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2012

Instructions for Forms 8804, 8805, and 8813

Department of the Treasury
Internal Revenue Service

DRAFT AS OF September 5, 2012

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Forms 8804, 8805, 8813, and their instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8804*.

Photographs of Missing Children

The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

General Instructions

Purpose of Forms

Use Forms 8804, 8805, and 8813 to pay and report section 1446 withholding tax based on effectively connected taxable income (ECTI) allocable to foreign partners (as defined in section 1446(e)).

Use Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), to report the total liability under section 1446 for the partnership's tax year. Form 8804 is also a transmittal form for Form(s) 8805.

Use Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, to show the amount of ECTI and the total tax credit allocable to the foreign partner for the partnership's tax year.

File a separate Form 8805 for each foreign partner. See *Reporting to Partners* later, and the instructions for line 8b of Form 8805 later, to determine when Form 8805 is required even if no section 1446 withholding tax was paid. Attach Copy A of each Form 8805 to the Form 8804 filed with the IRS.

Foreign partners must attach Form 8805 to their U.S. income tax returns to claim a withholding credit for their shares of the section 1446 tax withheld by the partnership. Any U.S. person erroneously subjected to the withholding tax would also receive Form 8805 from a partnership, and the Form 8805 should be attached to the U.S. person's income tax return to claim a withholding credit. A partnership that receives a Form 8805 from a lower-tier partnership should see *Tiered Partnerships*, later.

Form 8805 may also be completed, in some cases, by a foreign trust or estate. A foreign partner that is a foreign trust or estate must complete Schedule T of Form 8805 to report to the trust or estate's beneficiaries the section 1446 withholding tax that may be claimed as a withholding tax credit on the beneficiaries' income tax returns. See *Schedule T–Beneficiary Information*, later.

Use Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446), to pay the withholding tax under section 1446 to the United States Treasury. Form 8813 must accompany each payment of section 1446 tax made during the partnership's tax year.

Who Must File

Every partnership (other than a publicly traded partnership) that has effectively connected gross income allocable to a foreign partner must file a Form 8804, regardless of whether it had ECTI allocable to a foreign partner. The partnership must also file a Form 8805 for each partner on whose behalf it paid section 1446 tax, regardless of whether the partnership made any distributions during its tax year. The partnership may designate a person to file the forms. The partnership, or person it designates, must file these forms even if the partnership has no withholding tax liability under section 1446.

When To File

Forms 8804 and 8805

Generally, file these forms on or before the 15th day of the 4th month following the close of the partnership's tax year. For partnerships that keep their records and books of account outside the United States and Puerto Rico, the due date is the 15th day of the 6th month following the close of the partnership's tax year. If the partnership is permitted to file these forms on or before the 15th day of the 6th month, check the box at the top of Form 8804.

If a due date falls on a Saturday, Sunday, or legal holiday, file by the next business day.

File Forms 8804 and 8805 separately from Form 1065, U.S. Return of Partnership Income, or Form 1065-B, U.S. Return of Income for Electing Large Partnerships.

If you need more time, you can file Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns, to request an extension of time to file Form 8804. Form 7004 does not extend the time for payment of tax.

Form 8813

File on or before the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's tax year for U.S. income tax purposes.

Where To File

File Forms 8804, 8805, and 8813 with:

Internal Revenue Service Center
P.O. Box 409101
Ogden, UT 84409

Amended Form 8804

A partnership may file an amended Form 8804 to correct a previously filed Form 8804. To do so, complete a new Form 8804 with the corrected information. Write “Amended” in the top margin of the form and write “Corrected” on any Forms 8805 attached to the Form 8804. File the amended form with the address shown under *Where To File* above.

Taxpayer Identifying Number

To insure proper crediting of the withholding tax when reporting to the IRS, a partnership must provide a U.S. taxpayer identifying number (TIN) for each foreign partner. The partnership should notify any of its foreign partners without such a number of the necessity of obtaining a U.S. identifying number. An individual's identifying number is the individual's social security number (SSN) or individual taxpayer identification number (ITIN). Any other partner's identifying number is its U.S. employer identification number (EIN).

Certain aliens who do not have and are not eligible to get an SSN may apply for an ITIN on Form W-7, Application for IRS Individual Taxpayer Identification Number. The application is also available in Spanish.

