnished by the intermediary or U.S. branch to the payor or middleman, unless, and to the extent, the intermediary or U.S. branch knows that the payment is required to be reported under this section and was not so reported. For purposes of the preceding sentence, a foreign intermediary is one that is described in §1.1441–1(e)(3)(i) and a U.S. branch is one that is described in §1.1441–1(b)(2)(iv).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in §1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in §1.6049–5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under §5f.6045–1(c)(3)(ii) of this chapter, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FPmay not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in *Example 2* except that FPis also the agent of A. The result is the same as in *Example 2*. Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of §1.6049–5(c)(5)).

Example 4. The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under §5f.6045–1(c)(3)(ii) of this chapter. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FPis not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in *Example 4* except that FPis also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under §5f.6045–1(c)(3)(ii) of this chapter. FPis not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DPis a U.S. payor under §1.6049–5(c)(5). DC is not required to report under the multiple broker exception under §5f.6045–1(c)(3)(ii) of this chapter. DPis required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A owns U.S. corporate

bonds issued in registered form after July 18, 1984 and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of §1.1441–1(e)-(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y.

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under §5f.6045–1(c)-(3)(ii), because X is the person responsible for paying the proceeds from the sale to A. However, the portion of the payment that represents interest accrued on the obligation since the last payment date and that is received as part of the total sales proceeds from the transaction is reportable under §1.1461–1(b) and (c)(2)(i)(E), as an amount paid to a foreign person that is subject to withholding under chapter 3 of the Code within the meaning of §1.1441–2(a) (even though no withholding is required under chapter 3 of the Code based on §1.1441–3(b)(2)(i), unless §1.1441–3(b)(2)(ii) applies). The multiple broker exception under the regulations under section 6045 does not affect a withholding agent's obligation to report an amount otherwise required to be reported under §1.1461–1(b) and (c). Under §1.1461–1(c)(3), Y must file Form 1042-S in the name of X who, under §1.1441–1(b)(3)(v)(A), is presumed to be acting for its own account because Y cannot associate the payment of interest with a valid intermediary Form W–8 described in §1.1441–1(e)(3)(ii) or (iii) from X.

(ii) *X's obligations to withhold and report.* X may also have reporting and withholding obligations when it credits A's account with the sales proceeds. Although the sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section, X is a broker with respect to the sale because, as a wholly-owned subsidiary of a U.S. company, it meets the definition of a broker under paragraph (a)(1) of this section. Under the presumptions described in §1.6049–5(d)-(2), X, as a U.S. payor, must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore, the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment, based on the exemption under §31.3406(g)–1(e), unless X has actual knowledge that A is a U.S. person who is not an exempt recipient. X is also a withholding agent with respect to the portion of the sales proceeds that represents accrued interest on the bonds. Based on the presumptions under §§1.6049–5(d)(2) and 1.1441–1(b)(3)(iii)(D), X must presume that A is a foreign person with respect to the interest portion of the payment, because the interest amount is an amount subject to withholding, within the meaning of §1.1441–2(a) (even though a withholding agent is not required to withhold on such amounts). Thus, X is required to file a Form 1042 and 1042–S with respect to the interest portion of the payment. Y's filing of a Form 1042–S with respect to that portion of the payment to X does not meet the conditions for the multiple withholding agent exception under §1.1461–1(c)(4)(i) because Y did not report the payment to X as a payment to an intermediary.

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 1998.

(ii) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the preceding sentence). The rule in this paragraph (g)(b)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

* * * * *

(j) *Time and place for filing; cross-reference to penalty.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before the end of the second calendar month following the close of the calendar year of such reporting period with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. See paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), see §301.6721–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(k) *Requirement and time for furnishing statement; cross reference to penalty*—(1) *General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5), (d), (f), or (p) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 with respect to such person filed with the Internal Revenue Service Center. A statement shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required by this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements required to be furnished under this paragraph (k) for a calendar year shall be furnished on or before January 31 of the following calendar year.

(3) *Cross-reference to penalty.* For provisions for failure to furnish timely a correct payee statement, see §301.6724-1 of this chapter (Procedure and Administration Regulations). See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) *Magnetic media requirement.* For information returns filed after December 31, 1996, see §301.6011–2 of this chapter (Procedure and Administration Regulations) for rules relating to filing information returns on magnetic media. A broker or barter exchange that fails to file a Form 1099 under this section on magnetic media, when required, may be subject to a penalty for each such failure. See paragraph (j) of this section.

* * * * *

§1.6045–1T [Removed]

Par. 38. Section 1.6045–1T is removed.

Par. 39. Section 1.6045–2 is amended as follows:

1. Paragraph (b)(2) is amended by:

a. Removing the period at the end of paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C), and adding semicolons in each place.

b. Removing the period and the end of paragraph (b)(2)(i)(D) and adding a semicolon in its place.

c. Removing the language ", or" in paragraph (b)(2)(i)(E) and adding a semicolon in its place.

d. Removing the period at the end of paragraph (b)(2)(i)(F) and adding ", or" in its place.

e. Adding paragraph (b)(2)(i)(G).

2. Revising paragraph (g)(2).

3. Adding paragraph (g)(4).

The revision and additions read as follows:

§1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(b) * * *

(2) * * * (i) * * *

(G) A foreign central bank of issue, as defined in §1.6049-4(c)(1)(ii)(H), or the Bank for International Settlements.

* * * * *

(g) * * *

(2) *Magnetic media requirement.* For the requirement to submit the information required by paragraph (a) of this section and by Form 1099 on magnetic media for information returns filed after December 31, 1996, see §301.6011–2 of this chapter (Procedure and Administration Regulations). A broker or barter exchange that fails to file on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

(4) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6045(d) and §1.6045–2(g)(1), including a failure to file on magnetic media, see §301.6721–1 of this chapter. For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6045(d) and §1.6045–2(a), see §301.6722–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

§1.6045–2T [Removed]

Par. 40. Section 1.6045–2T is removed.

Par. 41. Section 1.6049–4 is amended by:

1. Removing the reference "section 3451" and adding "section 3406" each place it appears in the following locations in §1.6049–4:

a. Paragraph (b)(2) introductory text, third sentence.

b. Paragraph (b)(2)(iv).

c. Paragraph (b)(4), last sentence.

d. Paragraph (c)(2)(i).

e. Paragraph (c)(2)(ii) concluding text.

f. Paragraph (e)(4), second and last sentences.

g. Paragraph (e)(5)(iv).

h. Paragraph (f)(4)(i), fourth sentence.

2. Revising paragraphs (a), (b)(1), (b)(3), and (c)(1).

3. Removing the reference "§1.6049-5(c)" in paragraphs (b)(5)(i) last sentence, and (d)(2) and adding "§1.6049–5(f)" in its place.

4. Revising paragraph (d)(3).

5. Revising the heading for paragraph (d)(7) and adding a sentence to the end of the paragraph.

6. Removing the reference "§1.6049–5-(b)(1)(ii)" in the first sentence of paragraph (d)(8) and adding "1.6049–5(b)(2)" in its place.

7. Removing the reference "paragraph (d)(10)(i)" in paragraph (d)(9)(ii) introductory text, and adding "paragraph (d)(9)(i)" in its place.

8. Removing the reference "paragraph (c)(1)(K)" in the first sentence of paragraph (f)(4)(i) and adding "paragraph (c)(1)(ii)(M)" in its place; and revising the last two sentences of paragraph (f)(4)(i).

9. Revising the last sentence of the Example in paragraph (f)(4)(ii).

10. Adding paragraph (g)(3).

The additions and revisions read as follows:

§1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(a) *Requirement of reporting*—(1) *In general.* Except as provided in paragraph (c) of this section, an information return shall be made by a payor, as defined in paragraph (a)(2) of this section, of amounts of interest and original issue discount paid after December 31, 1982. Such return shall contain the information described in paragraph (b) of this section.

(2) *Payor.* A payor is a person described in paragraph (a)(2)(i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year; however, persons not treated as payors for purposes of §31.3406(a)–2 of this chapter shall not be treated as payors for purposes of this paragraph (a)(2).

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), including middlemen treated as payors under §31.3406(a)–2 of this chapter, or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraphs (b)(3) and (5) of this section, in the case of interest other than original issue discount treated as interest under §1.6049–5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee

(i.e., exempt recipient) has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to §31.6413(a)–3 of this chapter (Employment Tax Regulations). For reporting interest paid to a Canadian nonresident alien individual, see §1.6049–8.

