

U.S. tax liability. These proposed regulations contain provisions aimed at mitigating the potential for withholding in excess of the partner's actual tax liability (see *e.g.*, § 1.1446-5). These proposed regulations do not contain other provisions that have been suggested because, among other reasons, of concerns regarding the administrability of such approaches. Comments are requested with respect to approaches that would permit an adjustment to the amount of 1446 tax obligation that are consistent with the statute and legislative history and administrable by partnerships, partners and the IRS. In particular, comments are requested on whether the rules coordinating sections 1445 and 1446 should be modified to address these concerns.

#### *J. Effective Date*

These regulations are proposed to apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

#### **Effect on Other Documents**

The following publications will be obsolete for partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**: Rev. Proc. 89-31 (1989-1 C.B. 895) Rev. Proc. 92-66 (1992-2 C.B. 428)

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. With respect to the collections of information contained in § 1.871-10, § 1.1446-1 (pertaining to domestic grantor trusts), and § 1.1446-3 (pertaining to foreign trusts), it is hereby certified that these collections of information will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only limited small entities are impacted by these collections and the burden associated with such collections is .5 hours. With respect to the collections of information in §§ 1.1446-3 (pertaining to a partnership required to notify its foreign partners of an installment payment of 1446 tax paid on behalf of such partner) and 1.1446-4, it is hereby certified that these sections will not impose a significant economic impact on a substantial number of small entities. This certification is based upon

the fact that while approximately 15,000 small entities will be impacted by these sections, the estimated annual burden associated with these sections is only .5 hours per respondent. Moreover, the information collection in § 1.1446-4 is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet Site at <http://www.irs.gov/regs>. All comments will be available for public inspection and copying. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for December 4, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must come to the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 13, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal author of these proposed regulations is David J. Sotos,

Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and IRS participated in their development.

#### **List of Subjects**

##### *26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements

##### *26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

§ 1.1446-3 also issued under 26 U.S.C. 1446(f). \* \* \*

§ 1.1446-4 also issued under 26 U.S.C. 1446(f). \* \* \*

**Par. 2.** In § 1.871-10, paragraph (d)(3) is amended by adding a sentence at the end of that paragraph, and paragraph (e) is amended by revising the first sentence to read as follows:

**§ 1.871-10 Election to treat real property income as effectively connected with U.S. business.**

\* \* \* \* \*

(d) \* \* \*

(3) *Election by partnership.* \* \* \* If the nonresident alien or foreign corporation makes an election, such person must provide the partnership a Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Withholding," and must indicate that the nonresident alien or foreign corporation has made the election under this section to treat real property income as effectively connected income.

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966, except the last sentence of paragraph (d)(3) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**. \* \* \*

**Par. 3.** § 1.1443-1 is amended by:

1. Revising the first sentence of paragraph (a) and adding a sentence at the end of the paragraph.

2. Revising paragraph (c)(1).

The revision and additions read as follows: