

3. Paragraph (c)(1)(ii)(A)(8) is redesignated as paragraph (c)(1)(ii)(A)(9), and a new paragraph (c)(1)(ii)(A)(8) is added.

4. The first sentence of paragraph (c)(2)(i) is removed and two sentences are added in its place.

5. The first sentence of paragraph (c)(3) is removed and two sentences are added in its place.

6. Paragraph (i) is revised.

The additions and revisions read as follows:

§ 1.1461-1 Payment and returns of tax withheld.

(a) * * *

(1) * * * With respect to withholding under section 1446, this section shall only apply to publicly traded partnerships that have not made an election under § 1.1446-4(g). See § 1.1461-3 for penalties applicable to partnerships that fail to withhold under section 1446 on effectively connected taxable income allocable to foreign partners, including a publicly traded partnership that has made an election under § 1.1446-4(g). The previous two sentences shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

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(c) * * *

(1) * * *

(i) * * * Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446-4(a) must file a Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446-4 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

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(ii) * * *

(A) * * *

(8) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446-4. This paragraph (c)(1)(ii)(A)(8) shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

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(2) *Amounts subject to reporting*—(i) *In general*. Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on

Form 1042-S are amounts paid to a foreign payee or partner (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441-2(a) or § 1.1446-4(a). The reference in the previous sentence to withholding under § 1.1446-4 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

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(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 recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules of §§ 1.1441-1(b)(3), 1.1441-4(a); 1.1441-5(d) and (e); 1.1441-9(b)(3), 1.1446-1(c)(3) or 1.6049-5(d). The reference in the previous sentence to presumption rules applicable to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

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(i) *Effective date*. Unless otherwise provided in this section, this section shall apply to returns required for payments made after December 31, 2000.

Par. 6. Section 1.1461-2 is amended by:

1. Removing the first sentence of paragraph (a)(1) and adding two sentences in its place.

2. Revising paragraphs (b) and (d).

The revisions and addition read as follows:

§ 1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general*. Except for partnerships or nominees required to withhold under section 1446, a withholding agent that has overwithheld under chapter 3 of the Internal Revenue 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. References in the previous sentence excepting from this section certain partnerships withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as

final regulations in the **Federal Register**.

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(b) *Withholding of additional tax when underwithholding occurs*. A withholding agent may withhold from future payments (or a partner's allocable share of ECTI under section 1446) made to a beneficial owner the tax that should have been withheld from previous payments (or paid under section 1446 with respect to a partner's allocable share of ECTI) to such beneficial owner under chapter 3 of the Internal Revenue Code. 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 annual return (e.g. Form 1042, Form 8804) is required to be filed (not including extensions) for the taxable 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. See also §§ 1.1461-1, 1.1461-3, and 1.1446-1 through 1.1446-5 for rules relating to withholding under section 1446. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

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(d) *Effective date*. Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

Par. 7. Section 1.1461-3 is added to read as follows.

§ 1.1461-3 Withholding under section 1446.

For rules relating to the withholding tax liability of a partnership or nominee under section 1446, see §§ 1.1446-1 through 1.1446-6. For penalties and additions to the tax for failure to timely pay the tax required to be paid under section 1446, see sections 6655 (in the case of publicly traded partnerships that have not made an election under § 1.1446-4(g), see section 6656), 6672, and 7202 and the regulations under those sections. For penalties and additions to the tax for failure to file returns or furnish statements in accordance with the regulations under section 1446, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. This section shall apply to partnership taxable years beginning after the date that these regulations are