* * * * *

(3) *Returns made by middleman*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return for the calendar year. In the case of interest payments (other than original issue discount and other than interest described in §1.6049–8), the information return shall be made on Form 1099 and shall show the aggregate amount of the interest, the name, address, and taxpayer identification number of the person on whose behalf received, the amount of tax withheld under section 3406, if any, and such other information as required by the forms. In the case of original issue discount, the information return shall show the information required to be shown for the person on whose behalf received, as described in paragraph (b)(2) of this section. See §1.6049–5(f) to determine whether a middleman is required to make an information return with respect to original issue discount. A middleman shall make an information return regardless of whether the middleman receives a Form 1099. A middleman shall not be required to make an information return if the payment of interest aggregates less than $10 or if the payment is made to an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to §31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Forwarding of interest coupons and original issue discount obligations.* In the case of a middleman who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States, the middleman shall make an information return on Form 1099 for the calendar year showing, in the case of an interest coupon, the information required under paragraph (b)(3)(i) of this section and, in the case of a discount obligation, information required under paragraph (b)(2) of this section. For purposes of this paragraph (b)(3)(ii), a middleman is considered to forward an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States if the middleman forwards the coupon or obligations outside the United States on or after the date when the payee is entitled to be paid or at an earlier date that is within 90 days of such date or if the middleman has actual knowledge that the coupon or obligation is being forwarded outside the United States for presentation, collection, or payment outside the United States. However, the transfer, although subject to information reporting under this section, is not subject to backup withholding under section 3406.

(iii) *Example.* The following example illustrates the provisions of paragraph (b)(3)(ii) of this section:

Example. Individual F, who is entitled to payment on an interest coupon, instructs an office of Bank M in the United States to forward the coupon to Bank N for collection by Bank N outside the United States. Bank M in the United States forwards the interest coupon to Bank N outside the United States. Bank M is required to make an information return for the calendar year under paragraph (b)(3)(ii) of this section showing the aggregate amount of the interest coupon forwarded, the name, address of the permanent residence, and the taxpayer identification number, if any, of Individual F and such other information as the form requires.

* * * * *

(c) *Information returns not required*—(1) *Payment to exempt recipient*—(i) *In general.* No information return is required with respect to any payment made to an exempt recipient described in paragraph (c)(1)(ii) of this section, except to the extent otherwise provided in §1.6049–5(d)(3)(ii) and (iii). However, if the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), then the payor is required to make a return under this section, unless the payor refunds the amount withheld in accordance with §31.6413-(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Exempt recipient defined.* The term *exempt recipient* means any person described in paragraphs (c)(1)(ii)(A) through (Q) of this section. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (c)(1)(ii) require a payee to file a certificate. A payor may in any case require a payee not otherwise required to file a certificate under this paragraph (c)(1)(ii) to file a certificate in order to qualify as an exempt recipient. See §31.3406(h)–3(a)(1)(iii) and (c)(2) of this chapter for the certificate that a payee must provide when a payor requires it in order to treat the payee as an exempt recipient under this paragraph (c)(1)(ii). A payor may treat a payee as an exempt recipient based upon a properly completed form as described in §31.3406(h)–3(e)(2) of this chapter, its actual knowledge that the payee is a person described in this paragraph (c)(1)(ii), or the indicators described in this paragraph (c)(1)(ii).

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (c)(1), the term *corporation* includes a partnership all of whose members are corporations described in this paragraph (c)(1), but only if the partnership files with the payor a certificate meeting the certification requirements of paragraphs (c)(2)(ii)(A)(*1*) through (*5*) o this section. Absent actual knowledge otherwise, a payor may treat a payee as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (c)(1)(ii)(A)(*1*), (*2*), (*3*), or (*4*), of this section are met before a payment is made.

(*1*) The name of the payee contains an unambiguous expression of corporate status that is Incorporated, Inc., Corporation, Corp., P.C., (but not Company or Co.) or contains the term *insurance company*, *in - demnity company*, *reinsurance company*, or *assurance company*, or its name indicates that it is an entity listed as a per se corporation under §301.7701–2(b)(8)(i) of this chapter.

(*2*) The payor has on file a corporate

resolution or similar document clearly indicating corporate status. For this purpose, a similar document includes a copy of Form 8832, filed by the entity to elect classification as an association under §301.7701–3(b) of this chapter.

(*3*) The payor receives a Form W–9 which includes an EIN and a statement from the payee that it is a domestic corporation.

(*4*) The payor receives a withholding certificate described in §1.1441–1(e)-(2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

(B) *Tax exempt organization*—(1) *In general.* Any organization that is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A payor may treat an organization as an exempt recipient under this paragraph (c)(1)(ii)(B) without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is allowed, if the name of the organization contains an unambiguous indication that it is a tax-exempt organization, or if the organization is known to the payor to be a tax-exempt organization.

(*2*) *Examples.* The application of the provisions of this paragraph (c)(1)(ii)(B) may be illustrated by the following examples:

Example 1. The following persons maintain accounts at M Bank: N College, O University, and P Church. M may treat N, O, and Pas exempt recipients even though such persons have not filed an exemption certificate with M because the names of the organizations contain an unambiguous indication that they are tax exempt organizations.

Example 2. Q is listed in the current edition of Internal Revenue Service Publication 78 as an organization for which deductions are permitted for charitable contributions under section 170(c). Such listing has not been revoked by an announcement published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). A payor may treat Q as an exempt recipient even though Q has not filed an exemption certificate with the payor.

Example 3. Employer R maintains a section 403(b)(7) custodial account with Regulated Investment Company S on behalf of R's employees. S may treat the account as an exempt recipient even though R or its employees have not filed an exemption certificate with S.

(C) *Individual retirement plan.* An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A payor may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph (c)(1) without requiring a certificate.

(D) *United States.* The United States Government and any wholly-owned agency or instrumentality thereof are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1).

(E) *State.* A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1) or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing (for example, an account held in the name of "Town of S" or "County of T" may be treated as held by an exempt recipient under this paragraph (c)(1)(ii)(E)).

(F) *Foreign government.* A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A payor may treat a foreign government or a political subdivisions thereof as an exempt recipient under this paragraph (c)(1) without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the payor to be a foreign government or a political subdivision thereof (for example, an account held in the name of the "Government of V" may be treated as held by a foreign government).

(G) *International organization.* An international organization and any wholly owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). A payor may treat a payee as an international organization without requiring a certificate if the payee is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)).

(H) *Foreign central bank of issue.* A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See §1.895–1(b)(1). A payor may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient) without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue or if its name reasonably indicates that it is a foreign central bank of issue.

(I) *Securities or commodities dealer.* A dealer in securities, commodities, or notional principal contracts, that is registered as such under the laws of the United States or a State or under the laws of a foreign country is an exempt recipient. A payor may treat a dealer as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in this paragraph (c)(1) (for example, a registered broker-dealer or a person listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc.).

(J) *Real estate investment trust.* A real estate investment trust, as defined in section 856 and §1.856–1, is an exempt recipient. A payor may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940.* An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1), (or during such portion of the taxable year that it is in existence), is an exempt recip-

ient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence. A payor may treat such an entity as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund.* A common trust fund, as defined in section 584(a), is an exempt recipient. A payor may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the payor to be a common trust fund.

(M) *Financial institution.* A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization, whether organized in the United States or under the laws of a foreign country is an exempt recipient. A financial institution also includes a clearing organization defined in §1.163–5(c)(2)(i)(D)(*8*) and the Bank for International Settlements. A payor may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name (including a foreign name, such as "Banco" or "Banque") reasonably indicates the payee is a financial institution described in the preceding sentence. In the case of a foreign person, a payor may also treat a person on such list as the Internal Revenue Service may publish or approve (such as in the Thomson Bank Directory or a list approved by the Federal Reserve Board).

(N) *Trust.* A trust which is exempt from tax under section 664(c) (i.e., a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947(a)(1) (relating to certain charitable trusts) is an exempt recipient. A payor which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(O) *Nominees or custodians.* A nominee or custodian.

(P) *Brokers.* A broker as defined in section 6045(c) and §1.6045–1(a)(1).

(Q) *Swap dealers.* A dealer in notional principal contracts as defined in §1.446–3(c)(4)(iii).

(iii) *Exempt recipient no longer exempt.* Any person who ceases to be an exempt recipient shall, no later than 10 days after such cessation, notify the payor in writing when it ceases to be an exempt recipient unless it reasonably appears that the person formerly qualifying as an exempt recipient will not thereafter receive a reportable payment from the payor. If a payor treats a person as an exempt recipient by requiring the exempt recipient to file a certificate claiming exempt status, that person shall revoke the certificate as provided in the preceding sentence. If the exempt recipient terminates its relationship with the payor prior to the time that the notice of change in status is otherwise required, the exempt recipient is not required to notify the payor. If, however, the person who formerly qualified as an exempt recipient later reinstates the relationship with the payor, the person must, prior to receiving a reportable payment from such relationship, notify the payor that it no longer qualifies as an exempt recipient in case the payor relies upon the previous treatment.

* * * * *

(d) * * *

(3) *Conversion into United States dollars of amounts paid in foreign currency*—(i) *Conversion rules.* When a payment is made in foreign currency, the U.S. dollar amount of the payment shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in §1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or the Commissioner's delegate.

