Instructions for Forms 8804, 8805, and 8813

(Rev. December 2026)

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

Future Developments

For the latest information about developments related to Form 8804, Annual Return for Partnership Withholding Tax (Section 1446); Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446); and their instructions, such as legislation enacted after they were published, go to *IRS.gov/Form8804*, *IRS.gov/Form8805*, and *IRS.gov/Form8813*, respectively.

What's New

Address fields. We separated the address fields into separate entry boxes on Forms 8804 and 8805.

New line 3d on Form 8804. Every partnership (other than a publicly traded partnership (PTP)) that has effectively connected gross income (ECGI) allocable to a foreign partner must file a Form 8804. New line 3d has been added to report the partnership's ECGI regardless of whether it had effectively connected taxable income (ECTI) allocable to a foreign partner.

Copies B, C, and D of Form 8805 have been removed. Beginning with the December 2026 revision of Form 8805, we removed copies B, C, and D. The partnership must attach a copy of all Form(s) 8805 to its Form 8804 and furnish a copy of the Form 8805 to the relevant partner. The partner must attach the Form 8805 to their U.S. federal income tax return.

Reminders

Continuous-use revision. Use these instructions with the most current revision of Forms 8804, 8805, and 8813 for tax years beginning in 2026 and all subsequent years until a superseding revision is issued.

Direct deposit and electronic payment. If you have access to U.S. banking services or electronic payment systems, you should use direct deposit for any refunds. The IRS also recommends paying electronically whenever possible. Go to *IRS.gov/Payments* to see all your payment options.

Direct deposit lines on Form 8804. Line 14 has been expanded by adding lines 14b, 14c, and 14d for direct deposit information.

Partnerships with ECTI may use EFTPS. A partnership (or withholding agent) may transmit withheld amounts through the *Electronic Federal Tax Payment System* (EFTPS) or by submitting a check or money order with Form 8813 or Form 8804. Regardless of the payment method used, Forms 8804 and 8805 must still be filed (and Form 8813, as applicable). For additional information about EFTPS, refer to Pub. 4990, Payment Instruction Booklet For Business & Individual Taxpayers. For additional payment options, go to *IRS.gov/Payment*.

Penalties. We removed the threshold amounts for penalties throughout these instructions because this amount is adjusted annually for inflation. For the annual adjusted inflation amount:

1. Go to *IRS.gov/InflationAdjustment*,
2. Click on the link for the IRS tax inflation adjustments for your tax year, and
3. Click on the revenue procedure for the tax year.

Photographs of Missing Children

The Internal Revenue Service is a proud partner with the *National Center for Missing & Exploited Children® (NCMEC)*. Photographs of missing children selected by the Center can appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 800-THE-LOST (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 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 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* 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 each Form 8805 to the Form 8804 being filed with the IRS and provide a copy of the relevant Form 8805 to the foreign partner.

Foreign partners must attach Form 8805 to their U.S. federal 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. Partners that receive a Form 8805 should retain

a copy for their records. A partnership that receives a Form 8805 from a lower-tier partnership should see *Tiered Partnerships*, later.

Form 8805 can 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's or estate's beneficiaries the section 1446 withholding tax that can be claimed as a withholding tax credit on the beneficiaries' income tax returns. See *Schedule T*, later.

Use Form 8813 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.

Note: Payments related to Forms 8804 and 8813 may be transmitted through EFTPS instead of submitting a check or money order. If using EFTPS, Forms 8804 and 8805 must still be filed (and Form 8813, as applicable). For more information on EFTPS, go to *EFTPS.gov*.

Taxpayer Identification Number (TIN)

To ensure proper crediting of the withholding tax when reporting to the IRS, a partnership must provide a U.S. 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. TIN. An individual's TIN is the individual's social security number (SSN) or individual taxpayer identification number (ITIN). Individuals who don't have and aren't eligible to get an SSN can apply for an ITIN by filing Form W-7, Application for IRS Individual Taxpayer Identification Number, available at *IRS.gov/ITIN*. For partners that are not individuals, the TIN is the entity's U.S. employer identification number (EIN).

Applying for an EIN

EINs are used to identify estates, trusts, partnerships, and corporations. If you are required to have an EIN, apply for one at *IRS.gov/EIN*. If your principal place of business is outside the United States or its territories, you can apply for an EIN by phone at 267-941-1099. See *International EIN applicants* under *Other ways to apply for an EIN* at *IRS.gov/EIN*.

Who Must File

Every partnership (other than a publicly traded partnership (PTP)) that has effectively connected gross income (ECGI) 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 can 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.

