

# U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests

**Complete Part I or Part II. Also complete Form(s) 8288-A.**

**Part I To Be Completed by the Buyer or Other Transferee Required to Withhold**

|   |                       |
|---|-----------------------|
| 1 Name of withholding agent (buyer or other transferee) | Identification number |
| Address (Number and street)                             |                       |
| City, state, and Zip code                               |                       |

2 Description and location of property acquired

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|---|-----------------------------------|-----------------------------------|
| 3 Date of transfer  | 4 Number of Forms 8288-A attached | 5 Amount realized on the transfer |
| 6 a Withholding is at 10% <input type="checkbox"/><br>b Withholding is of a reduced amount <input type="checkbox"/> |                                   | 7 Amount withheld                 |

**(Check applicable box)**

**Part II To Be Completed by a Corporation, Partnership, Trust, or Estate Subject to the Provisions of Section 1445(e)**

|  |                       |
|--|-----------------------|
| 1 Name of withholding agent (corporation, partnership, or fiduciary) | Identification number |
| Address (Number and street)  |                       |
| City, state, and Zip code  |                       |

2 Description of U.S. real property interest transferred or distributed

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|--|-----------------------------------|-------------------------|
| 3 Date of transfer   | 4 Number of Forms 8288-A attached | 6 Total amount withheld |
| 5 a Withholding is at 10% or 28% <input type="checkbox"/><br>b Withholding is of a reduced amount <input type="checkbox"/><br>c Large partnership or trust election to withhold at distribution <input type="checkbox"/> |                                   |                         |

**(Check all applicable boxes)**

Under penalties of perjury, I declare that I have examined this return and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than withholding agent, partner, fiduciary, or corporate officer) is based on all information of which preparer has any knowledge.

|  |         |      |
|--|---------|------|
| Signature of withholding agent, partner, fiduciary, or corporate officer                     | Title   | Date |
| Signature of preparer other than withholding agent, partner, fiduciary, or corporate officer | Address | Date |

## General Instructions

(References are to the Internal Revenue Code, unless otherwise noted.)

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

### Purpose of Form

Beginning January 1, 1985, a 10% withholding obligation is generally imposed on the buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person. The withholding obligation also applies to certain partnerships, foreign and domestic corporations, and the fiduciary of certain trusts and estates. This withholding serves to collect tax that may be owed by the foreign person. Use this form to report and transmit the amount withheld.

### Who Must File

Any buyer or other transferee of a U.S. real property interest, and any corporation, partnership, or fiduciary that is required to withhold tax must file Form 8288 to report and transmit the amount withheld. If two or more persons are joint transferees, each of them is obligated to withhold. However, the obligation of each will be met if one of the joint transferees withholds and transmits to IRS the required amount.

### When to File

A transferee must report and transmit to IRS the tax withheld by the 10th day after the date of transfer. Timely mailing of Forms 8288 and 8288-A by U.S. mail will be treated as timely filing.

If, on the date of transfer, an application for a withholding certificate (explained later) is pending with IRS, you must nevertheless withhold. However, if the application was filed not later than the 30th day before the date of transfer, do not file Form 8288 and transmit the withholding until the 10th day after IRS's final determination with respect to the application. But if the principal purpose for filing the application for a withholding certificate was to delay your payment to the IRS of the amount withheld, interest and penalties will apply to the period after the 10th day after the date of transfer.

**Installment payments.**—No withholding is required on installment payments made during 1985 if the disposition of the property occurred before 1985. For dispositions in 1985 and later, you must withhold the full amount from the first installment payment. If you cannot because the payment does not involve sufficient cash or other liquid assets, you may obtain a withholding certificate from IRS.

### Where to File

File Form 8288 with the Internal Revenue Service Center, Philadelphia, PA 19255.

### Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete **Form 8288-A**, Statement of Withholding on Dispositions by Foreign

Persons of U.S. Real Property Interests, for each person subject to withholding. Copies A and B must be attached to Form 8288. Copy C is for your records.