(ii) *Special rule for §1.988–5(a) transactions where the payor on both components of a qualified hedging transaction is the same person*—(A) *In general.* Interest or original issue discount on a qualified debt instrument that is part of a qualified hedging transaction under §1.988–5(a) shall be computed for section 6049 reporting purposes under the rules described in §1.988–5(a)(9)(ii) if—

(*1*) The payor on the qualified debt instrument and the counterparty to the §1.988–5(a) hedge are the same person; and

(*2*) The payee complies with the requirements of §1.988–5(a) and so notifies its payor prior to the date required for filing Form 1099 as required by this section.

(B) *Effective date.* The provisions of this paragraph (d)(3)(ii) apply to transactions entered into after December 31, 1998.

* * * * *

(7) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and §301.6011–2 of this chapter (Regulations on Procedure and Administration).

* * * * *

(f) * * *

(4) * * * (i) * * * A person shall be considered to be a middleman as to any portion of an interest payment made to such person which portion is actually owned by another person, whether or not the other person's name is also shown on the information return filed with respect to such interest payment, except that a husband or wife will not be considered as acting in the capacity of a middleman with respect to his or her spouse. A person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406).

(ii) * * *

Example. * * * Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under §1.6049-5(f).

(g) * * *

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6049(a) and §1.6049–4(a)(1), see §301.6721–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 42. Section 1.6049-5 is amended by:

1. Removing the reference "section 3451" in the third sentence of paragraph (a)(6) and adding "section 3406" in its place.

2. Removing the last sentence of paragraph (a)(6).

3. Revising paragraph (b).

4. Redesignating paragraph (c) as paragraph (f).

5. Adding new paragraphs (c), (d), (e) and (g).

The revisions and additions read as follows:

§1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) *Interest excluded from reporting requirement.* The term *interest* or *original issue discount* (OID) does not include—

(1) Interest on any obligation issued by a natural person as defined in §1.6049–4(f)(2), irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman.

(2) Interest on any obligation if such interest is exempt from taxation under section 103(a), relating to certain governmental obligations, or interest which is exempt from taxation under any other provision of law without regard to the identity of the holder. The holder of a tax exempt obligation that is not in registered form must provide written certification to the payor (other than the issuer of the obligation) that the obligation is exempt from taxation. A statement that interest coupons are tax exempt on the envelope or shell commonly used by financial institutions to process such coupons, signed by the payee, will be sufficient for this purpose if the envelope is properly completed (i.e., shows the name, address, and taxpayer identification number of the payee). A payor may rely on such written certification in treating such interest as tax exempt for purposes of section 6049. See §1.6049–4(d)(8) with respect to the requirement that the issuer of a taxable obligation shall make an information return if such issuer receives an envelope which improperly claims that the interest coupons contained therein are tax exempt.

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security. However, interest on amounts held in escrow with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(4) Interest that a governmental unit pays with respect to tax refunds.

(5) Interest on deposits for security, such as deposits posted with a public utility company. However, interest on deposits posted for security with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section). See paragraph (e) of this section for circumstances in which a payment is considered to be made outside the United States.

(7) Portfolio interest, as defined in §1.871–14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A) or 881(c)(2)(A) or with respect to a foreign-targeted registered obligation described in §1.871–14(e)(2) for which the documentation requirements described in §1.871–14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in §1.871–14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2)(B) or 881(c)(2)(B) that is not described in paragraph (b)(7) of this section.

(9) Any amount paid by an international organization described in §1.6049–4(c)(1)(ii)(G) (or its paying, transfer, or other agent that is not also a payee's agent) with respect to an obligation of which the international organization is the issuer.

(10)(i) Amounts paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee or other agent of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of §1.163–5(c)(2)(i)(D)(3)) and is issued in accordance with the procedures of §1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (ii)(I) and the regula-

tions under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10).

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B) and issued in accordance with the procedures of §1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B) if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)-(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of §1.163–5(c)-(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of §1.163–5(c)-(2)(i)(D)(3)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(b)(i) and (ii) and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(b) of this section.

(B) The obligation must have on its face, and on any detachable coupons, the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) and regulations under that section) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) and the regulations under that section).

(C) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii).

(12) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d)(2), (3), (4), or (5) of this section. However, such payments may be reportable under §1.1461–1(b) and (c). The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of §1.1441–1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of §1.1441–1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid to a Canadian nonresident alien individual as provided in §1.6049–8.

(13) Amounts for the period that the debt obligation with respect to which the interest arises represents an asset blocked as described in §1.1441–2(e)(3). Payment of such amounts, including interest that is past due and OID on obligations that mature on or before the date that the assets are no longer blocked, is deemed to occur in accordance with the rules of §1.1441–2(e)(3).

(14) Payments made by a foreign intermediary described in §1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under §1.6049–4 and were not so reported.

(15) Amounts of interest as determined under the provisions of §1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment with respect to a notional principal contract). Such amounts are governed by the provisions of section 6041. See §1.6041–1-(d)(5).

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts.* A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) in the case of a payment made outside the United States to an offshore account or, in the case of broker proceeds described in §1.6045–1(c)(2), in the case of a sale effected outside the United States (as defined in §1.6045–1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an *offshore account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (i.e., other than in any of the fifty States or the District of Columbia) and outside of U.S. possessions. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an off-

shore account. For the definition of a payment made outside the United States, see paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person (including, but not limited to, documentary evidence described in §1.1441–6(c)(3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Code must contain all of the information that is necessary to complete a Form 1042–S for that payment.

(2) *Other applicable rules.* The provisions of §1.1441–1(e)(4)(i) through (ix) (regarding who may sign a certificate, validity period of certificates, retention of certificates, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under §1.1441–1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See §1.1441–1(b)(2)(vii) for provisions dealing reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of §1.1441–7(b)(2)(ii) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W–9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in §31.3406(h)–3(e) of this chapter (see the information and certification described in §31.3406(h)–3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W–9). The provisions of §1.1441–7(b)(2)(ii) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which §1.1441–7(b)(2)(ii) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of this paragraph (c) for payments to offshore accounts maintained at a bank or other financial institution of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. bank deposit interest). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under §1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds).

(i) *Alternative documentary evidence.* In the case of payments to which this paragraph (c)(4) applies, the payor may, instead of a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, rely on a customer's declaration of foreign status made on an account opening form that contains the statement described in this paragraph (c)(4)(i) (or such substitute statement as the Internal Revenue Service may prescribe) if the mailing and permanent residence address of the customer is in the country in which the branch or office is located and, under the local laws, regulations, or practices applicable to the type of account or transaction described in this paragraph (c)(4), it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section or, it is customary to obtain such documentary evidence, but it is not customary to request that it be renewed periodically. Reliance on the documentary evidence described in this paragraph (c)(4)(i) is permitted only if there are no indications that the person opening the account is a U.S. person (e.g., permanent residence address is in a foreign country, the person does not have a mailing address in the United States, the person is not employed by a U.S.-based multinational organization). If reliance is not permitted because there are indications of U.S. status (e.g., the person's permanent residence address is in the United States, the person changes his mailing address to the United States, the person is employed by a U.S.-based multinational organization) then the payor must obtain either documentary evidence described in paragraph (c)(1) of this section or a Form W–8 described in §1.1441–1(e)(2)(i) in order to treat the customer as a foreign payee. The form or documentary evidence must be renewed every three years in accordance with the renewal procedures set forth in §1.1441–1(e)(4)(ii)(A) for as long as indicia of U.S. status continue to be present. The statement referred to in this paragraph (c)(4)(i) must appear near the signature line and must read as follows:

> By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. federal income tax and that he/she/it is not acting for or on behalf of a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.

(ii) *Continuous validity of declaration of foreign status subject to due diligence by financial institution.* A declaration of foreign status described in paragraph (c)(4)(i) of this section does not expire if the financial institution complies with the mailing requirement described in paragraph (c)(4)(iii) of this section, unless the financial institution becomes aware of circumstances indicating that the customer may be a U.S. person (including indications described in §1.1441–7(b)(2)(ii), dealing with due diligence standards applicable to financial institutions). If circumstances indicate that the customer may be a U.S. person, then the financial institution may rely on the foreign status of the customer only if it obtains documentary evidence from the customer that

is described in paragraph (c)(1) of this section or a beneficial withholding certificate described in §1.1441–1(e)(2)(i). Such documentary evidence or certificate does not expire after the three-year validity period otherwise prescribed for such documentation but must be renewed each time new circumstances occur indicating that the customer may be a U.S. person.

(iii) *Negative confirmation of change of status.* In order for a declaration of foreign status to remain valid, the financial institution must include the following statement on a year-end statement mailed to the customer:

> You have declared to us that you are not a U.S. person and, unless you notify us to the contrary, we will continue to rely on that declaration to treat the account as owned by a non-U.S. person. You have an obligation to notify us if your status changes and you become a U.S. citizen or a U.S. resident. A U.S. person who fails to report earnings on the account could be subject to penalties under U.S. law.

(iv) *Special rule when non-renewable documentary evidence is customary.* If it is customary in the country in which the branch or office is located to obtain documentary evidence described in paragraph (c)(1) of this section, but it is not customary for such documentary evidence to be renewed, then a payor must request such documentary evidence in lieu of the statement described in paragraph (c)(4)(i) of this section. All other requirements described in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section shall apply.