Who Must Sign Form 8804

The partnership can designate a partner or limited liability company (LLC) member to sign Form 8804. The paid preparer's space should remain blank if the form is completed by a partner or LLC member. If the form is completed by a paid preparer with a valid preparer tax identification number (PTIN), the paid preparer should complete the paid preparer's section.

Paid preparer. In general, anyone who is paid to prepare the return must do the following.

- Sign the return in the space provided for the preparer's signature.
- Fill in the other blanks in the "Paid Preparer Use Only" area of the return. A paid preparer cannot use an SSN in the "Paid Preparer Use Only" box. The paid preparer must use a PTIN.
- Give the partnership a copy of the return in addition to the copy to be filed with the IRS.

A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

When To File

Forms 8804 and 8805

Generally, file Forms 8804 and 8805 on or before the 15th day of the 3rd 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.

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.

Note: Filing a Form 7004 **doesn't** extend the time for payment of tax.

Form 8813

File Form 8813 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 can 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*, earlier.

For the requirements for and the limits on obtaining a refund of the 1446 tax based on an amended Form 8804, see Regulations section 1.1446-3(d)(2)(iv).

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 doesn't apply to a partnership treated as a corporation under the general rule of section 7704(a). ECTI and applicable percentage are 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 isn't a U.S. person, as 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 foreign organization described in section 501(c).

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

Certification of Nonforeign Status

In general, a partnership can determine that a partner isn't a foreign person by obtaining a Form W-9 from the partner. Once the partnership has received the certification, the partnership can rely on it to confirm the partner's nonforeign status. See *Effect of certification*, later.

Form of certification. Generally, a partnership can 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 and Reporting (Individuals).
- Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities).
- Form 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.
- Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting.
- Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.
- 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 W-8 form or Form W-9) according to the rules in these instructions can rely on the certification to determine whether the partner is a foreign or nonforeign partner for purposes of figuring the section 1446 withholding 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 can also use the withholding certificate to determine that the partner isn't 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 isn't valid.

The partnership won't 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 isn't 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 isn't valid. See Regulations section 1.1446-1(c)(2)(iii).

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

- Its validity period hasn't 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 the 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 can 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 isn't required to obtain a Form W-9 and instead may rely on other methods to learn the nonforeign status of the partner. However, if the partnership relies on other methods and incorrectly determines that the partner wasn't a foreign person, the partnership will be held liable for payment of the tax, along with any applicable penalties, and interest.

A partnership isn't required to rely on other methods to determine the nonforeign status of a partner and can demand a Form W-9. If the partner doesn't provide the certification, the partnership can 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 calculation of ECTI.

For purposes of these instructions, figure this income with the following statutory adjustments.

1. Section 703(a)(1) doesn't apply.
2. The partnership is allowed a deduction for depletion of oil and gas wells, but the amount of the deduction must be determined without regard to sections 613 and 613A.
3. The partnership can't take into account items of income, gain, loss, or deduction allocable to any partner that isn't 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 calculating 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 ECGI 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(a) or section 882(c) and that are properly allocable to the partner under section 704. This income must be figured 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.

In addition, a partnership's ECTI isn't 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, can 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 can 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 its 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*, earlier), the partnership can consider as a deduction of such partner 90% (0.90) 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 can 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: Don't deduct state and local taxes paid on behalf of the partnership. The partnership can 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 corporate partners, the section 1446 applicable percentage is 21% (0.21).

For all non-corporate foreign partners, the section 1446 applicable percentage is generally 37% (0.37). However, in some circumstances, the partnership can 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.

The facts and circumstances of a partner that the partnership knows or has reason to know may determine if the partner would be entitled to a preferential rate on such income or gain. For example, the partner would not be entitled to a preferential rate if the partnership's income that otherwise is long-term capital gain is a type that is treated with respect to the partner as short-term capital gain under section 1061.

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

When to make the payment. Installment payments of the section 1446 withholding tax must be made by using Form 8813 or through EFTPS by the applicable due dates during the partnership's tax year 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, it should pay the estimated balance due of section 1446 withholding tax with Form 7004 to avoid a late payment penalty.

Coordination With Other Withholding Rules

Interest, Dividends, etc.

Fixed or determinable annual or periodical (FDAP) income subject to tax under section 871(a) or 881 isn't 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 aren't 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 (USRPI). 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 USRPIs. 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.

Gains from sales of interests in partnerships engaged in a trade or business in the United States. Since January 1, 2018, a foreign partnership has been subject to withholding under section 1446(f)(1) on the transfer of an interest in another partnership engaged in a U.S. trade or business (unless that interest is publicly traded) if (1) the foreign partnership realized gain on the sale, and (2) any portion of the gain would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

A foreign partnership subject to withholding under section 1446(f)(1) during a tax year will be allowed to credit the amount withheld under section 1446(f)(1), to the extent that 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 6f or 6g of the Form 8804 filed by the foreign partnership. See T.D. 9919, available at *IRS.gov/IRB/2020-48_IRB#TD-9919*.

