

LB&I International Practice Service Process Unit – Audit

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Unit Name	Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests
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Process Overview

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Process Description

The United States has the authority to tax the gain on the disposition of a U.S. real property interest (USRPI) by a foreign person under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). A disposition means a “disposition” for any purpose of the Internal Revenue Code (IRC), which includes a sale, exchange, liquidation, redemption, gift, and other transfers. A USPRI includes but is not limited to real property located in the U.S. or the Virgin Islands and ownership interests in certain entities that own USRPis.

Gain on the disposition of a USRPI is treated as income that is effectively connected to a U.S. trade or business (ECI) irrespective of the foreign person's activities in the U.S. IRC § 1445 was enacted to ensure collection of the tax imposed under FIRPTA. In general, IRC § 1445 requires the purchaser of a USRPI from a foreign person to withhold 10 percent (or more) of the amount realized on the disposition. The amounts withheld are credited towards the foreign person's U.S. tax liability and may be greater than the actual tax liability due on the disposition of the USRPI. A NRA may be entitled to a refund for taxes withheld under section IRC § 1445 by filing Form 1040NR, *U.S. Nonresident Alien Income Tax Return*.

This International Practice Service (IPS) unit focuses on determining whether a nonresident alien's (NRA) refund request for taxes withheld under IRC § 1445 should be granted. In reviewing the NRA's refund request, a critical first step is to ensure that the request is timely under the statute of limitations. If the refund request is timely, it is important to verify that the NRA's Form 1040NR accurately reported the gain (or loss) on the disposition of the USRPI and the amount of withholding taxes imposed on the transaction. This verification process involves reconciling the amount realized on the disposition of the USRPI, the adjusted basis of the USRPI, and the amount of withholding tax as reported on Form 1040NR with information return(s) filed by the purchaser, other third-party information (e.g., public property records), and Internal Revenue Service (IRS) information. Finally, a NRA is entitled to a refund of taxes withheld under IRC § 1445 only if his/her total U.S. tax liability is less than amounts withheld or previously paid. Thus, an analysis of all of the NRA's income subject to U.S. taxation must be performed prior to issuing a refund for taxes withheld under IRC § 1445.

Process Overview (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Process Description

This verification process is important because federal taxes refunded to a NRA will generally be difficult to collect if a subsequent examination reveals errors on the NRA's Form 1040NR. This is due to the fact that NRAs may not have sufficient assets that the U.S. may utilize to satisfy an assessed tax liability.

Note: For IPS practice units related to Foreign Persons, a NRA's Legal Status and FIRPTA, see "Index of Other Related Issues" on the last page of this unit.

Process Overview (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Example Circumstances Under Which Process Applies

The following example illustrates a request for refund of amounts withheld under IRC § 1445:

In December of 2012, a NRA sells a USRPI for \$250,000 and has a basis in the property of \$300,000, resulting in a \$50,000 loss. The buyer withheld 10% of the purchase price (\$25,000). In January of 2013, the NRA filed a request for refund of the entire \$25,000 withheld on the sale of the USRPI on Form 1040NR. The NRA did not earn any ECI or fixed, determinable, annual, or periodical (FDAP) income in 2012. Accordingly, the NRA's Form 1040NR reported the following:

- A \$50,000 loss on Schedule D, Capital Gain, which carried to Form 1040NR (Line 14)
- An amount withheld of \$25,000 on the disposition of the USRPI on Form 1040NR (Line 61c)
- Attached to Form 1040NR, Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, reporting an amount withheld of \$25,000.

Since the refund request is timely and the NRA earned no U.S. ECI or FDAP income in 2012, the \$25,000 request for refund should be allowed.

Determination of Process Applicability

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Generally, the following criteria must be present for this IPS practice unit to be applicable.

Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ A NRA disposes of a USRPI. ▪ The buyer/withholding agent (buyer) withholds on the amount realized on the disposition of the USRPI, files Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, with the IRS 	<ul style="list-style-type: none"> ▪ Form 1040NR ▪ Schedule D, Capital Gains and Losses ▪ Form 4797, Sales of Business Property ▪ Form 1099-S, Proceeds from Real Estate Transactions ▪ IRM 2.3.35 – Command Code IRPTR ▪ Accurint ▪ Review Form 1040NR for an attached Form 8288-A. ▪ Overview of Withholding under FIRPTA for Sales by Individuals – See “References of Other Related Issues” at the end of this practice unit. 	