Requirement To Make Withholding Tax Payments

A foreign or domestic partnership that has ECTI allocable to a foreign partner must pay a withholding tax equal to the applicable percentage of the ECTI that is allocable to its foreign partners. However, this requirement does not apply to a partnership treated as a corporation under the general rule of section 7704(a). ECTI is defined later. Applicable percentage is defined later.

Withholding Agents

For ease of reference, these instructions refer to various requirements applicable to withholding agents as requirements applicable to partnerships themselves.

Determining If a Partner Is a Foreign Person

A partnership must determine if any partner is a foreign partner subject to section 1446. A foreign partner (as defined in section 1446(e)) is any partner who is not a U.S. person, which is defined in section 7701(a)(30). As such, a foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust or estate, or a foreign organization described in section 501(c).

A partnership may determine a partner's foreign or nonforeign status by relying on a W-8 form (for example, Form W-8BEN), Form W-9, an acceptable substitute form, or by other means. See *Form of certification* and *Use of Means Other Than Certification* below. Also, see Regulations section 1.1446-1(c) for additional information.

Certification of Nonforeign Status

In general, a partnership may determine that a partner is not a foreign person by obtaining a Form W-9 from the partner. A partnership that has obtained this certification may rely on it to establish the nonforeign status of a partner. See *Effect of certification* below.

Form of certification. Generally, a partnership may determine a partner's foreign or nonforeign status by obtaining one of the following withholding certificates from the partner.

- Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual).
- Form W-8BEN-E, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Entities).
- W-8ECI, Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States.
- W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding.
- W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.
- Form W-9, Request for Taxpayer Identification Number and Certification.
- An acceptable substitute form (as described in Regulations section 1.1446-1(c)(5)).
- A statement required from a domestic grantor trust (as described in Regulations section 1.1446-1(c)(2)(ii)(E)) with the necessary documentation required for the trust and the grantor.

Effect of certification. Generally, a partnership that has obtained a withholding certificate (for example, a Form W-8 or W-9) according to the rules in these instructions may rely on the certification to determine whether the partner is a foreign or nonforeign partner for purposes of computing section 1446 tax, and if such partner is a foreign partner, to determine whether or not such partner is a corporation for U.S. tax purposes. The partnership may also use the withholding certificate to determine that the partner is not subject to withholding. A partnership may not rely on a withholding certificate if it knows or has reason to know that any information provided on the withholding certificate is incorrect or unreliable, and based on that information the partnership should pay more section 1446 withholding tax. Under those circumstances, the certificate is not valid.

The partnership will not be subject to penalties for its failure to pay the section 1446 withholding tax prior to the date that it knows or has reason to know that the certificate is not valid. However, the partnership is fully liable for section 1446 withholding tax for the year, as well as penalties and interest, starting with the installment period or Form 8804 filing period during which it knows or has reason to know that the certificate is not valid. See Regulations section 1.1446-1(c)(2)(iii).

Requirements for certificates to be valid. Generally, the validity of a Form W-9 is determined under section 3406 and Regulations section 31.3406(h)-3(e). A Form W-8 is only valid 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.

See Regulations section 1.1446-1(c)(2)(iv) for more details.

Change in circumstances. A partner must provide a new withholding certificate when there is a change in circumstances. The principles of Regulations section 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.

How long to keep the certifications. A partnership or nominee who has responsibility for paying section 1446 withholding tax must retain each withholding certificate, statement, and other information received from its direct and indirect partners for as long as it may be relevant to the determination of the withholding agent's section 1446 tax liability under section 1461 and the regulations thereunder.

Use of Means Other Than Certification

A partnership is not required to obtain a Form W-9. It may rely on other means to learn the non-foreign status of the partner. But if the partnership relies on other means and erroneously determines that the partner was not a foreign person, the partnership will be held liable for payment of the tax, any applicable penalties, and interest. A partnership is not required to rely on other means to determine the non-foreign status of a partner and may demand a Form W-9. If a certification is not provided, the partnership may presume the partner is foreign and will be considered for purposes of sections 1461 through 1463 to have been required to withhold section 1446 tax.

Effectively Connected Taxable Income (ECTI)

Definition

"ECTI" is the excess of the gross income of the partnership that is effectively connected under section 864(c), or treated as effectively connected with the conduct of a U.S. trade or business, over the allowable deductions that are connected to such income. See Pub. 519, U.S. Tax Guide for Aliens, for detailed instructions regarding the computation of ECTI. For purposes of these instructions, figure this income with the following statutory adjustments:

1. Section 703(a)(1) does not apply.
2. The partnership is allowed a deduction for depletion of oil and gas wells, but the amount of the deduction

IRS TAX ASSIST
September 5, 2012

must be determined without regard to sections 613 and 613A.