Reporting to Partners

When making an installment payment of the section 1446 withholding tax, a partnership must notify all foreign partners of their allocable shares of any section 1446 withholding tax paid 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, 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 effectively connected income, 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. Each foreign partner must receive a copy of its Form 8805 by the due date of the partnership return, including extensions. The partnership must also issue a Form 8805 to any U.S. person erroneously subjected to withholding tax 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*, 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) can generally be subject to a penalty of 5% (0.05) of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% (0.25) of the unpaid tax. The penalty won't apply if the partnership can show reasonable cause for filing late.

If Form 8804 is filed more than 60 days late, the minimum penalty will apply. To determine the minimum failure to file penalty, go to *IRS.gov/InflationAdjustment*. Select the tax inflation adjustment for the applicable tax year, then click on the revenue procedure link and search for section 6651, Failure to File Tax Return, to obtain the penalty amount.

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. **Don't** attach an explanation when you file Form 8804.

Late Filing of Correct Form 8805

A penalty can be imposed for failure to file each Form 8805 when due (including extensions). The penalty can 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.

To determine the penalty for each failure to file a correct Form 8805, go to *IRS.gov/InflationAdjustment*. Select the tax inflation adjustment for the applicable tax year, then click on the revenue procedure link and search for section 6721, Failure to File Correct Information Returns, to obtain the penalty amount.

There are some situations where the penalty under section 6721 is reduced or eliminated. This can apply if the partnership:

- Has average annual gross receipts of not more than $5 million during a specified period of time,
- Corrects the failure to file within a specified period, or
- Has a de minimis number of failures to file correct Forms 8805.

There can also be a higher penalty imposed when the failure is due to intentional disregard of the requirement to file timely correct information returns. For more information, go to *IRS.gov/InflationAdjustment*. Select the tax inflation adjustment for the applicable tax year, then click on the revenue procedure link and search for section 6721, failure to file correct information returns due to intentional disregard of the filing requirement, to obtain the penalty amount.

Reasonable cause. A partnership can seek a waiver of the penalty if the partnership can establish it had reasonable cause for the failure.

Failure To Furnish Correct Form 8805 to Recipient

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

To determine the penalty for each failure to furnish a correct Form 8805, go to *IRS.gov/InflationAdjustment*. Select the tax inflation adjustment for the applicable tax year, then click on the revenue procedure link and search for section 6722, Failure to Furnish Correct Payee Statements, to obtain the penalty amount.

There are some situations where the penalty under section 6722 is reduced or eliminated. This can apply if the partnership:

- Has average annual gross receipts of not more than $5 million during a specified period of time,
- Corrects the failure to furnish within a specified period, or
- Has a de minimis number of failures to furnish correct Forms 8805.

There can also be a higher penalty imposed when the failure is due to intentional disregard of the requirement to furnish timely correct information returns. For more information, go to *IRS.gov/InflationAdjustment*. Select the tax inflation adjustment for the applicable tax year, then click on the revenue procedure link and search for section 6722, failure to furnish correct payee statements due to intentional disregard of the requirement to furnish a payee statement, to obtain the penalty amount.

Reasonable cause. A partnership can seek a waiver of the penalty if the partnership can establish it had reasonable cause for the failure.

Late Payment of Tax

The penalty for not paying tax when due is usually half of 1% (0.005) of the unpaid tax for each month or part of a month the tax is unpaid. The penalty can't exceed 25% (0.25) of the unpaid tax. The penalty won't 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. **Don't** 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, can 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 can 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.

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 can't 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 tax 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 a copy 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 (PTPs)

A PTP is any partnership whose interests are regularly traded on an established securities market (regardless of the number of its partners). However, this doesn't 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 37% (0.37) for non-corporate foreign partners, and 21% (0.21) for corporate partners. The PTP can't consider preferential rates when figuring the section 1446 withholding 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 must also 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 withholding tax liability for any section 1446 withholding 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 can look through the partnership to the partners of such upper-tier partnership in determining its section 1446 withholding tax due. The look-through rules can 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 calculation of its section 1446 withholding tax liability. It doesn't 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 withholding 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 doesn't 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 or town, state or province, the name of the country, and ZIP or foreign postal code. Follow the foreign country's practice of placing the postal code in the address. Don't abbreviate the country name.

Form 8804

Line 3b

Enter on this line the total number of Forms 8805 attached to Form 8804.