Determination of Process Applicability (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Generally, the following criteria must be present for this IPS practice unit to be applicable.

Criteria	Resources	6103 Protected Resources
The NRA files a request for refund on Form 1040NR timely within the period to receive a refund of amounts withheld or previously paid (IRC § 6511 – generally within 3 years of the due date of the return without extensions or 2 years of date tax paid or deemed paid).	<ul style="list-style-type: none"> ▪ Claim for Refund on Form 1040NR – Timely or Not – See “References of Other Related Issues” 	
The NRA’s tax liability reported on Form 1040NR is less than the total prepayments and federal tax withheld (including amounts withheld under IRC § 1445 related to FIRPTA). The NRA’s tax liability would include tax imposed on income effectively connected with a U.S. trade or business (including gain or loss from the disposition of USRPI) and FDAP income.	<ul style="list-style-type: none"> ▪ Form 1040NR: <ul style="list-style-type: none"> - Schedule D for disposition - Form 4797 for disposition - Total Tax - Total Prepayments 	

Summary of Process Steps

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests


<u>Step 1</u>	Determine the total gain or loss realized on the disposition of the USRPI by a NRA.
<u>Step 2</u>	Determine whether the disposition of the USRPI is exempt from taxation.
<u>Step 3</u>	Determine whether the total withholding under IRC §1445 reported on the Form 1040NR is correct.
<u>Step 4</u>	Determine whether the request for a refund of taxes withheld under IRC §1445 is allowable.

Step 1 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 1: Determine the total gain or loss recognized on the disposition of the USRPI by a NRA.

When a NRA disposes of a USRPI, the total gain or loss from the disposition is generally included on either Schedule D or Form 4797 attached to the Form 1040NR.

Considerations	Resources	6103 Protected Resources
<p>Part A Continued:</p>  <p>Decision Point: Are there any discrepancies between the amounts reported on the Form 1040NR and all other available information?</p> <p>If “No”, proceed to Part B.</p> <p>If “Yes”, conduct the following steps below.</p> <ul style="list-style-type: none"> ▪ Issue information document request (IDR) to the NRA requesting the sales contract and other related sales documentation (e.g. settlement statement). ▪ Issue IDR requesting sales contract and other related sales documentation from withholding agent and/or purchaser. ▪ Interview third parties, if warranted to gather relevant information to confirm amount realized on the sale of the property. 	<ul style="list-style-type: none"> ▪ IRM 4.10.1.6.12 – Third Party Contacts – Background ▪ IRM 4.10.3.2.1.4 – Third Party Interviews 	

Step 1 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 1: Determine the total gain or loss recognized on the disposition of the USRPI by a NRA.

When a NRA disposes of a USRPI, the total gain or loss from the disposition is generally included on either Schedule D or Form 4797 attached to the Form 1040NR.

Considerations	Resources	6103 Protected Resources
<p>Part B: Verify adjusted basis of the USRPI disposed of by comparing the amounts reported on the Form 1040NR (Schedule D or Form 4797) to other available information.</p> <ul style="list-style-type: none"> ▪ The adjusted basis of the USRPI generally equals the original purchase price of the property (including real estate taxes imposed on the seller) plus or minus certain adjustments to basis, such as: <ul style="list-style-type: none"> - Items chargeable to the asset (expenses, losses, or other items) - Depreciation expense allowed or allowable - Other adjustments ▪ Determine the NRA's original cost basis of the property by conducting the following: <ul style="list-style-type: none"> - Review Accurint and public property records for original purchase price information. - Issue IDR to NRA for original purchase contract, Settlement Statement (HUD-1) or other applicable purchase documents - Issue third party IDR for purchase contract, Settlement Statement (HUD-1) or other relevant purchase documents 	<ul style="list-style-type: none"> ▪ IRC 1011 ▪ Treas. Reg. 1.1011-1 ▪ IRC 1012 ▪ Treas. Reg. 1.1012-1(a) & (b) ▪ IRC 1016 ▪ Treas. Reg. 1.1016-1 to 10 ▪ IRM 4.10.1.6.12 	

Step 1 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 1: Determine the total gain or loss recognized on the disposition of the USRPI by a NRA.