3. The partnership may not take into account items of income, gain, loss, or deduction allocable to any partner that is not a foreign partner.

See Regulations section 1.1446-2 for additional adjustments that may be required.

A partnership's ECTI includes partnership income subject to a partner's election under section 871(d) or 882(d) (election to treat real property income as income connected with a U.S. business). It also includes any partnership income treated as effectively connected with the conduct of a U.S. trade or business under section 897 (disposition of investment in U.S. real property), and other items of partnership income treated as effectively connected under other provisions of the Internal Revenue Code, regardless of whether those amounts are taxable to the partner.

See Regulations section 1.1446-2 for additional information for computing ECTI.

Amount Allocable to Foreign Partners

The amount of a partnership's ECTI for the partnership's tax year allocable to a foreign partner under section 704 equals (a) the foreign partner's distributive share of effectively connected gross income of the partnership for the partnership's tax year that is properly allocable to the partner under section 704, minus (b) the foreign partner's distributive share of deductions of the partnership for that year that are connected with that income under section 873 or section 882(c)(1) and that are properly allocable to the partner under section 704. This income must be computed by taking into account any adjustments to the basis of the partnership property described in section 743 according to the partnership's election under section 754. Also, a partnership's ECTI is not allocable to a foreign partner to the extent the amounts are exempt from U.S. tax for that partner by a treaty or reciprocal agreement, or a provision of the Code.

Certification of Deductions and Losses

A foreign partner, in certain circumstances, may certify to the partnership that it has deductions and losses it reasonably expects to be available to reduce the partner's U.S. income tax liability on the partner's allocable share of effectively connected income or gain from the partnership. In certain circumstances, the partnership may consider and rely on these deductions and losses to reduce the partnership's section 1446 tax.

Note. Foreign partners must submit all certificates (including updated certificates) using Form 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

See Form 8804-C and instructions, and Regulations section 1.1446-6 for additional information.

Reductions for State and Local Taxes

In addition to any deductions and losses certified by a foreign partner to the partnership (see *Certification of Deductions and Losses* above), the partnership may consider as a deduction of such partner 90% of any state and local income taxes withheld and remitted by the partnership on behalf of such partner with respect to the partner's allocable share of partnership ECTI. The partnership may consider the amount of state and local taxes of the foreign partner regardless of whether the foreign partner submits a certificate to the partnership.

Note. Do not deduct state and local taxes paid on behalf of the partnership. The partnership may only consider as a deduction of a partner **the partner's own state and local income taxes** the partnership withholds and remits on the partner's behalf with respect to the partner's allocable share of partnership ECTI.

Amount of Withholding Tax

Figuring the Tax Payments

Under section 1446, a partnership must make four installment payments of withholding tax during the tax year.

Amount of each installment payment of withholding tax. In general, the amount of a partnership's installment payment is equal to the sum of the installment payments for each of the partnership's foreign partners. A partnership will generally determine the amount of the installment payment for each of its foreign partners by applying the principles of section 6655 and Regulations section 1.1446-3. To do so, use Form 8804-W, Installment Payments of Section 1446 Tax for Partnerships.

Applicable percentage. For all foreign partners, the section 1446 applicable percentage is generally 35%. However, in some circumstances, the partnership may consider the highest rate applicable to a particular type of income allocated to a non-corporate partner if such partner would be entitled to use a preferential rate on such income or gain. See Regulations section 1.1446-3(a)(2) for additional information.

When to make the payment. Make installment payments of the withholding tax under section 1446 with Form 8813 by the applicable due dates during the tax year of the partnership in which the income is earned. The partnership must generally make the installment payments for each foreign partner on or before the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's tax year.

Generally, pay any additional amounts due when filing Form 8804. However, if the partnership files Form 7004 to request an extension of time to file Form 8804, pay the balance of section 1446 withholding tax estimated to be due with Form 7004 in order to avoid the late payment penalty.

Coordination With Other Withholding Rules

Interest, Dividends, etc.

