

withholding under the rules of this section shall be subject to liability under sections 1461 and 6655, as well as for all applicable penalties and interest, as if such nominee was a partnership responsible for withholding under this section.

(e) *Determining foreign status of partners*—(1) *In general.* Except as provided in paragraph (d) of this section permitting nominees to submit a Form W-9 to a publicly traded partnership, the rules of § 1.1446-1 shall apply in determining whether a partner of a publicly traded partnership is a foreign partner for purposes of the 1446 tax (see § 1.1446-4(a)) and a nominee obligated to withhold under this section shall be entitled to rely on a Form W-8BEN, “Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,” Form W-8IMY, “Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding,” or Form W-9, “Request for Taxpayer Identification Number,” received from persons on whose behalf it holds interests in the partnership to the same extent a partnership is entitled to rely on such forms under those rules. In addition to the rules stated in §§ 1.1446-1 through 1.1446-3 with respect to certificates establishing a partner as a domestic or foreign person, a nominee shall attach a brief statement to the Form W-9 that it furnishes to the partnership, informing the partnership that the nominee holds interests in the partnership on behalf of one or more foreign persons, including information that permits the partnership to determine the partnership interest held on behalf of such foreign persons. A statement furnished by a nominee pursuant to § 1.6031(c)-1T satisfies the requirements of the previous sentence.

(2) *Presumptions regarding payee's status in absence of documentation.* The rules of § 1.1446-1(c)(3) shall apply to determine a partner's status in the absence of documentation.

(f) *Distributions subject to withholding*—(1) *In general.* Except as provided in this paragraph (f)(1), a publicly traded partnership must withhold at the applicable percentage with respect to any actual distribution made to a foreign partner. The amount of a distribution subject to 1446 tax includes the amount of any 1446 tax required to be withheld on the distribution and, in the case of a partnership that receives a partnership distribution from another partnership in which it is a partner (*i.e.*, a tiered structure described in § 1.1446-5), any 1446 tax that was withheld from such distribution. For example, a foreign

publicly traded partnership, UTP, owns an interest in domestic publicly traded partnership, LTP. UTP does not provide LTP any documentation with respect to its domestic or foreign status. LTP and UTP each have a calendar taxable year. LTP makes a distribution subject to section 1446 of \$100 to UTP during its taxable year beginning January 1, 2004, and withholds 35 percent (the highest rate in section 1) of that distribution under section 1446. UTP receives a net distribution of \$65 which it immediately redistributes to its partners. UTP has a liability to pay 35 percent of the total actual and deemed distribution it makes to its foreign partners as a section 1446 withholding tax. UTP may credit the \$35 withheld by LTP against this liability as if it were paid by UTP. When UTP distributes the \$65 it actually receives from LTP to its partners, UTP is treated for purposes of section 1446 as if it made a distribution of \$100 to its partners (\$65 actual distribution and \$35 deemed distribution). UTP's partners (U.S. and foreign) may claim a credit against their U.S. income tax liability for their allocable share of the \$35 of 1446 tax paid on their behalf.

(2) *In-kind distributions.* If a publicly traded partnership distributes property other than money, the partnership shall not release the property until it has funds sufficient to enable the partnership to pay over in money the required 1446 tax.

(3) *Ordering rule relating to distributions.* Distributions from publicly traded partnerships are deemed to be paid out of the following types of income in the order indicated—

(i) Amounts attributable to income described in section 1441 or 1442 that are not effectively connected, without regard to whether such amounts are subject to withholding because of a treaty or statutory exemption;

(ii) Amounts attributable to recurring dispositions of crops and timber that are subject to withholding under § 1.1445-5(c)(3)(iv) of the regulations, which continue to be subject to the rules of § 1.1445-5(c)(3);

(iii) Amounts effectively connected with a U.S. trade or business, but not subject to withholding under section 1446 (*e.g.*, exempt by treaty);

(iv) Amounts subject to withholding under section 1446; and

(v) Amounts not listed in paragraphs (f)(3)(i) through (iv) of this section.

(4) *Coordination with section 1445(e)(1).* Except as otherwise provided in this section, a publicly traded partnership that complies with the requirements of withholding under section 1446 and this section will be

deemed to have satisfied the requirements of section 1445(e)(1) and the regulations thereunder. Notwithstanding the excluded amounts set forth in paragraph (f)(3) of this section, distributions subject to withholding at the applicable percentage shall include the following—

(i) Amounts subject to withholding under section 1445(e)(1) upon distribution pursuant to an election under § 1.1445-5(c)(3); and

(ii) Amounts not subject to withholding under section 1445 because the distributee is a partnership or is a foreign corporation that has made an election under section 897(i).

(g) *Election to withhold based upon ECTI allocable to foreign partners instead of withholding on distributions.* A publicly traded partnership may elect to comply with the requirements of §§ 1.1446-1 through 1.1446-3 (relating to withholding on ECTI allocable to foreign partners) and § 1.1446-5 (relating to tiered partnership structures) instead of the rules of this section. A publicly traded partnership shall make the election described in this paragraph (g) by complying with the payment and reporting requirements of §§ 1.1446-1 through 1.1446-3 and by complying with the information reporting requirements of this paragraph (g). The election is made by attaching a statement to a timely filed Form 8804, “Annual Return for Partnership Withholding Tax (Section 1446),” that is required to be filed by the partnership for the taxable year, indicating that the partnership is a publicly traded partnership that is electing to pay the 1446 tax under section 1446 based upon ECTI allocable under section 704 to its foreign partners. Once made, an election under this paragraph (g) may be revoked only with the consent of the Commissioner.

§ 1.1446-5 Tiered partnership structures.

(a) *In general.* The rules of this section shall apply in cases where a partnership (lower-tier partnership) that has effectively connected taxable income (ECTI), has a partner that is itself a partnership (upper-tier partnership). A partnership that directly or indirectly (through a chain of partnerships) owns a partnership interest in a lower-tier partnership shall be allowed a credit against its own section 1446 withholding tax (1446 tax) for the tax paid by the lower-tier partnership on its behalf. If an upper-tier domestic partnership directly owns an interest in a lower-tier partnership, the lower-tier partnership is not required to pay a withholding tax with respect to the upper-tier partnership's allocable share