When a NRA disposes of a USRPI, the total gain or loss from the disposition is generally included on either Schedule D or Form 4797 attached to the Form 1040NR.

Considerations	Resources	6103 Protected Resources
<p><u>Part B Continued:</u></p> <ul style="list-style-type: none"> ▪ Review adjustments to original cost basis, if any, to determine if adjustments were proper and accurate. <ul style="list-style-type: none"> - Review the NRA's prior year tax returns, if any - Issue IDR to NRA for substantiation of any additions to basis - Review Accurint & Public records <p><u>Part C:</u> Determine the total gain or loss realized on the disposition of the USRPI</p> <ul style="list-style-type: none"> ▪ Subtract the adjusted basis of the USRPI from the amount realized from sale of USRPI to determine amount of gain or loss on the sale. ▪ If the amounts determined in Part A or B differ from the amounts reported on Form 1040NR, propose an adjustment to reflect the correct amount of gain or loss on the disposition of the USRPI. 	<ul style="list-style-type: none"> ▪ IRC 1016(a) ▪ Treas. Reg. 1.1016-1 to 10 	

Step 2

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 2: Determine whether the disposition of a USRPI is exempt from taxation.

In general, a NRA that realizes gain on the disposition of a USRPI is subject to tax on the amount of the gain (i.e., the amount realized on the disposition of the USRPI exceeds its adjusted basis). However, certain non-recognition provisions or other exemptions may apply to exclude the entire gain realized (or a portion thereof) from taxation.

Considerations	Resources	6103 Protected Resources
<p>The following non-recognition provisions may be applicable to a request for refund of amounts withheld under IRC § 1445:</p> <ul style="list-style-type: none"> ▪ IRC § 332, Complete liquidations of subsidiaries ▪ IRC § 351, Transfer to corporation controlled by transferor ▪ IRC § 361, Non-recognition of gain or loss to corporations ▪ IRC § 721, Non-recognition of gain or loss on contribution to a partnership ▪ IRC § 1031, Exchange of property held for productive use or investment ▪ IRC § 1033, Involuntary conversions <p>The non-recognition provisions listed above are generally only applicable if the USRPI disposed of is exchanged for a USRPI that is subject to U.S. taxation upon its disposition and the transferor complies with certain filing requirements. (Please note that, in general taxation of the realized gain is deferred until the occurrence of a subsequent event (e.g. the sale of the USRPI received in exchange for the disposed USPRI)).</p>	<ul style="list-style-type: none"> ▪ IRC 897(e) ▪ Treas. Reg. 1.897-6T(a)(2) ▪ Notice 2006-46 - Announcement of rules to be included in final regulations under sections 897(d) and (e) of the Code ▪ Treas. Reg. 1.897-5T(c) ▪ Notice 89-85 - Revision of temporary regulations pending issuance of final regulations under section 897 of the Internal Revenue Code of 1986 <ul style="list-style-type: none"> • For further information on the non-recognition provisions listed here and the others contained in Treas. Reg. 1.897-6T(a)(2), see the IPS Library for practice units on these issues. 	

Step 2 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 2: Determine whether the disposition of a USRPI is exempt from taxation.

In general, a NRA that realizes gain on the disposition of a USRPI is subject to tax on the amount of the gain (i.e., the amount realized on the disposition of the USRPI exceeds its adjusted basis). However, certain non-recognition provisions or other exemptions may apply to exclude the entire gain realized (or a portion thereof) from taxation.


Considerations	Resources	6103 Protected Resources
<p>A NRA relying on a non-recognition provision is required to file a tax return reporting the non-recognition transaction and attach a statement to the return which must include information proscribed by the Treasury Regulations.</p> <p>If the request for refund under IRC § 1445 is based on a non-recognition provision, conduct the following:</p> <ul style="list-style-type: none"> ▪ Review the statement attached to the tax return to determine if the proper information was provided under the Regulations <ul style="list-style-type: none"> - If a notice of non-recognition was filed under the IRC § 1445 Regulations, that notice may be used to satisfy the procedural requirements described above by attaching a copy of the notice to the tax return ▪ Review public records, Accurint and other available information to verify information included in the statement attached to the tax return is correct and accurate ▪ Review the statement to determine if the non-recognition provision was properly applied and the transaction qualifies for gain deferral ▪ Request additional information from the NRA to substantiate the non-recognition transaction, if needed (e.g., request sales contracts, closing statements, etc.) ▪ Request information from third parties, if warranted, to verify information included on the NRA's tax return statement. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-5T(d)(1)(iii) • Treas. Reg. 1.897-5T(d)(1)(iii) • Treas. Reg. 1.1445-2(d)(2)(iii) • Treas. Reg. 1.1445-5(b)(2)(ii) 	

Step 2 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 2: Determine whether the disposition of a USRPI is exempt from taxation.