Fixed or determinable, annual or periodical income subject to tax under section 871(a) or 881 is not included in the partnership's ECTI under section 1446. However, these amounts are independently subject to withholding under the requirements of sections 1441 and 1442 and their regulations.

Real Property Gains

Domestic partnerships. Domestic partnerships subject to the withholding requirements of section 1446 are not also subject to the payment and reporting requirements of section 1445(e)(1) and its regulations for income from the disposition of a U.S. real property interest. A domestic partnership's compliance with the requirement to pay a withholding tax under section 1446 satisfies the requirements under section 1445 for dispositions of U.S. real property interests. However, a domestic partnership that would otherwise be exempt from section 1445 withholding by operation of a nonrecognition provision must continue to comply with the requirements of Regulations section 1.1445-5(b)(2).

Foreign partnerships. A foreign partnership subject to withholding under section 1445(a) during a tax year will be allowed to credit the amount withheld under section 1445(a), to the extent such amount is allocable to foreign partners, against its liability to pay the section 1446 withholding tax for that year. This credit is allowed on line 6d or 6e of the Form 8804 filed by the foreign partnership.

Reporting to Partners

When making an installment payment of withholding tax to the IRS under section

DRAFT ASOF September 5, 2012

1446, a partnership must notify all foreign partners of their allocable shares of any section 1446 tax paid to the IRS by the partnership. The partners use this information to adjust the amount of estimated tax that they must otherwise pay to the IRS. The notification to the foreign partners must be provided within 10 days of the installment due date, or, if paid later, the date the installment payment is made. See Regulations section 1.1446-3(d)(1)(i) for information that must be included in the notification and for exceptions to the notification requirement.

If a partnership has gross ECI, it must file a separate Form 8805 for each partner for whom it paid section 1446 tax. In addition, if the partnership reduces ECTI for state and local income tax deductions permitted under Regulations section 1.1446-6(c)(1)(iii) or relies on a Form 8804-C it receives from a partner to reduce its section 1446 tax, it must complete a Form 8805 for the partner even if no tax is paid on behalf of the partner. The foreign partner must also receive a copy of its Form 8805 by the due date of the partnership return (including extensions).

A foreign partner that is a foreign trust or estate must provide to each of its beneficiaries a Form 8805 completed as described under *Schedule T–Beneficiary Information*, later.

Interest and Penalties

Interest

Interest is charged on taxes not paid by the due date, even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, and substantial understatements of tax from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

Late Filing of Form 8804

A partnership that fails to file Form 8804 when due (including extensions of time to file) generally may be subject to a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The penalty will not apply if the partnership can show reasonable cause for filing late.

If you receive a notice about penalty and interest after you file Form 8804, send us an explanation and we will determine if you meet reasonable-cause criteria. Do **not** attach an explanation when you file Form 8804.

Late Filing of Correct Form 8805

A penalty may be imposed for failure to file each Form 8805 when due (including extensions). The penalty may also be imposed for failure to include all required information on Form 8805 or for furnishing incorrect information. The penalty is based on when a correct Form 8805 is filed as follows:

- $30 per Form 8805 if the partnership correctly files within 30 days; maximum penalty of $250,000 per year ($75,000 for a small business). A “small business” has average annual gross receipts of $5 million or less for the most recent 3 tax years (or for the period of time the business has existed, if shorter) ending before the calendar year in which the Forms 8805 were due.
- $100 per Form 8805 if the partnership files more than 30 days after the due date or does not file a correct Form 8805; maximum penalty of $1,500,000 per year ($500,000 for a small business).

If the partnership intentionally disregards the requirement to report correct information, the penalty per Form 8805 is increased to $250 or, if greater, 10% of the aggregate amount of items required to be reported, with no maximum penalty. For more information, see sections 6721 and 6724.

Reasonable cause requests. Section 6724(a) provides reasonable cause relief for failure to comply with sections 6721 through 6724. File reasonable cause requests with the address shown under *Where To File*, earlier.

Adjustment for inflation. The penalty for failure to file Form 8805 under section 6721 will be adjusted for inflation every 5 years beginning in 2013. See section 6721(f) for more information.