After receipt of Form 8288 and Form(s) 8288-A, IRS will stamp Copy B of Form 8288-A to show receipt of the withholding and forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A. The receipted Copy B of Form 8288-A is for the transferor's use in filing future income tax returns or making future claims. You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor. To receive credit for the withheld amount, the transferor must attach the stamped Copy B of Form 8288-A to any U.S. income tax return (e.g., Form 1040NR, or 1120F) or application for refund the transferor files with IRS.

### Penalties

If you are required but fail to withhold tax under section 1445, the tax may be collected from you. Further, under section 7202 you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to IRS.

### Definitions

**Transferee** means any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other disposition.

**Transferor**, for purposes of this withholding, means any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other disposition.

**U.S. real property interest** means any interest, other than an interest solely as a creditor, in:

- (1) Real property located in the U.S. or the Virgin Islands,
- (2) Certain personal property associated with the use of real property, or
- (3) A domestic corporation unless it is shown that the corporation was not a U.S. real property holding corporation during the previous 5 years (or during the period since June 18, 1980, in which the transferor held the interest, if shorter).

A U.S. real property interest does not include:

- (1) An interest in a domestically controlled real estate investment trust (REIT).
- (2) An interest in a corporation that has disposed of all its U.S. real property interests in transactions in which the full amount of any gain was recognized as provided in section 897(c)(1)(B).
- (3) An interest in certain publicly-traded corporations, partnerships, and trusts.

For further information on these rules, see Regulations sections 1.897-1 and -2. Also see, *Transferred property not a U.S. real property interest*, later.

**Amount realized** means the sum of the cash paid, or to be paid, the fair market value of property transferred, or to be transferred, and the amount of any liability assumed by the transferee or to which the U.S. real property interest is subject immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

**Date of transfer** means the first date on which consideration is paid or a liability is assumed by the transferee. However, for purposes of section 1445(e)(2) and (3), the date of transfer is the date of distribution that gives rise to the obligation to withhold. Payment of consideration does not include the payment, before the passage of title, of earnest money, a good-faith deposit, or any similar sum primarily intended to bind the parties to the contract and subject to forfeiture. However, a payment that is not forfeitable may nevertheless be found to constitute earnest money, a good-faith deposit, or a similar sum.

**A foreign person** is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

### Exceptions

You are not required to withhold if:

- (1) You acquire the property for use as a residence and the amount realized (sales price) is not more than \$300,000,
- (2) The transferor (seller) is not a foreign person,
- (3) You did not acquire a U.S. real property interest,
- (4) You received a notice of nonrecognition of gain or loss from the transferor, and you filed a copy of the notice with IRS, or
- (5) You receive a withholding certificate from IRS that excuses withholding. (See *Withholding Certificate Issued by IRS*, later.)

For rules applicable to foreclosures or other similar acquisitions, see Temporary Regulations section 1.1445-2T(d)(3).

**Purchase of residence for \$300,000 or less.**—No withholding is required if you acquire U.S. real property for use as a residence and the amount realized is not more than \$300,000. A U.S. real property interest is acquired for use as a residence if you or a member of your family has definite plans to reside at the property for at least 50% of the number of days the property is in use during each of the first two 12-month periods following the date of transfer. No form or other document need be filed with IRS for this exception; however, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

**Transferor not a foreign person.**—If you receive a certification of nonforeign status from the transferor, signed under penalties of perjury, stating that the transferor is not a foreign person and containing the

transferor's name, address, and identification number, you may rely on it and you need not withhold. If you receive a certification, the withholding tax cannot be collected from you, unless you knew that the certification was false or you received a notice from your agent or the transferor's agent that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or equivalent fiduciary of a trust or estate. Any foreign corporation electing to be treated as a domestic corporation must attach to the certification a copy of the acknowledgement of the election received from IRS; if this is not attached, you may not rely on the certification. If you receive a certification of nonforeign status, keep it in your records for 5 years.

You may also use other means to determine that the transferor is not a foreign person; but, if you do, and it is later determined that the transferor is a foreign person, the withholding tax may be collected from you.