In general, a NRA that realizes gain on the disposition of a USRPI is subject to tax on the amount of the gain (i.e., the amount realized on the disposition of the USRPI exceeds its adjusted basis). However, certain non-recognition provisions or other exemptions may apply to exclude the entire gain realized (or a portion thereof) from taxation.

Considerations	Resources	6103 Protected Resources
<p> CONSULTATION: Consider seeking assistance from the Organization/Restructuring IPN and/or request advice of Counsel regarding any of the above listed non-recognition provisions.</p> <p>Other exclusion provisions:</p> <ul style="list-style-type: none"> ▪ Did the NRA dispose of his/her principal residence? <ul style="list-style-type: none"> - Generally, gross income shall not include gain from the sale or exchange of property if, during the 5 year period prior to the sale or exchange, the property was used for a least 2 years as the primary residence. <ul style="list-style-type: none"> ○ Principal residence defined ○ Ownership/use requirements ○ Generally, \$250,000 maximum exclusion for NRA ○ Reduced exclusion if ownership test is not fully met <p>Note: Form 1099-S is not required when the seller provides the required information substantiating the sale was of their primary residence and the gain on the sale was \$250,000 or less.</p>	<ul style="list-style-type: none"> ▪ IRC 121(a) ▪ Treas. Reg. 1.121-1(a) ▪ Treas. Reg. 1.121-1(b)(2) ▪ Treas. Reg. 1.121-1(c)(1) – (3) ▪ Treas. Reg. 1.121-2(a) ▪ Treas. Reg. 1.121-3(a) ▪ IRC 6045(e)(5) 	

Step 2 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 2: Determine whether the disposition of a USRPI is exempt from taxation.

In general, a NRA that realizes gain on the disposition of a USRPI is subject to tax on the amount of the gain (i.e., the amount realized on the disposition of the USRPI exceeds its adjusted basis). However, certain non-recognition provisions or other exemptions may apply to exclude the entire gain realized (or a portion thereof) from taxation.



Considerations	Resources	6103 Protected Resources
<p>If a NRA excludes a realized gain from the sale of his/her principal residence, consider conducting the following steps to determine whether or not the NRA qualifies for such exclusion:</p> <ul style="list-style-type: none"> ▪ Determine if the home was owned and used by the NRA as the NRA's principal residence: <ul style="list-style-type: none"> - Review public property records to substantiate ownership of the property - Compare addresses on federal and state tax returns, driver's license, utility bills and/or automobile registration to address of principal residence - Check public property tax records for existence of homestead exemption for primary residence (Note: Homestead exemption only applicable in states with such laws and exemption typically exempts a certain amount of the assessed value of the home from property taxes if the home is considered the owner's primary or principal residence) - Request copy of homeowner's insurance policy and compare insured address to property address - Review public property records and Accurint to determine if the NRA owns other real property, if so, analyze the facts to determine if other property may be the NRA's principal residence. 	<ul style="list-style-type: none"> • Treas. Reg. 1.121-1(b)(2) 	

Step 2 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 2: Determine whether the disposition of a USRPI is exempt from taxation.

In general, a NRA that realizes gain on the disposition of a USRPI is subject to tax on the amount of the gain (i.e., the amount realized on the disposition of the USRPI exceeds its adjusted basis). However, certain non-recognition provisions or other exemptions may apply to exclude the entire gain realized (or a portion thereof) from taxation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine if the NRA used the property as a principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the USRPI <ul style="list-style-type: none"> - Request information from taxpayer to substantiate 2 year period <p> CAUTION: If a NRA claims that the exclusion of realized gain on the sale of his principal residence is allowable, consider evaluating the NRA's residency for U.S. tax purposes.</p> <p> CONSULTATION: Consider seeking assistance from the Jurisdiction to Tax IPN and/or request advice of Counsel regarding the evaluation of whether the foreign person is a U.S. resident for tax purposes.</p>	<ul style="list-style-type: none"> ▪ IRC 7701(b)(1)(A) ▪ IRC 7701(b)(3) ▪ Treas. Reg. 301.7701(b) 	

Step 2 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 2: Determine whether the disposition of a USRPI is exempt from taxation.