Failure To Furnish Correct Form 8805 to Recipient

A penalty may be imposed for each failure to furnish Form 8805 to the recipient when due. The penalty may also be imposed for each failure to give the recipient all required information on each Form 8805 or for furnishing incorrect information. The penalty is:

- $30 per Form 8805 if the partnership correctly furnishes within 30 days; maximum penalty of $250,000 per year ($75,000 for a small business). A “small business” has average annual gross receipts of $5 million or less for the most recent 3 tax years (or for the period of time the business has existed, if shorter) ending before the calendar year in which the Forms 8805 were due.
- $100 per Form 8805 if the partnership furnishes more than 30 days after the due date or does not furnish a correct Form 8805; maximum penalty of $1,500,000 per year ($500,000 for a small business).

If the partnership intentionally disregards the requirement to report correct information, the penalty is increased to $250 or, if greater, 10% of the aggregate amount of items required to be reported, with no maximum penalty. For more information, see sections 6722 and 6724.

Reasonable cause requests. Section 6724(a) provides reasonable cause relief for failure to comply with sections 6721 through 6724. File reasonable cause requests with the address shown under *Where To File*, earlier.

Adjustment for inflation. The penalty for failure to furnish Form 8805 under section 6722 will be adjusted for inflation every 5 years beginning in 2013. See section 6722(f) for more information.

Late Payment of Tax

The penalty for not paying tax when due is usually $^1/_2$ of 1% of the unpaid tax for each month or part of a month the tax is unpaid. The penalty cannot exceed 25% of the unpaid tax. The penalty will not apply if the partnership can show reasonable cause for paying late.

If you receive a notice about penalty and interest after you file Form 8804, send us an explanation and we will determine if you meet reasonable-cause criteria. Do **not** attach an explanation when you file Form 8804.

Failure To Withhold and Pay Over Tax

Any person required to withhold, account for, and pay over the withholding tax under section 1446, but who fails to do so, may be subject to a civil penalty under section 6672. The civil penalty is equal to the amount that should have been withheld and paid over.

Other Penalties

Penalties may also be imposed, absent reasonable cause and good faith, for failing to accurately report the amount of tax required to be shown on a return, if any portion of the resulting underpayment is attributable to negligence, substantial understatement of income tax, valuation misstatement, or fraud. See sections 6662 and 6663.

Treatment of Partners

A partnership's payment of section 1446 withholding tax on ECTI allocable to a foreign partner generally relates to the partner's U.S. income tax liability for the partner's tax year in which the partner is subject to U.S. tax on that income.

DRAFT AS OF September 5, 2012

Amounts paid by the partnership under section 1446 on ECTI allocable to a partner are allowed to the partner as a credit under section 33. The partner may not claim an early refund of withholding tax paid under section 1446.

Amounts paid by a partnership under section 1446 for a partner are to be treated as distributions made to that partner on the earliest of the following:

1. The day on which this tax was paid by the partnership.

2. The last day of the partnership's tax year for which the amount was paid.

3. The last day on which the partner owned an interest in the partnership during that year.

However, the amount of section 1446 withholding paid during a tax year by the partnership is generally treated as an advance or draw under Regulations section 1.731-1(a)(1)(ii) to the extent of the partner's share of income for the partnership year. See Regulations section 1.1446-3(d)(2)(v) for more details.

A partner that wishes to claim a credit against its U.S. income tax liability for amounts withheld and paid under section 1446 must attach Copy C of Form 8805 to its U.S. income tax return for the tax year in which it claims the credit.

See Regulations section 1.1446-3(d)(2) for additional information.

Publicly Traded Partnerships (PTP)

A "publicly traded partnership" is any partnership whose interests are regularly traded on an established securities market (regardless of the number of its partners). However, it does not include a PTP treated as a corporation under the general rule of section 7704(a).

A PTP that has effectively connected income, gain, or loss must withhold tax on distributions of that income made to its foreign partners. The rate is 35%. The PTP may not consider preferential rates when computing the section 1446 tax for a partner. The partnership uses Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding; and Form 1042-T, Annual Summary and Transmittal of Forms 1042-S, to report withholding from distributions instead of following these instructions. It also must comply with the regulations under section 1461 and Regulations section 1.6302-2.

Tiered Partnerships

The term "tiered partnership" describes the situation in which a partnership owns an interest in another partnership. The former is an "upper-tier partnership" and the latter is a "lower-tier partnership." An upper-tier partnership that owns a partnership interest in a lower-tier partnership is allowed a credit against its own section 1446 liability for any section 1446 tax paid by the lower-tier partnership for that partnership interest.