**Belated notice of false certification.**—If after the date of transfer you receive a notice from your agent or the transferor's agent that the certification of nonforeign status you received is false, you can rely on the certification and not withhold on consideration paid before you received the notice. However, you must withhold the full 10% of the amount realized from any consideration that remains to be paid, if possible. You must do so by withholding and paying over the entire amount of each successive payment of consideration, until the full 10% has been withheld and paid to IRS. These amounts must be reported and transmitted to IRS by the 10th day following the date of each payment.

**Transferred property not a U.S. real property interest.**—If you acquire an interest in property that is not a U.S. real property interest, no withholding is required. A U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property. See *U.S. real property interest*, earlier. The following explains how to determine if an interest in a corporation is a U.S. real property interest subject to withholding.

No withholding is required on the acquisition of an interest in a domestic corporation if (1) any class of stock of the corporation is regularly traded on an established securities market, or (2) the transferee receives a statement by the corporation specifying that the interest is not a U.S. real property interest. A corporation's statement may be relied on only if it is dated not more than 30 days before the date of transfer. A corporation's statement may be relied on unless you know that the statement is false or you receive a notice from your agent or the transferor's agent that the statement is false.

Generally, no withholding is required on the acquisition of an interest in a foreign corporation. However, it may be required if such corporation has made the election to be treated as a domestic corporation.

**Transferor's nonrecognition of gain or loss.**—If you receive a notice signed under penalties of perjury stating that the transferor is not required to recognize gain or loss on the transfer because of a nonrecognition provision of the Internal Revenue Code, you may rely on the transferor's notice unless: (1) you and the transferor are related, (2) only part of the gain qualifies for nonrecognition, or (3) you know or have reason to know that the transferor is not entitled to the claimed nonrecognition treatment. No particular form is required for this notice. By the 10th day after the date of transfer, you must send a copy of the notice of nonrecognition with a cover letter giving your name, identification number (if any), and address to the Director, Foreign Operations District, 1325 K St., N.W., Washington, DC 20225. See Temporary Regulations section 1.1445-2T(d)(2) for more information on the transferor's notice of nonrecognition.

### Withholding Certificate Issued by IRS

A withholding certificate may be issued by IRS to reduce or eliminate withholding on dispositions of U.S. real property interests by foreign persons. The certificate may be issued if: (1) reduced withholding is appropriate because the 10% amount exceeds the transferor's maximum tax liability, (2) the transferor is exempt from U.S. tax or nonrecognition provisions apply, or (3) the transferee or transferor enters into an agreement with IRS for the payment of the tax. Either a transferee or transferor may apply for the certificate.

The application for a withholding certificate must be submitted to the Director, Foreign Operations District, 1325 K St., N.W., Washington, DC 20225. No form is required for the application, but the application must comply with Temporary Regulations section 1.1445-3T.

### Liability of Agents

If the transferee or other withholding agent has received (1) a transferor's certification of nonforeign status, or (2) a corporation's statement that an interest is not a U.S. real property interest, and the transferee's or transferor's agent knows that such document in (1) or (2) is false, the agent is required to provide notice to the transferee, entity, or fiduciary. If the notice is not provided, the agent will be held liable for the tax that should have been withheld, but only to the extent of the agent's compensation from the transaction.

If you are the withholding agent, and you receive such a notice of false certification from your agent or the transferor's agent, you must withhold tax as if you had not received a notice of nonforeign status. But see *Belated notice of false certification*, earlier.

The terms **transferor's agent** and **transferee's agent** mean any person who represents the transferor or transferee, respectively, in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. For purposes of section 1445(e), a transferor's or transferee's agent is any person who represents or advises an entity, a holder of an interest in such entity, or a fiduciary with respect to the planning,

arrangement, or consummation of a transaction described in section 1445(e)(1) through (4).

A person is not treated as an agent if the person only performs one or more of the following acts in connection with the transaction:

- (1) The receipt and disbursement of any part of the consideration.
- (2) The recording of any document.
- (3) Typing, copying, and other clerical tasks.

