

of relevant facts or statements contained on the form or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. See §§ 1.1441-1(e)(4)(viii) and 1.1441-7(b)(1) and (2). If the partnership does not know or have reason to know that a Form W-8BEN, Form W-8IMY, Form W-9, or statement received from a partner, nominee, beneficial owner, or grantor trust contains incorrect or unreliable information, but it subsequently determines that it does contain incorrect or unreliable information, and, based on such knowledge the partnership should pay 1446 tax in an amount greater than would be the case if it relied on the information or certification, the partnership will not be subject to penalties for its failure to pay the 1446 tax in reliance on such form or statement for any installment payment date prior to the date that the determination is made. See §§ 1.1446-1(c)(4) and 1.1446-3 concerning penalties for failure to pay the withholding tax when a partnership knows or has reason to know that the form or statement is incorrect or unreliable.

(iii) *Requirements for certificates to be valid.* Except as otherwise provided in this paragraph (c), for purposes of this section, the validity of a Form W-9 shall be determined under section 3406 and § 31.3406(h)-3(e) of this chapter which establish when such form may be reasonably relied upon. A Form W-8BEN, or Form W-8IMY is only valid for purposes of this section if its validity period has not expired, the partner submitting the form has signed it under penalties of perjury, and it contains all the required information.

(A) *When period of validity expires.* For purposes of this section, a Form W-8BEN or W-8IMY submitted by a partner shall be valid until the end of the period of validity determined for such form under § 1.1441-1(e). With respect to a foreign partnership submitting Form W-8IMY, the period of validity of such form shall be determined under § 1.1441-1(e) as if such foreign partnership submitted the form required of a nonwithholding foreign partnership. See § 1.1441-1(e)(4)(ii).

(B) *Required information for Forms W-8BEN and W-8IMY.* Forms W-8BEN and W-8IMY submitted under this section must contain the partner's name, permanent address and Taxpayer Identification Number (TIN), the country under the laws of which the partner is formed, incorporated or governed (if the person is not an

individual), the classification of the partner for U.S. federal tax purposes (e.g., partnership, corporation), and any other information required to be submitted by the forms or instructions to Form W-8BEN or Form W-8IMY, as applicable.

(iv) *Partner must provide new withholding certificate when there is a change in circumstances.* The principles of § 1.1441-1(e)(4)(ii)(D) shall apply when a change in circumstances has occurred (including situations where the status of a U.S. person changes) that requires a partner to provide a new withholding certificate.

(v) *Partnership must retain withholding certificates.* A partnership or nominee who has responsibility for paying the withholding tax under this section or § 1.1446-4, must retain each withholding certificate and other documentation received from its direct and indirect partners (including nominees) for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and the regulations thereunder.

(3) *Presumption of foreign status in absence of valid Form W-8BEN, Form W-8IMY, Form W-9, or statement.* Except as otherwise provided in this paragraph (c)(3), a partnership that does not receive a valid Form W-8BEN, Form W-8IMY, Form W-9, statement described in § 1.1446-4(e)(1), or statement required by paragraph (c)(2) of this section from a partner, nominee, beneficial owner, or grantor trust, or a partnership that receives a withholding certificate or statement but has actual knowledge or reason to know that the information on the certificate or statement is incorrect or unreliable, must presume that the partner is a foreign person. If the partnership knows that the partner is an individual and not an entity, the partnership shall treat the partner as a nonresident alien individual. If the partnership knows that the partner is an entity, the partnership shall treat the partner as a corporation if the entity is a corporation as defined in § 301.7701-2(b)(8) of this chapter. In all other cases, the partnership shall treat the partner as either a nonresident alien individual or a foreign corporation, whichever classification results in a higher 1446 tax being due, and shall pay the 1446 tax in accordance with this presumption. The presumption set forth in this paragraph (c)(3) that a partner is a foreign person (either because a Form W-9 was not furnished by such partner or the partnership determines that such form is incorrect or unreliable) shall not apply to the extent that the partnership

relies on other means to ascertain the non-foreign status of a partner and the partnership is correct in its determination that such partner is a U.S. person. A partnership is in no event required to rely upon other means to determine the non-foreign status of a partner and may demand that a partner furnish a Form W-9. If a certification is not provided in such circumstances, the partnership may presume that the partner is a foreign partner, and for purposes of sections 1461 through 1463, will be considered to have been required to pay 1446 tax on such partner's allocable share of partnership ECTI.

(4) *Consequences when partnership knows or has reason to know that Form W-8BEN, Form W-8IMY, or Form W-9 is incorrect or unreliable and does not withhold.* If a partnership knows or has reason to know that a Form W-8BEN, Form W-8IMY, Form W-9, statement described in § 1.1446-4(e)(1), or statement required by paragraph (c)(2) of this section submitted by a partner, nominee, beneficial owner, or grantor trust contains incorrect or unreliable information (either because the certificate or statement when given to the partnership contained incorrect information or because there has been a change in facts that makes information on the certificate or statement incorrect), and the partnership pays less than the full amount of withholding tax due on ECTI allocable to that partner, the partnership shall be fully liable under section 1461 and § 1.1461-3 (§ 1.1461-1 for publicly traded partnerships subject to § 1.1446-4), § 1.1446-3, and for all applicable penalties and interest, for any failure to pay the 1446 tax for the period during which the partnership knew or had reason to know that the certificate contained incorrect or unreliable information and for all subsequent installment periods. If a partner, nominee, beneficial owner, or grantor trust, submits a new valid Form W-8BEN, Form W-8IMY, Form W-9, or statement, as applicable, the partnership may rely on that form for paying installments of 1446 tax beginning with the installment period during which such form is received.

§ 1.1446-2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

(a) *In general.* A partnership's effectively connected taxable income (ECTI) is generally the partnership's taxable income as computed under section 703, with adjustments as provided in section 1446(c) and this section, and computed with