In general, a NRA that realizes gain on the disposition of a USRPI is subject to tax on the amount of the gain (i.e., the amount realized on the disposition of the USRPI exceeds its adjusted basis). However, certain non-recognition provisions or other exemptions may apply to exclude the entire gain realized (or a portion thereof) from taxation.


Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Was the USRPI disposed of as a gift to a spouse or former spouse? <ul style="list-style-type: none"> - Generally, no gain or loss shall be recognized on the transfer of property from an individual to his or her spouse or a former spouse (only if incident to a divorce). - This exception is not applicable if the spouse receiving the gift is a NRA. - However, there is no withholding required if the amount realized is \$0. ▪ Was the USRPI disposed of a District of Columbia (DC) Zone Asset? <ul style="list-style-type: none"> - Generally, gross income shall not include qualified capital gain from the sale or exchange of any DC Zone asset held for more than 5 years. - DC Zone Asset includes any DC Zone business property acquired after December 31, 1997 and before January 1, 2012. - DC Zone business property includes land and any substantial improvements on that land. 	<ul style="list-style-type: none"> ▪ IRC 1041(a) ▪ Treas. Reg. 1.1041-1T ▪ IRC 1041(d) ▪ Treas. Reg. 1.445-1(b)(1) ▪ Notice 98-57 - D.C. Enterprise Zone / Census Tracts ▪ IRC § 1400B(a) ▪ IRC § 1400B(b)(1)(C) ▪ IRC § 1400B(b)(4)(A) ▪ IRC § 1400B(b)(4)(B) 	

Step 3

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 3: Determine whether the total withholding under IRC § 1445 reported on the Form 1040NR is correct.

Generally, a NRA reports taxes withheld under IRC § 1445 on the disposition of a USRPI on Form 1040NR and attaches Form 8288-A provided by the IRS.

Considerations	Resources	6103 Protected Resources
<p>Part A: Determine whether the IRS previously verified the FIRPTA withholding reported on Form 1040NR and Form 8288-A.</p> <ul style="list-style-type: none"> Austin Submission Processing Center tries to verify FIRPTA withholding reported on Forms 1040NR with the withholding in the Form 8288-A Database. Result of verification is noted on Form 13698 stapled to the Form 1040NR. <p>NOTE: Although a copy B of Form 8288-A is generally required to be attached to the Form 1040NR to claim federal taxes withheld under IRC § 1445, the NRA may attach substantial evidence of such withholding in lieu of copy B of Form 8288-A.</p>	<ul style="list-style-type: none"> IRM 3.21.25.14 – Checking Form 8288-A for completeness Form 13698, International Credit(s) Verification Slip IRM 3.21.25.14.1 - Reviewing Form 8288-A CCA 201028040 - IRC 1445 	
<p> Decision Point: Does the Form 13698 attached to the Form 1040NR verify the total amount of Federal income tax withheld under IRC § 1445?</p> <p>If yes, continue to Step 4.</p> <p>If no, proceed to Part B.</p>	<ul style="list-style-type: none"> Form 13698, International Credit(s) Verification Slip 	

Step 3 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 3: Determine whether the total withholding under IRC § 1445 reported on the Form 1040NR is correct.

Generally, a NRA reports taxes withheld under IRC § 1445 on the disposition of a USRPI on Form 1040NR and attaches Form 8288-A provided by the IRS.