(v) *Exception for existing accounts.* The rules of paragraphs (c)(4)(i) and (iv) of this section shall apply only to accounts opened on or after January 1, 1999.

(5) *U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman.* The terms *payor* and *middleman* have the meanings ascribed to them under §1.6049–4(a). A *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than a U.S. payor or U.S. middleman. The term *U.S. payor* or *U.S. middleman* means—

(i) A person described in section 7701(a)(30) (including a foreign branch or office of such person);

(ii) The government of the United States or the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(iii) A controlled foreign corporation within the meaning of section 957(a);

(iv) A foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons (as defined in §1.1441–1(c)(2)) who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States;

(v) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States; or

(vi) A U.S. branch of a foreign bank or a foreign insurance company described in §1.1441–1(b)(2)(iv).

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

Example 1. FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest for purposes of information reporting under section 6049 because it is paid in the United States.

Example 2. The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W–8 in accordance with the provisions of §1.1441–1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example 3. The facts are the same as in *Example 2* except that D has not furnished a Form W–8 and DC pays interest on the obligation at its branch outside the United States. The payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049 because DC, although a U.S. person is not a middleman or a payor within the meaning of §1.6049–4(a) and (f)(4). Thus, the amount is described in paragraph (b)(6) of this section. Therefore, DC is not required to make an information return under section 6049.

Example 4. The facts are the same as in *Example 3* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of §1.1441–1(e)(1)(ii).

Example 5. The facts are the same as in *Example 4* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. Under paragraph (b)(6) of this section, the payment by NC to D is not considered to be a payment of interest for purposes of section 6049. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee.* The provisions of §1.1441–1(b)(2) shall apply (by substituting the term *payor* for the term *withholding agent*) to identify the payee for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of payments of amounts that are not subject to withholding under chapter 3 of the Code. Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under §1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of §1.1441–1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code are as follows:

(i) The provisions of §1.1441–1(b)(2)(ii), dealing with payments to a U.S. agent of a foreign person, shall not apply. Thus, a payment to a U.S. agent of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches of certain banks or insurance companies described in §1.1441–1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch may have arranged with the payor to be treated as a U.S. person for payments of amounts subject to withholding and irrespective of the fact that the branch is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign*

status in the absence of documentation—(i) *In general.* For purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of §1.1441–1(b)(3)(i), (ii), (iii), (vii), (viii), and (ix) shall apply (by substituting the term *payor* for the term *withholding agent*) to determine the status of a payee as a U.S. or a foreign person and its relevant characteristics (e.g., as an owner or intermediary, or as an individual, corporation, or flow-through entity), irrespective of whether the payments are subject to withholding under chapter 3 of the Code. In addition, the rules of §1.1441–1(b)-(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by substituting the term *payor* for the term *withholding agent*. For this purpose, the documentary evidence described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with amounts reportable under section 6042, 6045, or 6049 with respect to publicly traded securities, or under section 6050N in the case of royalties from a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a) may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, choose, in its discretion, to treat the account as owned by a foreign person if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in §1.1441–1(e)(2)(i) or (3)(i) (by way of a facsimile copy of the certificate or other non-qualified electronic transmission of the information required to be stated on the certificate), or the payor holds a withholding certificate that is no longer reliable. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the grace period begins on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in §1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account if the account holder already holds an account at the branch location at which the new account is opened. It shall also be treated as an existing account if an account is held at another branch location if the institution maintains a coordinated account information system described in §1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins, the date that the documentation is provided, or the last day of the calendar year in which the grace period begins. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is less than 31 percent of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See §31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of §31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of §1.1441–1(e)(4)(iv). See §1.1092(d)–1 for a definition of the term *publicly traded* for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that are subject to withholding under chapter 3 of the Code, the provisions of §1.1441–1(b)(2)(v) and (3)(v) shall apply (by substituting the term *payor* for the term *withholding agent*) to identify the payee and determine the applicable presumptions for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* Amounts that are not subject to withholding under chapter 3 of the Code that the payor may treat as paid to a foreign intermediary in accordance with §1.1441–1(b)(3)(v)(A) shall be treated as made to an exempt recipient de-

scribed in §1.6049–4(c)(1)(ii)(M), (O), (P), or (Q) except to the extent that the payor has actual knowledge that any person for whom the intermediary is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient. If the payor does not have sufficient reliable information regarding the portion of the payment to the foreign intermediary that is allocable to such presumed U.S. payee, then the payor shall treat the maximum portion of the payment that could be allocable to such presumed U.S. payee as so allocable.

(iii) *Special rule for payments of certain short-term original issue discount and bank deposit interest*—(A) *General rule.* A payment of U.S. source original issue discount on an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(a)(3) or of U.S. source interest (including original issue discount) on deposits with banks and other financial institutions described in section 871(i)(2)(A) or 881(d) that the payor may treat as paid to a foreign intermediary in accordance with the provisions of §1.1441–1(b)(3)(v)(A) shall be treated as paid to an exempt recipient only to the extent that the payor can treat the payment as made to a foreign person that is a beneficial owner in accordance with the provisions of §1.1441–1(e)(1)(ii), or can treat as a payment to a U.S. beneficial owner in accordance with the provisions of §1.1441–1(d)(4) (except to the extent that the payment is associated with a Form W–9 described in §1.1441–1(d)(2) relating to a U.S. payee who is not an exempt recipient), or can rely on the payee's claim that the payee assumes withholding responsibility in accordance with §1.1441–1(e)(5)(iv).

(B) *Payee has not furnished reliable documentation.* If the payment is made to a person described in §1.6049–4(c)(1)(ii) that the payor may treat as an exempt recipient without requiring documentation and the payor may not treat the payee as a foreign intermediary in accordance with the provisions of §1.1441–1(b)(3)(v)(A), then the payee shall be treated as an exempt recipient only if the payor can treat the person as a U.S. person, or if the person has furnished a certificate as a U.S. branch described in §1.1441–1(b)(2)(iv), or the person has furnished a certificate such that the payor can treat the payment as a payment made to a foreign person that is a beneficial owner, or if the payor can treat the person as a foreign person that has furnished an indication to the payor that such person is receiving the payment for its own account. A payor must treat the payee as a foreign person for purposes of this paragraph (d)(3)(iii) if the payor has actual knowledge of the person's employer identification number and that number begins with the two digits "98," if the payor's communications with the person are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in paragraph (e) of this section). The payor may treat as a U.S. person any person not described in the preceding sentence for purposes of this paragraph (d)(3)(iii). If the payee is treated as a foreign person under this paragraph (d)(3)(iii)(B), it must be treated as not acting for its own account unless it furnishes an indication of beneficial ownership in any manner that the payor and the person may choose, provided the indication is documented in the payor's records. The indication is not required to be under penalties of perjury. The provisions of this paragraph (d)(3)(iii) shall not apply to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in paragraphs (b)(7), (10) and (11) of this section (relating to certain obligations issued in bearer form).

(iv) *Examples.* The rules of this paragraph (d)(3) are illustrated by the following example:

Example 1. A payor, X, makes a payment to Y of U.S. source interest on debt obligations issued prior to July 18, 1984. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). Y is a non-qualified foreign intermediary that has furnished to X a valid intermediary withholding certificate described in §1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. Y's withholding certificate does not contain reliable information regarding B and C's share of the payment. B's withholding certificate (attached to Y's withholding certificate) indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate (attached to Y's withholding certificate) indicates that C is a foreign corporation not entitled to a reduced rate of withholding. Under paragraph (b)(12) of this section, X may rely on the withholding certificates to determine the status of A, B, and C for purposes of deciding whether the amounts paid are interest within the meaning of this section. However, because X cannot reliably determine how much of the payment is allocable to B and C, it must presume under paragraph (d)(3)(i) of this section and §1.1441–1(b)(3)(v)(C) that 80 percent of the payment (i.e., all of the payment less A's share) is allocable to C because the rate of withholding applicable to the payment to C is the highest of the withholding rates applicable to B and C. Thus, based on such presumption, X may treat C as a foreign payee under paragraph (b)(12) of this section and, therefore, may treat the payment as not being interest reportable under §1.6049–4(a).

Example 2. The facts are the same as in *Example 1*, except that X can reliably determine C's allocable share, but cannot reliably determine A's and B's share. No withholding is required under chapter 3 of the Code or under section 3406 on the payment to A or B since A is a U.S. person who has furnished a valid Form W–9 and B is an exempt recipient (as defined in §1.6049–4(c)(1)(ii)(B)) and a foreign tax-exempt organization exempt from chapter 3 withholding (see §1.1441–9). However, X estimates that A, as a U.S. person, is subject to a higher U.S. tax liability with respect to the payment than B is, since B is a foreign tax-exempt organization. Therefore, X must presume under paragraph (d)(3)(i) of this section and §1.1441–1(b)(3)(v)(C) that 70 percent of the payment (i.e., all of the payment less C's share) is allocable to A. Consequently, X must report all of the payment on the Form 1099 filed for A under §1.6049–4(a).