If an upper-tier partnership provides appropriate documentation to a lower-tier partnership, the lower-tier partnership may look through the partnership to the partners of such upper-tier partnership in determining its section 1446 tax due. The look through may apply only with respect to the portion of the upper-tier partnership's allocation that is allocable to partners of such partnership for which appropriate documentation has been received by the lower-tier partnership. For more information, see Regulations section 1.1446-5(c) for upper-tier foreign partnerships and Regulations section 1.1446-5(e) for upper-tier domestic partnerships. See Regulations section 1.1446-5(b) for reporting requirements.

Note. The look-through rules referred to above apply only for purposes of the lower-tier partnership's computation of its section 1446 tax liability. It does not affect the upper-tier partnership's reporting requirements with respect to Forms 8804 and 8805 as set forth in the next paragraph and elsewhere in these instructions.

An upper-tier partnership that has had section 1446 tax payments made on its behalf by a lower-tier partnership will receive a copy of Form 1042-S or Form 8805 from the lower-tier partnership. The upper-tier partnership must in turn file these forms with its Form 8804 and treat the amount withheld by the lower-tier partnership as a credit against its own liability to withhold under section 1446. This credit is allowed on line 6b or line 6c of the Form 8804 filed by the upper-tier partnership. The upper-tier partnership must also provide to its partners the information described in *Reporting to Partners* , earlier. These statements and forms will enable those partners to obtain appropriate credit for tax withheld under section 1446.

See Regulations section 1.1446-5 for additional information.

Specific Instructions

Address

When providing a U.S. address on Form 8804, 8805, or 8813, include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the partnership (or withholding agent) has a P.O. box, show the box number instead of the street address. If the partnership (or withholding agent) receives its mail in care of a third party (such as an accountant or an attorney), enter on the street address line "c/o" followed by the third party's name and street address or P.O. box.

When providing a foreign address on Form 8804, 8805, or 8813, enter the number and street, city, province or state, and the name of the country. Follow the foreign country's practice in placing the postal code in the address. Do not abbreviate the country name.

Form 8804

Lines 1c, 1d, 2c, and 2d

See *Address* above.

Lines 4a, 4e, 4i, and 4m

Figure the partnership's ECTI using the definition, earlier. Enter the total ECTI allocable to foreign partners (by income type) on lines 4a, 4e, 4i, and 4m. With respect to lines 4e, 4i, and 4m, enter the specified types of income allocable to non-corporate partners if appropriate documentation is received and such partners would be entitled to use a preferential rate on such income or gain. See Regulations section 1.1446-3(a)(2) for additional information.

If the partnership has net ordinary loss, net short-term capital loss, or net 28% rate loss, each net loss should be netted against the appropriate categories of income and gain to determine the amounts of income and gain to be entered on lines 4e, 4i, and 4m, respectively. See section 1(h) and Notice 97-59, 1997-45 I.R.B. 7, for rules for netting gains and losses.

Note. Partnership ECTI on which a foreign partner is exempt from U.S. tax by a treaty or other reciprocal agreement is not allocable to that partner and is exempt from withholding under section 1446. However, this exemption from section 1446 withholding must be reported on Form 8805. See instructions for line 8b of Form 8805, later.

Lines 4b, 4f, 4j, and 4n

Enter the reduction amounts for state and local taxes under Regulations section 1.1446-6(c)(1)(iii). See *Reductions for State and Local Taxes*, earlier, for additional information. The netting rules under section 1(h) and Notice 97-59 must be considered in determining the category of income the reduction amounts offset.

Lines 4c, 4g, 4k, and 4o

Enter the reduction amounts resulting from certified partner-level items received from foreign partners using Form 8804-C. See *Certification of Deductions and Losses*,

DRAFT AS OF September 5, 2012

earlier, for additional information. The netting rules under section 1(h) and Notice 97-59 must be considered in determining the category of income the reduction amounts offset.

Line 5e

Add lines 5a through 5d.

Line 6b

If the partnership is an upper-tier partnership in one or more lower-tier partnerships, enter on line 6b the amount of section 1446 tax withheld by lower-tier partnerships with respect to ECTI allocable to the upper-tier partnership (see *Tiered Partnerships*, earlier). The amount withheld will be shown on line 10 of the Form 8805 the partnership receives from the lower-tier partnership.