Considerations	Resources	6103 Protected Resources
<p>Part B:</p> <ul style="list-style-type: none"> ▪ Reconcile the Form 8288-A attached to the return to the total amount reported on in the Payment section on page 2 of the Form 1040NR. ▪ Review IRPTRO to confirm withholding reported on Form 8288-A (Document Code 41). <ul style="list-style-type: none"> - NOTE: Form 8288-A may be filed without a TIN. If this occurred, Form 8288-A will not appear on IRPTRO nor will the IRS date stamp Form 8288-A “Copy B Mailed” or forward it to the foreign seller. - For Forms 8288-A filed without a TIN, the Ogden Submission Processing Center will mail Letter 3794 to inform the foreign seller they must first obtain a U.S. TIN (SSN/ITIN) by filing a Form W-7 in order for the IRS to mail Form 8288-A, “Copy B” to them. - If the foreign seller subsequently furnishes a U.S. TIN to the IRS, the IRS will then mail a stamped of Form 8288-A (Copy B) to the foreign seller, which should then be attached to Form 1040NR. 	<ul style="list-style-type: none"> ▪ Form 1040NR ▪ Form 8288-A ▪ IRM 2.3.35 – Command Code IRPTR ▪ IRM 2.3.35-4 –Document Code Availability by Tax Year ▪ TD 9082 - Revision of Income Tax Regulations Under Sections 897, 1445, and 6109 to Require Use of Taxpayer Identifying Numbers on Submissions Under the Section 897 and 1445 Regulations ▪ IRM 3.21.25.10 - ITIN Guidance for Foreign Buyers/Sellers of U.S. Property 	

Step 3 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 3: Determine whether the total withholding under IRC § 1445 reported on the Form 1040NR is correct.

Generally, a NRA reports taxes withheld under IRC § 1445 on the disposition of a USRPI on Form 1040NR and attaches Form 8288-A provided by the IRS.

Considerations	Resources	6103 Protected Resources
<p><u>Part B continued:</u></p> <ul style="list-style-type: none"> ▪ If a stamped copy of Form 8288-A (Copy B) was not attached to the Form 1040NR, determine whether other “substantial evidence of withholding” (e.g., HUD-1 Form) was attached to the tax return. ▪ If such evidence was not attached to the return, contact the buyer/withholding agent for verification of amounts withheld including requesting the Settlement Statement (HUD-1 form) containing: <ul style="list-style-type: none"> - NRA's name - Buyer's name, address, TIN - Description of disposed of USRPI - Date of disposition - Amount realized on disposition - Amount of tax withheld 	<ul style="list-style-type: none"> ▪ IRM 3.21.25.14 ▪ CCA 201028040 – IRC 1445 ▪ IRM 4.11.57 – Third Party Contacts ▪ IRM 3.21.25.14 	

Step 4

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 4: Determine whether any request for a refund of taxes withheld under IRC § 1445 is allowable

A NRA is entitled to a refund of taxes withheld under IRC § 1445 only if his or her total U.S. tax liability is less than the amounts withheld or previously paid. Hence, an analysis of all the NRA's income subject to U.S. taxation (e.g., ECI and FDAP) must be performed prior to issuing a refund for taxes withheld on the disposition of USRPI.


Considerations	Resources	6103 Protected Resources
Determine the NRA's correct taxable income: <ul style="list-style-type: none"> ▪ Gain/loss on sale of USRPI ▪ Other Effectively Connected Income (ECI) ▪ FDAP Income 	<ul style="list-style-type: none"> ▪ See Steps 1 and 2 ▪ See "References of Other Related Issues" for IPS practice units regarding these issues. 	
Determine the total correct tax due on the following: <ul style="list-style-type: none"> ▪ ECI (including the gain or loss on the disposition of the USRPI) ▪ FDAP Income ▪ Other taxes 	<ul style="list-style-type: none"> ▪ See "References of Other Related Issues" for IPS practice units regarding these issues. 	
Determine total federal tax withheld and prepayments: <ul style="list-style-type: none"> ▪ FIRPTA Withholding ▪ Other withholding ▪ Additional credits ▪ Prepayments 	<ul style="list-style-type: none"> ▪ See Step 3 ▪ See "References of Other Related Issues" for IPS practice units regarding these issues. 	

Step 4 (cont'd)

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Step 4: Determine whether any request for a refund of taxes withheld under IRC § 1445 is allowable

A NRA is entitled to a refund of taxes withheld under IRC § 1445 only if his or her total U.S. tax liability is less than the amounts withheld or previously paid. Hence, an analysis of all the NRA's income subject to U.S. taxation (e.g., ECI and FDAP) must be performed prior to issuing a refund for taxes withheld on the disposition of USRPI.