Example 3. A payor, X, makes a payment of foreign source interest to Y, a non-qualified foreign intermediary that has furnished an intermediary withholding certificate described in §1.1441–1(e)(3)(iii) to which it has attached a withholding certificate described in §1.1441–1(e)(3)(iii) for Z, that is also a non-qualified foreign intermediary. Beneficial owner certificates are attached to Z's certificate. Under paragraph (d)(1) of this section, X must rely on the provisions of §1.1441–1(b)(2)(v) to treat the payment as made to the persons whose withholding certificates are attached to Z's certificate to the extent both Y and Z have reliably certified in accordance with §1.1441–1(e)(3)(iii)(D) that the certificates that each of them has attached to their respective intermediary withholding certificate represent all of the persons to whom the intermediary withholding certificate relates. X must rely on the provisions of §1.1441–1(b)(2)(v) even though the payment is not an amount subject to withholding under chapter 3 of the Code.

Example 4. A payor, X, makes a payment to Y of foreign source interest and U.S. source dividends. Y has furnished to X a qualified intermediary withholding certificate described in §1.1441–1(e)(3)(ii) for itself. Y indicates that 10 percent of each type of payments is allocable to the category described in §1.1441–1(e)(5)(v)(B)(3), relating to assets owned by persons for whom the qualified intermediary does not hold the documentation. X has no actual knowledge that the persons owning the assets are U.S. persons. With respect to the payment of foreign source interest (an amount that is not subject to withholding under chapter 3 of the Code), X must,

under paragraph (d)(3)(ii) of this section, treat the payment as made to a foreign payee. Such treatment is effective for purposes of paragraph (b)(12) of this section, meaning that the 10-percent amount is not treated as interest for purposes of reporting under §1.6049–4(a). With respect to the amount of U.S. source dividends, X must, under paragraph (d)(3)(i) of this section, treat the payment as made to a foreign payee (based upon paragraph (d)(3)(i)'s cross-reference to §1.1441–1(b)(3)(v)(B)). Such treatment is effective for purposes of §1.6042–3(b)-(1)(iii), meaning that the 10-percent amount is not treated as a dividend for purposes of reporting under §1.6042–2(a).

Example 5. A payor, X, makes a payment of foreign source interest to Y, a non-qualified foreign intermediary that has furnished an intermediary withholding certificate described in §1.1441–1(e)(3)(iii) to which it has attached beneficial owner Forms W–8. In its withholding certificate, Y represents to X that 30 percent of the payment is allocable to a U.S. person who has not furnished a Form W–9 and whom Y cannot treat as an exempt recipient. Under paragraph (d)(3)(ii) of this section, X must treat 70 percent of the payment as made to a foreign payee. X, however, may not rely on the rule of paragraph (d)(3)(ii) of this section to treat the remainder of the payment as made to a foreign payee because X has actual knowledge that the remainder of the payment is allocable to a U.S. person. Under paragraph (d)(3)(ii) of this section, X must treat 30 percent of the payment as made to a U.S. payee who is not an exempt recipient.

Example 6. A payor, X, holds a valid withholding certificate from Y, a qualified intermediary, with which it reliably associates payments made to A, a U.S. individual who maintains an account relationship with Y and who has furnished a valid Form W–9 to Y. Y has furnished A's Form W–9 to X who has set up a separate account for those assets held in Y's name, and which Y has indicated are allocable to A. The assets consist of 10,000 shares of stock of domestic corporation T, publicly traded on a U.S. stock exchange. When dividends are paid on the T stock held in the Y/Aaccount, X credits the dividend amounts to the account and reports the dividend amounts credited to that account on a Form 1099–DIV under section 6042, treating A as the payee in accordance with paragraph (d)(1) of this section (cross-referencing §1.1441–1(b)(2)(v)). When A later instructs Y to sell the shares, X effects the sale and credits the Y/A account with the gross proceeds from the sale of 10,000 shares of the T stock. Under §1.6045–1(c)(2) and paragraph (d)(3)(ii) of this section, X must report the gross proceeds credited to the Y/Aaccount on a Form 1099-B made in the name of A since it has actual knowledge that the gross proceeds are paid to a U.S. person who is not an exempt recipient. See section 1.6045–1(g)(3)(iv).

Example 7. A payor, X, holds a valid withholding certificate from Y, a non-qualified intermediary, and can reliably associate a payment of U.S. short-term OID and proceeds from the sale of shares with the certificate. Y has not attached any certificates or documentary evidence to its certificate and informs X that the payment is allocable to persons for whom it holds no documentation. Under paragraph (d)(3)(iii) of this section, X must, for purposes of this section and section 3406, treat the payment of short-term OID as made to a U.S. payee who is not an exempt recipient. However, under paragraph (d)(3)(ii) of this section, the payment of gross proceeds from the sale of shares is treated as made to a foreign payee. X must rely on this treatment for purposes of determining its reporting obligations under section 6045 and the regulations under that section (see §1.6045–1(g)(1)(i)) and, consequently, its withholding obligations under section 3406 and the regulations under that section.

(4) *Determination of partnership and partners status in the absence of documentation*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that are subject to withholding under chapter 3 of the Code, the provisions of §§1.1441–1(b)(3)(ii) and 1.1441–5(c)(1), and (d) shall apply (by substituting the term *payor* for the term *withholding agent*) to determine the status of the payee as a partnership, as a domestic or foreign partnership, and the status of its partners for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(4) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of amounts that are not subject to withholding under chapter 3 of the Code, the provisions of §§1.1441–1(b)(3)(ii) and 1.1441–5(c)(1), and (d) shall also apply (by substituting the term *payor* for the term *withholding agent*), subject to the following exceptions—

(A) If, in the absence of documentation, the payor treats the payee as a partnership in accordance with the presumptions set forth in §1.1441–1(b)(3)(ii), the presumptions of §1.1441–5(d)(2) shall not apply to treat the partnership as a foreign partnership; instead, the person treated as a partnership shall be presumed to be a domestic partnership; and

(B) In the case of payments described in §1.1441–5(d)(3)(i) (dealing with lacking or unreliable documentation regarding the status of partners) or in §1.1441–5-(d)(3)(iii), dealing with lacking or unreliable information regarding the number of partners represented by the withholding certificate), the partners are presumed to be U.S. payees who are not exempt recipients and not foreign payees.

(5) *Presumptions for payments to or by foreign trusts or estates.* [Reserved]

(e) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2), (3), and (4) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account. However, without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (e)(1)(i) or (ii) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is not considered to be paid outside the United States.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at

least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in §1.864–4-(c)(5)(i). In addition, an amount paid by a bank or other financial institution with respect to a deposit or an account with the institution is not considered paid at a branch or office outside the United States if the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. However, without regard to where the coupon or discount obligation is presented for payment, an amount paid with respect to either a bond with coupons attached or a discount obligation by transfer to an account maintained by the payee in the United States or by mail to the United States is considered paid in the United States if the payment is described in paragraphs (e)(3)(i) and (ii) of this section.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in a interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of payee, collects the amount for or on behalf of the payee.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation, as described in §1.871–14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identifies an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder, that were issued by FC in a public offering outside the United States, that are not registered under the Securities Act of 1933 (15 U.S.C. 77a), and that are neither listed on an exchange that is registered as a national securities exchange in the United States nor included in an interdealer quotation system. DC, a U.S. corporation that is engaged in a commercial banking business, is the designated fiscal agent for FC. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays a with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

Example 2. The facts are the same as in *Example 1* except that A presents the coupon to FB at its office outside the United States with instructions to transfer funds in payment to a bank account maintained by a in the United States. FB transfers the funds in accordance with a's instructions. Even though the amount is credited to an account in the United States, the place of payment of interest on the FC bonds is considered to be outside the United States under paragraph (e)(3) of this section because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section; because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example 3. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section. B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in §1.871–14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (e)(1)(i)(B) of this section. The place of payment to B by FC of the interest on the FC bonds is considered to be inside the United States under paragraph (e)(1) of this section.

Example 4. The facts are the same as in *Example 3* except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the place of payment by DC of the interest on the FC bonds is considered to be within the United States under paragraph (e)(1) of this section.

Example 5. Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in §1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable in six months with accrued interest. On the day that the interest is credited to C's account with FB, C telephones DB from inside the United States and asks DB to direct FB to transfer the funds in his account with FB to an account C maintains in the United States with DB. Transmissions from the United States concerning this account have taken place in isolated and infrequent circumstances. Under paragraph (e)(2) of is section, FB is considered to have paid the interest on C's deposit outside the United States.

Example 6. The facts are the same as in *Example 5* except that C has placed his deposit with FB for an indefinite period of time. Interest will be credited to C's account daily. C has instructed FB to wire the interest at 90-day intervals to C's account with DB within the United States. FB is considered to have paid the interest credited to a's account within the

United States under paragraph (e)(2) of this section because the regular crediting of the account disqualifies the transmission from being isolated or infrequent.