Line 6c

Enter on line 6c the amount of section 1446 tax withheld by a lower-tier PTP that is reported to the partnership on Form 1042-S. The amount withheld will be shown in box 7 of the Form 1042-S. (Box 1 of the Form 1042-S will show income code 27.)

Line 6d

Line 6d applies only to partnerships treated as foreign persons and subject to withholding under section 1445(a) or 1445(e)(1) upon the disposition of a U.S. real property interest.

Enter on line 6d the amount of tax withheld under section 1445(a) or 1445(e)(1) and shown on Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, for the tax year in which the partnership disposed of the U.S. real property interest. The amount withheld will be shown in box 2 of the Form 8288-A.

Line 6e

Enter on line 6e the amount of section 1445(e) tax withheld on a distribution by a domestic trust to the partnership with respect to the disposition of a U.S. real property interest by the trust. The amount withheld will be shown in box 7 of the Form 1042-S the partnership receives from the trust. (Box 1 of the Form 1042-S will show income code 25 or 26.)

Reporting Amounts Allocable To Partners

For lines 6d and 6e, do not enter more than the amount allocable to foreign partners (as defined in section 1446(e)). Enter amounts allocable to U.S. partners on line 15f of Schedule K (Form 1065) and in box 15 (using code P) of Schedule K-1 (Form 1065). For Form 1065-B, see line 15 of Schedule K and enter amounts in box 9 of Schedule K-1.

Line 8

If Schedule A (Form 8804) is attached, check the box on line 8 and enter the amount of any penalty on this line.

Form 8805

Line 1b

A partnership must pay the withholding tax for a foreign partner even if it does not have a U.S. TIN for that partner. See *Taxpayer Identifying Number*, earlier, for details.

Line 1c

See *Address*, earlier.

Line 3

Enter the type of partner (for example, individual, corporation, partnership, trust, estate).

Line 4

Enter the applicable two-letter code from the list at *www.irs.gov/countrycodes* for the country of which the partner is a resident for tax purposes. These codes are used by the IRS to provide information to all tax treaty countries for purposes of their tax administration.

Line 5c

See *Address*, earlier.

Line 8b

Check the box on this line if any of the partnership's ECTI is treated as not allocable to the foreign partner identified on line 1a and therefore exempt from section 1446 withholding because the income is exempt from U.S. tax for that foreign partner by a treaty, reciprocal exemption, or a provision of the Internal Revenue Code.

Line 9

Enter the partnership ECTI allocable to the foreign partner (before considering any state and local income tax reduction permitted under Regulations section 1.1446-6(c)(1)(iii) or any reduction amounts resulting from certified partner-level items received from foreign partners using Form 8804-C).

The partnership must provide a statement (generally Schedule K-1 (Form 1065)) to the foreign partner that lists each income type of ECTI included on line 9. The income types of ECTI that may be included on line 9 are:

- Net ordinary income and net short-term capital gains.
- 28% rate gains (non-corporate partners only).
- Unrecaptured section 1250 gains (non-corporate partners only).
- Qualified dividend income and net long-term capital gains (including net section 1231 gains) (non-corporate partners only).

The partnership must also provide any additional information to foreign partners that they may reasonably need to complete Schedule P (Form 1120-F).

Line 10

To calculate the total tax credit allowed to a foreign partner under section 1446, subtract from each type of ECTI allocable to the foreign partner the amount of any state and local income tax reduction permitted under Regulations section 1.1446-6(c)(1)(iii) and any reduction amounts resulting from certified partner-level items received from foreign partners, using Form 8804-C, that the partnership considered in determining that partner's portion of the section 1446 withholding tax due. Then multiply each net amount by the applicable percentage (see definition, earlier). Finally, total the resulting amounts.

Note. If the partnership relied on a certificate the partner submitted under Regulations section 1.1446-6(c)(1)(ii) to determine that the partnership is not required to pay any section 1446 tax with respect to that partner, enter -0- on line 10. See Form 8804-C, Part III.

Attachments

The partnership is required to attach to Form 8805 the computation described in the first paragraph of these line 10 instructions. Furthermore, if the total section 1446 tax paid for a partner has been reduced as a result of the state and local income tax reduction permitted under Regulations section 1.1446-6(c)(1)(iii) or as a result of relying in whole or in part on a partner's Form 8804-C, then the documentation described below must also be attached to the Form 8805 for that partner.