Considerations	Resources	6103 Protected Resources
 <p>Decision Point: After completing Steps 1 through 4 above and determining the NRA's taxable income (ECI and FDAP), tax liability, and verification of any withholding taxes:</p> <ul style="list-style-type: none"> ▪ If the amount of taxes withheld exceed the NRA's tax liability, a timely filed refund request under the statute of limitations should be allowed to the extent of the overpayment. ▪ If the amount of taxes withheld are less than the NRA's tax liability, the refund request should be denied. 		

Other Considerations / Impact to Audit

Verifying Refund Request of IRC 1445 Withholding on Dispositions of U.S. Real Property Interests

Considerations	Resources
<p>Applicable Forms:</p> <ul style="list-style-type: none">▪ Form 1040NR – Filed by Taxpayer with the IRS▪ Form 1099-S – Filed by Title Co./Real Estate Co. with IRS▪ Form 4797 – Filed by Taxpayer with Form 1040NR▪ Form 8288 – Filed by buyer or other transferee with IRS▪ Form 8288-A – Filed by buyer or other transferee with the IRS; if complete, IRS provides copy to Taxpayer (transferor)▪ Form 13698 – Completed by IRS and attached to Form 1040NR during processing to verify withholding under IRC § 1445.	<ul style="list-style-type: none">▪ www.IRS.gov

Training and Additional Resources

Chapter 15.2 Non-Resident Alien FIRPTA Issues

Type of Resource	Description(s) and/or Instructions for Accessing	References
Centra Sessions	<ul style="list-style-type: none"> ▪ Overview of IDRS for Revenue Agents - Event # RSJ971910 ▪ 07/12/2012 – IIC Withholding - Event # NSM932839 ▪ 07/12/2012 – IBC – CPE Non-Resident Alien Withholding - Event # NTD633930 	<ul style="list-style-type: none"> ▪ 2012 CENTRA – IDRS for Revenue Agent ▪ 2012 CENTRA – IIC Withholding ▪ 2012 CENTRA – IBC – CPE Non-Resident Withholding - 48582
Issue Toolkits	<ul style="list-style-type: none"> ▪ FAQ's – FIRPTA (Section 1445) 	<ul style="list-style-type: none"> ▪ FIRPTA & IRC 1445 FAQs - IRS.gov
Other Training Materials	<ul style="list-style-type: none"> ▪ ELMS course on selling personal residence ▪ ELMS course on U.S. real property holding corporations. ▪ ELMS course on FIRPTA and IRC 1445 ▪ Choicepoint – FIRPTA ▪ ELMS – Intro to IRPTR 	<ul style="list-style-type: none"> ▪ Selling Your Main Home (10295) ▪ Liquidations & Distributions under FIRPTA (31540) ▪ Int'l FIRPTA – IRC Section 1445 (28221) ▪ International Taxation: Foreign Investment in U.S. Real Estate (53230) ▪ IMF Intro to IRPTR (17219)

Glossary of Terms and Acronyms

Acronym	Definition
DC	District of Columbia
ECI	Effectively Connected Income
FIRPTA	Foreign Investment in Real Property Tax Act of 1980
FDAP	Fixed Determinable Annual Periodical
IDRS	Integrated Data Retrieval System
IRPTRO	Information Returns Processing Transcripts Request Online
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NRA	Nonresident Alien
USRPI	U.S. Real Property Interest

Index of Related Issues

Issue	Associated UIL(s)	References
FIRPTA – Refund Claims	▪ 9424.04	▪ In Process – (10/2014)
FIRPTA – Taxation Concept	▪ 9424.04	▪ In Process – (10/2014)
FIRPTA – U.S. Real Property Holding Corporations (USRPHC Status)	▪ 9424.04	▪ IPS Unit – DCN: RPW/9424.04_XX
Effectively Connected Income	▪ 9441.02	▪ In Process – (10/2014)
Overview of FDAP Income	▪ 9442.01	▪ IPS Unit – DCN: WIT/CU/P_15.1_01(2014)
Claim filed on Form 1040NR – Timely or Not?	▪ 9442.01	▪ In Process – (10/2014)
Verifying refund requests of IRC 1441 withholding on FDAP income	▪ 9442.01	▪ IPS Unit - DCN: WIT/9442.01_03(2014)
Overview of FIRPTA	▪ 9442.02	▪ IPS Unit – DCN: WIT/9442.02_01(2013)