Example 7. DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in §1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

Example 8. FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (2) of this section.

Example 9. DC is a U.S. corporation. a holds bonds that were issued by DC in registered form under section 163(f) and the regulations thereunder and that are foreign-targeted registered obligations as defined in §1.871–14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to a and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to a's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to a by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 1998.

(2) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which it is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, may require new withholding certificates conforming to the requirements described in this section.

Par. 43. Section 1.6049–6 is amended by:

1. Removing the language, "a reasonable facsimile thereof" in the first sentence of paragraph (d) and adding "an acceptable substitute" in its place.

2. Revising paragraph (e)(3).

The revision reads as follows:

§1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6049(c) and §1.6049–6(a), see §301.6722–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

Par. 44. Section 1.6049–7 is amended by revising paragraph (c)(4) to read as follows:

§1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(c) * * *

(4) A foreign central bank of issue (as defined in §1.895–1(b)(1)) or the Bank for International Settlements;

* * * * *

Par. 45. In §1.6049–8, paragraph (a) is amended by removing the last two sentences and adding four sentences in their place to read as follows:

§1.6049–8 Interest and original issue discount paid to residents of Canada.

(a) I*nterest subject to reporting requirement.* * * * The payor or middleman may rely upon the permanent residence address (as defined in §1.1441–1(e)(2)(ii)) as stated on the Form W–8 described in §1.1441–1(e)(2)(i) in order to determine whether the payment is made to a Canadian nonresident alien individual. If the permanent residence address stated on the certificate is in Canada, or if the payor has actual knowledge of the individual's residence address in Canada, the payor must presume that the individual resides in Canada. Amounts described in this paragraph (a) are not subject to backup withholding under section 3406. See §31.3406(g)–1(d) of this chapter.

* * * * *

Par. 46. Section 1.6050A–1 is amended by:

1. Removing the language "Form 1099F" each place it appears and adding "Form 1099–MISC" in its place in paragraphs (a) introductory text, (a) concluding text, (b) and (c)(1) first and second sentences.

2. Adding paragraph (d) to read as follows:

§1.6050A–1 Reporting requirements of certain fishing boat operators.

* * * * *

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050A(a) and §1.6050A–1(a), see §301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050A(b) and §1.6050A–1(c), see §301.6722–1 of

this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

§1.6050H–1 [Amended]

Par. 47. Section 1.6050H–1 is amended by:

1. Removing the language "§35a.9999–4T, Q/A–5(iii)" and adding "§1.6049–5(c)" in its place in paragraph (d)(2)(ii)(A).

2. Removing the language "§1.6049–5-(b)(2)(iv)" and adding "§1.1441–1(e)(1)" in its place in paragraph (d)(2)(ii)(B).

Par. 48. Section 1.6050N–1 is amended by:

1. Revising the section heading.
2. Revising paragraphs (c) and (d).
3. Adding paragraph (e).

The addition and revisions read as follows:

§1.6050N–1 Statement to recipients of royalties paid after December 31, 1986.

* * * * *

(c) *Exempted foreign-related items*—(1) *In general.* No return shall be required under paragraph (a) of this section for payments of the items described in paragraphs (c)(1)(i) through (iv) of this section.

(i) Returns of information are not required for payments of royalties that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (c)(1)(i), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See §1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code.

(ii) Returns of information are not required for payments of royalties from sources outside the United States (determined under Part I of subchapter N and the regulations under these provisions) made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(iii) Returns of information are not required for payments made by a foreign intermediary described in §1.1441–1(e)-(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in §1.1441–1(e)-(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported and were not so reported.

(2) *Definitions*—(i) *Payor.* For purposes of this section, the term payor shall have the meaning ascribed to it under §1.6049–4(a).

(ii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (c) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (c)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (c)(2)(ii), the grace period described in §1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050N(a), see §301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050N(b) and §1.6050N–1-(a), see §301.6722–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Effective date*—This section, except paragraph (c) , is applies to payee statements due after December 31, 1995, without regard to extensions. For further guidance regarding the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996 (see Rev. Proc. 84–70 (1984–2 C.B. 716) and §601.601(d)(2) of this chapter). The provisions of paragraph (c) of this section apply to payments made after December 31, 1998.

Par. 49. Section 1.6071–1, is amended by revising paragraphs (c)(7), (c)(8),(c)(11), (c)(13), and (c)(15) to read as follows:

§1.6071–1 Time for filing returns and other documents.

* * * * *

(c) * * *

(7) For provisions relating to the time for filing information returns by persons making certain payments, see §1.6041–2-(a)(3) and §1.6041–6.

(8) For provisions relating to the time for filing information returns regarding payments of dividends, see §1.6042–2(c).

* * * * *

(11) For provisions relating to the time for filing information returns with respect to payments of patronage dividends, see §1.6044–2(d).

* * * * *

(13) For provisions relating to the time for filing information returns regarding

certain payments of interest, see §1.6049–4(g).

* * * * *

(15) For provisions relating to the time for filing the annual information return on Form 1042–S of the tax withheld under chapter 3 of the Code (relating to withholding of tax nonresident aliens and foreign corporations and tax-free covenant bonds), see §1.1461–1(c).

* * * * *

Par. 50. In §1.6091–1, paragraph (b)(15) is revised to read as follows:

§1.6091–1 Place for filing returns or other documents.

* * * * *

(b) * * *

(15) For the place for filing information returns on Forms 1042–S with respect to certain amounts paid to foreign persons, see instructions to the form.

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 51. The authority for part 31 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.3401(a)(6)-1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Par. 52. Section 31.3401(a)(6)–1 is amended by:

1. Revising the section heading.

2. Revising the paragraph heading and first sentence of paragraph (e).

3. Adding paragraph (f).

4. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§31.3401(a)(6)–1 Remuneration for services of nonresident alien individuals.

* * * * *

(e) *Exemption from income tax for remuneration paid for services performed before January 1, 1999.* Remuneration paid for services performed within the United States by a nonresident alien individual before January 1, 1999, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party.* * *

(f) *Exemption from income tax for remuneration paid for services performed after December 31, 1998.* Remuneration paid for services performed within the United States by a nonresident alien individual after December 31, 1998, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. An employer may rely on a claim that the employee is entitled to an exemption from tax if it complies with the requirements of §1.1441–1(e)(1)(ii) of this chapter (for a claim based on a provision of the Internal Revenue Code) or §1.1441–4(b)(2) of this chapter (for a claim based on an income tax convention).

§31.3406–0 [Amended]

Par. 53. Section 31.3406–0 is amended by removing the entries in the table for §31.3406(h)–2, paragraphs (e)(1) and (e)(2).

Par. 54. Section 31.3406(d)–3 is amended by:

1. Adding two sentences at the end of paragraph (a).

2. Removing the words "30-day" in the first sentence, revising the word "these" to "the 30-day", and adding the word "may" immediately before the words "apply only if" in the second sentence, and revising the word "those" to "the" in the third sentence in paragraph (b).

3. Revising paragraph (c).

The addition and revision read as follows:

§31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) * * * For payments made after December 31, 1998, see §1.6049–5(d)(2)(ii) of this chapter for the application of a 90-day grace period in lieu of the 30-day grace period described in this paragraph (a) if, at the beginning of the 90-day grace period, certain conditions are satisfied. If the grace period provisions of §1.6049–5-(d)(2)(ii) or §1.1441–1(b)(3)(iv) of this chapter are applied with respect to a new account, the grace period provisions of this paragraph (a) shall not apply to that account.

* * * * *

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 (or an acceptable substitute) or other evidence of foreign status (pursuant to relevant regulations under an applicable Internal Revenue Code section without regard to the requirement to furnish a taxpayer identifying number, and the certifications described in §§31.3406(d)–1(b)-(3) and 31.3406(d)–2), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident. The 30-day rules described in paragraph (a) or (b) of this section may apply only if the payee does not qualify for, or the payor does not apply, the 90-day grace period described in §1.6049–5(d)(2)(ii) or §1.1441–1(b)-(3)(iv) of this chapter.

Par. 55. In §31.3406(g)–1, paragraph (e) is added to read as follows:

§31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after December 31, 1998, a payor is not required to backup withhold under section 3406 on a reportable payment that qualifies for the documentary evidence rule described in §1.6049–5(c)(1) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no

backup withholding is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to notional principal contracts, see §1.6041–1(d)(5) of this chapter.

Par. 56. Section 31.3406(h)–2 is amended by:

1. Revising paragraph (a)(3)(i).

2. Revising the penultimate sentence in paragraph (d)

3. Removing the heading of paragraph (e)(1).

4. Removing the paragraph designation (e)(1).

5. Removing paragraph (e)(2).

The revisions read as follows:

§31.3406(h)–2 Special rules.