- If the total section 1446 tax paid for the partner has been reduced because the partnership relied on a Form 8804-C, attach that Form 8804-C to the partner's Form 8805.
- A computation of the tax due relating to the partner if any Forms 8804-C were relied on. See Regulations section 1.1446-6(d)(3)(i).
- If the total section 1446 tax paid for the partner has been reduced based on the state and local income tax reduction permitted under Regulations section 1.1446-6(c)(1)(iii), attach a computation of the tax due.

Note. With respect to the last two bulleted items, a statement showing one computation for both items is permitted.

DRAFT AS OF September 5, 2012

A partnership must attach all applicable items referred to above to reduce its section 1446 tax due by either of the reductions referred to above.

Schedule T–Beneficiary Information

If the foreign partner is a foreign trust or estate, the foreign trust or estate must provide to each of its beneficiaries a copy of the Form 8805 furnished by the partnership. In addition, the foreign trust or estate must complete Schedule T for each of its beneficiaries and must provide that Schedule T information to each beneficiary.

The foreign trust or estate may provide all of the information listed in the previous paragraph on a single Form 8805 for each of its beneficiaries. In this case, the information provided in boxes 1a through 10 will be the same for all of the beneficiaries, but the information provided on Schedule T may vary from beneficiary to beneficiary, depending on the ownership interests of the respective beneficiaries.

Line 11c

See *Address*, earlier.

Line 12

Enter the amount of ECTI on line 9 to be included in the beneficiary's gross income. The foreign trust or estate must provide a statement (generally Schedule K-1 (Form 1041)) to each of its beneficiaries that lists each income type of ECTI included on line 12. The income types of ECTI that may be included on line 12 are:

- Net ordinary income and net short-term capital gains.
- 28% rate gains (non-corporate beneficiaries only).
- Unrecaptured section 1250 gains (non-corporate beneficiaries only).
- Qualified dividend income and net long-term capital gains (including net section 1231 gains) (non-corporate beneficiaries only).

Line 13

To determine the total tax credit allowed to a beneficiary under section 1446, multiply each type of ECTI on line 12 by the applicable percentage (see definition, earlier).

Form 8813

Line 1

A partnership without a U.S. EIN must obtain one and must pay any section 1446 withholding tax due. If the partnership has not received an EIN by the time it files Form 8813, indicate on line 1 of Form 8813 the date the partnership applied for its EIN. On receipt of its EIN, the partnership must immediately send that number to the IRS using the address as shown in *Where To File*, earlier. Failure to provide an EIN may delay processing of payments on behalf of the partners.

Line 2

See *Amount of each installment payment of withholding tax*, earlier, for information on calculating the amount of the payment.

Line 3

See *Address*, earlier.

Attachments

If the total section 1446 tax paid for an installment period has been reduced as a result of the state and local income tax reduction permitted under Regulations section 1.1446-6(c)(1)(iii) or as a result of relying in whole or in part on a partner's Form 8804-C, then the documentation described below must be attached to all Forms 8813 starting with the first installment period in which the certificate was considered. Under these circumstances, a partnership must file Form 8813 for an installment period even if no section 1446 withholding tax is due.

The required documentation is as follows:

- If the partnership reduced an installment payment because it relied on Forms 8804-C, attach all such Forms 8804-C to Form 8813. If the same Form 8804-C for a partner is used in a subsequent installment period, see Regulations section 1.1446-6(d)(3)(i) for a substitute to attaching that Form 8804-C to the Form 8813 for subsequent installment periods.
- A computation of the tax due relating to each partner whose Form 8804-C it relied on. See Regulations section 1.1446-6(d)(3)(i).
- If the partnership reduced an installment payment based on state and local income tax deductions permitted under Regulations section 1.1446-6(c)(1)(iii), attach a computation of the tax due.

Note. With respect to the last two bulleted items, a statement showing one computation for both items is permitted.

A partnership must attach all applicable items referred to above to reduce its section 1446 tax due by either of the reductions referred to above.

Paperwork Reduction Act Notice. We ask for the information on these forms to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average times are:

Form	8804	8805	8813
Recordkeeping	52 min.	39 min.	26 min.
Learning about the law or the form	1 hr., 11 min.	53 min.	49 min.
Preparing the form	1 hr., 01 min.	21 min.	16 min.
Copying, assembling, and sending the form to the IRS	31 min.	16 min.	10 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the tax forms to this address. Instead, see *Where To File*, earlier.

NOT AS OF September 5, 2012