### Corporations, Partnerships, Trusts, and Estates Subject to Section 1445(e)

Withholding is required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates. A domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax on a foreign partner's or beneficiary's proportionate share of the amount realized by the entity on the disposition of a U.S. real property interest. A foreign corporation that has not made the election under section 897(i) must withhold 28% of the gain it realizes on the distribution of a U.S. real property interest to its shareholders. Certain domestic corporations are required to withhold tax on distributions to foreign shareholders.

No withholding is required under section 1445(e) on the transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Similarly, no withholding is required on the transfer of an interest in a publicly traded partnership or trust. Withholding may be required on the transfer to a single transferee of an interest described in Regulations section 1.897-1(c)(2)(iii)(B).

No withholding will be required with respect to an interest holder if the entity or fiduciary receives a certification of nonforeign status from the interest holder. An entity or fiduciary may also use other means to determine that an interest holder is not a foreign person; but, if it does so, and it is later determined that the interest holder is a foreign person, the withholding may be collected from the entity or fiduciary. A domestic partnership that has more than 100 partners or the fiduciary of a domestic trust that has more than 100 beneficiaries may presume that a partner or beneficiary that has a U.S. mailing address is a nonforeign person for any transfers before July 1, 1985. However, the presumption rule does not apply if the partnership or fiduciary has actual knowledge that the partner or beneficiary is a foreign person.

No withholding is required under section 1445(e)(4), relating to certain taxable distributions by domestic or foreign partnerships, trusts, and estates, until the effective date of a Treasury Decision under section 897(e)(2)(B)(ii) and (g). No withholding is required under section 1445(e)(5), relating to certain dispositions of interests in partnerships, trusts, and estates, until the effective date of a Treasury Decision under section 897(g).

**Section 1445(e)(1) transactions.**—If a domestic partnership, trust, or estate disposes of a U.S. real property interest and any partner, beneficiary, or substantial owner of the entity is a foreign person, the partnership or fiduciary must withhold tax with respect to each such foreign person. The withholding obligation applies to the fiduciary of a trust even if the grantor of the trust or another person is treated as its substantial owner. Generally, the withholding is 10% of the foreign person's proportionate share. For information on how to calculate the proportionate share of the amount realized, see Temporary Regulations section 1.1445-5T(c)(1).

**Large partnership or trust election.**—Partnerships and trusts with more than 100 partners or beneficiaries may make the large partnership or trust election to withhold upon distribution rather than on the date of transfer. See Temporary Regulations section 1.1445-5T(c)(3)(iii).

**Nonforeign status.**—For 1985, if any class of beneficial interests in a partnership or trust is regularly traded on an established securities market, that partnership or the fiduciary of the trust may presume that each partner or beneficiary of record is the beneficial owner of that interest and that each partner or beneficiary that has a mailing address in the U.S. is a nonforeign

person. After 1985, a certificate of nonforeign status or other means must be relied on to determine that a partner or beneficiary is not a foreign person, and record owners may not be presumed to be beneficial owners. See Temporary Regulations section 1.1445-5T(c)(3).

**Section 1445(e)(2) transactions.**—A foreign corporation that distributes a U.S. real property interest must generally withhold 28% of the gain recognized by the corporation. No withholding or reduced withholding is required if the corporation receives from IRS a withholding certificate.

**Section 1445(e)(3) transactions.**—Generally, a domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must withhold 10% of the fair market value of the property distributed if:

- (1) The foreign person's interest in the corporation is a U.S. real property interest under section 897, and
- (2) The property is distributed either in redemption of stock under section 302, or in liquidation of the corporation under sections 331 through 341.

No withholding or reduced withholding is required if the corporation receives from IRS a withholding certificate.

## Specific Instructions

**Lines 1.**—If you are a fiduciary, list your name and the name of the trust or estate. Enter the home address of an individual, the office address of an entity.

**Lines 2.**—Enter a description of the property including its location and the nature of any improvements, such as an apartment building or warehouse, or the class or type and amount of interests in the case of interests in a corporation that constitute U.S. real property interests, such as "10,000 shares Class A Preferred Stock XYZ Corporation."

**Line 3, Part II.**—If you make the large partnership or trust election, enter the date of distribution.

**Lines 4.**—Copies A and B of each Form 8288-A should be counted as one single form.