(a) * * *

(3) *Joint foreign payees*—(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W–8 or documentary evidence described in §1.1441–1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those p r ovisions) or any one of the joint owners who has not established foreign status provides a taxpayer identification number to the payor in the manner required in §§31.3406(d)–1 through 31.3406(d)–5. See §1.6049–5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

* * * * *

(d) * * * If its payee is not subject to withholding under section 3406, the payor must pay or credit the full amount of the payment to the payee, unless, with respect to payments made after December 31, 1998, the payor chooses to apply prior withholding under section 3406 to an amount required to be withheld under another section of the Internal Revenue Code (such as under section 1441) to the extent permitted under procedures prescribed by the Internal Revenue Service (see §601.601(d)(2) of this chapter). * * *

* * * * *

Par. 57. Section 31.6413(a)–3 is amended as follows:

1. Paragraph (a)(1)(ii) is amended by removing the language "or" at the end of the paragraph.

2. In paragraph (a)(1)(iii), the parenthetical "(including the certification relating to foreign status described in §1.6049–5(b)(2)(iv) of this chapter or §1.6045–1(g)(1) of this chapter)" is removed and "(including the documentation described in §1.1441–1(e)(1)(ii), 1.6045–1(g)(3), or 1.6049-5(c) of this chapter)" is added in its place.

3. Paragraph (a)(1)(iii) is further amended by removing the period at the end of the paragraph and adding "; or" in its place.

4. Paragraph (a)(1)(iv) is added.

5. Paragraphs (a)(2) and (b)(2) are revised.

The addition and revisions read as follows:

§31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) * * * (1) * * *

(iv) The amount is withheld because a payor imposed backup withholding on a payment made to a person because the payee failed to furnish the documentation described in §1.1441–1(e)(1)(ii) of this chapter and the payee subsequently furnishes, completes, or corrects the documentation. The documentation must be furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.

(2) For purposes of paragraph (a)(1) of this section (other than erroneous withholding occurring under the circumstances described in paragraph (a)(1)(iv) of this section), if a payor or broker withholds because the payor or broker has not received a taxpayer identifying number or required certification and the payee subsequently provides a taxpayer identifying number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) * * *

(2) *Adjustment after the deposit of the tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

(ii) *Erroneous withholding from a payee that is a foreign person.* Where a payor withholds in error from a payee that is a nonresident alien or foreign person, as described in paragraph (a)(1)(iv) of this section, the payor may refund some or all of the amount subject to backup withholding under section 3406. A refund may be paid in accordance with the requirements of this paragraph (b)(2)(ii) where the documentation is furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount of the refund will be the amount erroneously withheld less the amount of tax required to be withheld, if any, under chapter 3 of the Internal Revenue Code and the regulations under that chapter. With respect to the amount of the payment to the foreign person and the amount of tax required to be withheld under chapter 3 of the Internal Revenue Code (and the regulations thereunder), returns must be made in accordance with the requirements of §1.1461–1(b) and (c) of this chapter.

Par. 58. Effective October 14, 1997, §31.9999–0 is added to read as follows:

§31.9999–0 Effective dates.

In general, the provisions of §§35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4, and 35a.9999–5 of this chapter apply before January 1, 1997. The provisions of those sections remain applicable after December 31, 1996, and before January 1, 1999, however, for purposes of §301.6724–1 of this chapter, relating to due diligence safe harbor, and for international transactions, including transactions involving a foreign payee, a foreign payor, a foreign office of

a U.S. bank or broker, or a payment from sources without the United States. See §§31.3406–0 through 31.3406(i)–1 of this chapter for rules that apply to other transactions after December 31, 1996.

§31.9999–0 [Removed]

Par. 59. Effective January 1, 1999, §31.9999–0 is removed.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 60. The authority for part 35a is amended by removing the entries for §§35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§35a.9999–0T [Removed]

Par. 60a. Effective October 14, 1997, §35a.9999–0T is removed.

Par. 61. Effective October 14, 1997, §35a.9999–0 is added to read as follows:

§35a.9999–0 Effective date.

See §31.9999–0 of this chapter for applicability dates for §§35a.9999–1 through 35a.9999–5.

Par. 62. Effective January 1, 1999, §§35a.9999–0, 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T and 35a.9999–5 are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 63. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 301.6402–3 also issued under 95 Stat. 357 amending 88 Stat. 2351. * * *

Par. 64. Section 301.6109–1 is amended as follows:

1. Paragraphs (b)(2)(iv) and (b)(2)(v) are revised.
2. Paragraph (b)(2)(vi) is added.
3. Paragraph (c) is revised.

The revisions and addition read as follows:

§301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(iv) A foreign person that makes a return of tax (including income, estate, and gift tax returns), an amended return, or a refund claim under this title but excluding information returns, statements, or documents;

(v) A foreign person that makes an election under §301.7701–3(c); and

(vi) A foreign person that furnishes a withholding certificate described in §1.1441–1(e)(2) or (3) of this chapter or §1.1441–5(c)(2)(iv) or (3)(iii) of this chapter to the extent required under §1.1441–1(e)(4)(vii) of this chapter.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section, such person must request the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

* * * * *

Par. 65. Section 301.6114–1 is amended by:

1. Revising paragraph (a)(1)(ii).
2. Revising paragraph (b)(4)(ii) introductory text
3. Removing the period at the end of paragraph (b)(4)(ii)(B)(7) and adding "; or" in its place
4. Adding paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D).
5. Revising paragraph (c)(1)(i).
6. Adding paragraph (c)(6).

The revisions and addition read as follows:

§301.6114–1 Treaty-based return positions.

(a) * * * (1) * * *

(ii) If a return of tax would not otherwise be required to be filed, a return must nevertheless be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, taxpayer identifying number, and be signed under penalties of perjury (as well as the subject disclosure). Also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established, or timely chooses for this purpose to establish, a different taxable year). In the case of a disclosable return position relating solely to income subject to withholding (as defined in §1.1441–2(a) of this chapter), however, the statement required to be filed in paragraph (d) of this section must instead be filed at times and in accordance with procedures published by the Internal Revenue Service.

* * * * *

(b) * * *

(4) * * *

(ii) A treaty exempts from tax, or reduces the rate of tax on, fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442 that a foreign person receives from a U.S. person, but only if described in paragraphs (b)(4)(ii)(A) and (B) of this section, or in paragraph (b)(4)(ii)(C) or (D) of this section as follows—

* * * * *

(C) For payments made after December 31, 1998, with respect to a treaty that contains a limitation on benefits article, that—

(*1*) The treaty exempts from tax, or reduces the rate of tax on income subject to withholding (as defined in §1.1441–2(a) of this chapter) that is received by a foreign person (other than a State, including a political subdivision or local authority) that is the beneficial owner of the income and the beneficial owner is related to the person obligated to pay the income within the meaning of sections 267(b) and 707(b), and the income exceeds $500,000; and

(*2*) A foreign person (other than an individual or a State, including a political subdivision or local authority) meets the requirements of the limitation on benefits article of the treaty; or

(D) For payments made after December 31, 1998, with respect to a treaty that imposes any other conditions for the entitlement of treaty benefits, for example as a part of the interest, dividends, or royalty article, that such conditions are met;

* * * * *

(c)* * *

(1) * * *

(i) Notwithstanding paragraph (b)(4) or (5) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties to the extent such income is beneficially owned by an individual or a State (including a political subdivision or local authority);

* * * * *

(6) This section does not apply to amounts required to be reported under section 6038Aon a Form 5472 (or successor form) to the extent permitted under the form or accompanying instructions.

* * * * *

Par. 66. Section 301.6402–3 is amended by:

1. Revising paragraph (e).

2. Removing the authority citation at the end of the section.

The revision reads as follows:

§301.6402–3 Special rules applicable to income tax.

* * * * *

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Code, a copy of the Form 1042–S required to be provided to the beneficial owner pursuant to §1.1461–1(c)(1)(i) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042-S must include the taxpayer identifying number of the beneficial owner even if not otherwise required. No claim of refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to §1.1461–2(a)(2) of this chapter, that was subject to a set-off pursuant to §1.1461–2(a)(3) of this chapter, or in accordance with the provisions of an agreement that a qualified intermediary described in §1.1441–1(e)(5)(ii) has in effect with the Internal Revenue Service. Upon request, a taxpayer must also submit such documentation as the Commissioner (or delegate), the District Director, or the Assistant Commissioner (International), may require establishing that the taxpayer is the beneficial owner of the income for which a claim of refund or credit is being made.

Par. 67. In §301.6721–0, the table is amended by adding entries for §3012.6724–1, paragraphs (g)(1), (g)(2), and (g)(3) to read as follows:

§301.6721–0 Table of Contents.

* * * * *

§301.6724–1 Reasonable cause.

* * * * *

(g) * * *

(1) In general.

(2) Special rules relating to TINs.

(3) Effective dates.

* * * * *

Par. 68. In §301.6724–1, paragraph (g) is revised to read as follows:

§301.6724–1 Reasonable cause.

* * * * *

(g) *Due diligence safe harbor*—(1) *In general.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723.

(2) *Special rules relating to TINs.* The following questions and answers provide guidance on the exercise of due diligence for an exception to a penalty under sections 6721 through 6723 for a failure to provide a correct TIN on any information return (as defined in §301.6721–1(g)), payee statement (as defined in §301.6722–1(d)), document (as described in §301.6723–1(a)(4)), or the failure merely to provide a TIN as described in §301.6723–1(a)(4)(ii).

GENERAL RULE

Q–1. Is a payor subject to a penalty for a failure to provide a correct TIN on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the TIN furnished to the payor is the payee's correct number, the payor provided that number on an information return, and the number is later determined not to be the payee's correct number?

A–1. A payor is not subject to a penalty for failure to provide the payee's correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the payor was his correct number, and the payor included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

DUE DILIGENCE DEFINED FOR ACCOUNTS OPENED AND INSTRUMENTS ACQUIRED AFTER DECEMBER 31, 1983

Q–2. In order for a payor of a reportable interest or dividend payment

(other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the payor take?

A–2. (1) In general, the payor of an account or instrument that is not a pre-1984 account nor a window transaction must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS to satisfy the due diligence requirement. Therefore, if a payor permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the payor will be liable for the $50 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the payor exercises due diligence in processing such number, i.e., the payor uses the same care in processing the TIN provided by the payee that a reasonably prudent payor would use in the course of the payor's business in handling account information such as account numbers and balances.

(2) Once notified by the IRS (or a broker) that a number is incorrect, a payor is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the payor has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions described in §31.3406–(d)–5-(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A)(i) through (iv).

Q–3. Is a payor as described in A–2 liable for the penalty if the payor obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

A–3. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

SPECIAL RULES

Q–4. With respect to an instrument transferred without the assistance of a broker, is a payor liable for the penalty for filing an information return with a missing or an incorrect TIN if the payor records on its books a transfer of a readily tradable instrument in a transaction in which the payor was not a party?

A–4. Generally, a payor as described in Q-4 will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the payor if the payor records on its books a transfer in which the payor was not a party. This exception applies until the calendar year in which the payor receives a certified TIN from the payee.

Q–5. Is the payor described in A-4 required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year?

A–5. There is no requirement on the payor to solicit the TIN in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in A–4.

Q–6. Is a payor as described in Q–4 considered to have exercised due diligence if the payee provides a TIN to the payor (whether or not certified), the payor uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

A–6. A payor as described in Q–4 who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in A–4 where the transfer is accompanied with a TIN provided that the payor uses the same care in processing the TIN provided by a payee that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. Thus, a payor will not be liable for the penalty if the payor uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is later determined to be incorrect. However, a payor will not be considered as having exercised due diligence under A–4 after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the required additional actions described in the second paragraph of A–2.

Q–7. Is a payor liable for a penalty for filing an information return with a missing or an incorrect TIN with respect to a post-1983 account or instrument if the payor could have met the due diligence requirements but for the fact that the payor incurred an undue hardship?

A–7. A payor of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the payor could have satisfied the due diligence requirements but for the fact that the payor incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the payor by fire or other casualty (or the place of business of the payor's agent who under a pre-existing written contract had agreed to fulfill the payor's due diligence obligations with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the payor). Undue hardship will also be found to exist if the payor could have met the due diligence requirements only by incurring an extraordinary cost.

Q–8. How does a payor obtain a determination from the IRS that the payor has met the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the payor is subject to the penalty?

A–8. A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the payor could have satisfied the due diligence requirements but for the occur-

rence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the payor either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A payor may request an undue hardship determination from the district director or the director of the Internal Revenue Service Center where the payor is required to remit the penalty under section 6721(a).

Q–9. Is a pre-1984 account or instrument of a payor that is exchanged for an account or instrument of another payor as a result of a merger of the other payor or acquisition of the accounts or instruments of such payor transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

A–9. No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee.

Q–10. May the acquiring taxpayer described in A–9 rely upon the business records and past procedures of the merged payor or the payor whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

A–10. Yes. The acquiring payor may rely upon the business records and past procedures of the merged payor or of the payor whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

Q–11. To what extent may a payor rely on the due diligence rules set forth in §§35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 1999 (see §§35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1997).

A–11. A payor may rely on the due diligence rules set forth in §§35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 1999 (see §§35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1997) solely for the definitions of terms or phrases used in this paragraph (g)(2).

(3) *Effective dates.* This paragraph (g) is effective for information returns (as defined in section 6724(d)(1)) required to be filed, payee statements (as defined in section 6724(d)(2)) required to be furnished, and specified information (as described in section 6724(d)(3)) required to be reported after December 31, 1998. See §301.6724–1(g) in effect prior to January 1, 1999 (see §301. 6724–1(g) as contained in 26 CFR part 301, revised April 1, 1997) for substantially similar rules applicable prior to January 1, 1999.

* * * * *

PART 502 [REMOVED]

Par. 70. Part 502 is removed.

PART 503 [REMOVED]

Par. 71. Part 503 is removed.

PART 509—SWITZERLAND

Par. 72. The authority citation for "Subpart—General Income Tax" is removed and a general authority citation for part 509 is added to read as follows:

Authority: 26 U.S.C. 62, 3791 and 7805.

Par. 73. Part 509 is amended as follows:

1. Subpart—Withholding of Tax consisting of §§509.1 through 509.10 is removed.

2. In §509.103, paragraph (e) is removed and reserved.

3. In §509.117, paragraph (a) is removed and reserved.

4. Sections 509.119 and 509.122 are removed.

PART 513—IRELAND

Par. 74. The authority citation for part 513 is revised to read as follows:

Authority: 26 U.S.C. 62.

Par. 75. Part 513 is amended as follows:

1. Section 513.1 is removed.

2. Sections 513.2, 513.3, 513.4 and 513.5 are revised to read as follows:

§513.2 Dividends.

The fact that the payee of the dividend is not required to pay Irish tax on such dividend because of the application of reliefs or exemptions under Irish revenue laws does not prevent the application of the reduction in rate of United States tax with respect to such dividend. If the dividend would have been subject to Irish tax had the payee thereof derived an income large enough to require payment of tax then liability to Irish tax exists for the purpose of the reduction in rate of United State tax. As to what constitutes a permanent establishment, see Article II(1)(i) of the convention.

§513.3 Interest.

The provisions of §513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

§513.4 Patent and copyright royalties and film rentals.

The provisions of §513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

§513.5 Natural resource royalties and real property rentals.

The provisions of §513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

PART 514 FRANCE

Par. 76. The authority citation for part 514 is added to read as set forth below and the authority citation preceding §514.1 is removed.

Authority: 26 U.S.C. 7805.

Par. 77. Part 514 is amended as follows:

1. The undesignated centerheading preceding §514.1 is removed.

§§514.20 and 514.21 [Removed]

2. Sections 514.20 and 514.21 are removed.

§514.22 [Amended]

3. In §514.22, paragraph (c) is removed.

§§514.23 through 514.32 [Removed]

4. Sections 514.23 through 514.32 are removed.

§§514.101 through 514.117 [Removed]

5. Subpart—General Income Tax consisting of sections 514.101 through 514.117 is removed.

PART 516 [REMOVED]

Par. 78. Part 516 is removed.

PART 517 [REMOVED]

Par. 79. Part 517 is removed.

PART 520 [REMOVED]

Par. 80. Part 520 is removed.

PART 521 [AMENDED]

Par. 81. The authority citation for part 521 is revised to read as follows:

Authority: 26 U.S.C. 62, 143, 144, 211, and 231.

Par. 82. Part 521 is amended as follows:

1. Subpart—Withholding of Tax consisting of §§521.1 through 521.8 is removed.

§521.103 [Amended]

2. In §521.103, paragraph (d) is removed and reserved.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 83. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 84. In §602.101, paragraph (c) is amended by:

1. Removing the following entries from the table:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1441–8T.	1545–1053
* * * * *	
1.1461–3	1545–0054
	1545–0055
	1545–0096
	1545–0795
1.1461–4	1545–0054
	1545–0055
	1545–0096
* * * * *	
35a.9999–3	1545–0112
* * * * *	
Part 502	1545–0844
Part 503	1545–0837
* * * * *	
Part 516	1545–0841
Part 517	1545–0849
Part 520	1545–0833
* * * * *	

2. Adding entries in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1441–1	1545–1484
1.1441–4	1545–1484
* * * * *	
1.1441–8	1545–1484
	1545–1053
1.1441–9	1545–1484
* * * * *	
31.3401(a)(6)	1545–1484
301.6114–1	1545–1484
* * * * *	

3. Revising entries in the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1441–5	1545–0096
	1545–0795
	1545–1484
1.1441–6	1545–0055
	1545–0795
	1545–1484
* * * * *	
1.1461–1	1545–0054
	1545–0055
	1545–0795
	1545–1484
* * * * *	
301.6402-3	1545–0055
	1545–0073
	1545–0091
	1545–0132
	1545–1484
* * * * *	

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved August 28, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

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