Line 3d

Enter on this line the total ECGI allocable to all foreign partners. Complete this line regardless of whether the partnership had ECTI allocable to a foreign partner.

Note: Since this amount reflects ECGI (before deductions), it cannot be less than zero.

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

Figure the partnership's ECTI using the definition, earlier, under *Effectively Connected Taxable Income (ECTI)*. Enter the total ECTI allocable to foreign partners (by income type) on lines 4a, 4e, 4i, 4m, and 4q. With respect to lines 4i, 4m, and 4q, 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 4a, 4e, 4i, 4m, and 4q, respectively. **Don't** enter a negative number on lines 4a, 4e, 4i, 4m, and 4q. See section 1(h) and Notice 97-59, 1997-45 I.R.B. 7, available at *IRS.gov/pub/irs-irbs/irb97-45.pdf*, for the rules for netting gains and losses.

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 withholding tax with respect to that partner, reduce the ECTI on line 4 of Form 8804 by any amount allocable to that foreign partner. See Form 8804-C, Part III.

Note: Partnership ECTI on which a foreign partner is exempt from U.S. tax by a treaty or other reciprocal agreement isn't 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 the instructions for line 8b of Form 8805, later.

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

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, 4o, and 4s

Enter the reduction amounts resulting from certified partner-level items received from foreign partners using Form 8804-C. See *Certification of Deductions and Losses*, 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 5f

Add lines 5a through 5e.

Line 6

If the partnership is claiming a credit on lines 6b through 6g related to a form it received, the partnership must attach that form to its Form 8804 to obtain that credit.

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 on ECTI 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 on ECTI by a lower-tier PTP that is reported to the partnership on Form 1042-S. On Form 1042-S, box 7a will show the amount withheld, and box 1 will show income code 27.

Line 6d

Line 6d applies to partnerships treated as foreign persons that are subject to withholding under section 1445(a) or 1445(e)(1) upon the disposition of a USRPI.

Enter on line 6d the amount of tax withheld from the partnership under section 1445(a), but only to the extent that the amount is allocable to foreign partners, or withheld by the partnership under section 1445(e)(1). On Form 8288-A, Statement of Withholding on Certain Dispositions by Foreign Persons, box 4 will show the amount withheld, and box 5a will be checked.

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 USRPI by the trust. On Form 1042-S, box 7a will show the amount withheld that the partnership received from the trust, and box 1 will show income code 25 or 26.

Line 6f

Enter on line 6f the amount of section 1446(f)(1) tax withheld from the partnership on a transfer of an interest in a non-PTP engaged in the conduct of a U.S. trade or business, but only to the extent that the amount is allocable to foreign partners. On Form 8288-A, box 4 will show the amount withheld, and box 5b will be checked.

Line 6g

Enter on line 6g the amount of section 1446(f)(1) tax withheld from the partnership on a transfer of an interest in a PTP engaged in the conduct of a U.S. trade or business, but only to the extent that the amount is allocable to

foreign partners. On Form 1042-S, box 7a will show the amount withheld, and box 1 will show income code 57.

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.

Failure to pay withholding as required. A penalty will be imposed if the partnership failed to make its four installment payments of withholding during the tax year as required. If a penalty is due, the partnership should figure the penalty using Schedule A (Form 8804) and enter it on line 8. If the partnership failed to pay withholding tax as required, and a completed Schedule A (Form 8804) is not attached to the return, the IRS will figure the penalty without regard to any exceptions that may apply on Schedule A (Form 8804). For more information, see the *Instructions for Schedule A (Form 8804)*.

Line 10

Making a payment. The IRS recommends paying electronically whenever possible. Electronic payment options include EFTPS. Go to *IRS.gov/Payments* to see all your payment options.

Line 12

If the partnership has an overpayment on line 11, it can allocate some or all of that amount to its partners. Enter the amount of the overpayment it wishes to allocate to its partners on line 12. Include the amount allocated to each partner in the amount reported on line 10 of Form 8805.

Lines 14a Through 14d

Direct deposit of refund. If the partnership wants its refund directly deposited into its checking or savings account at any U.S. bank or other financial institution instead of having a check sent to the partnership, complete lines 14b through 14d.

Line 14b. The routing number must be 9 digits.

Line 14c. Check the appropriate box for the type of account. Do not check more than one box. If unknown, leave blank.

Line 14d. The account number can be up to 17 characters (both numbers and letters). Include hyphens but omit spaces and special symbols. Enter the number from left to right and leave any unused boxes blank.

Paid Preparer

Generally, anyone you pay to prepare Form 8804 must sign it and include their PTIN in the space provided. See *Who Must Sign Form 8804*, earlier.

Form 8805

Line 1b

A partnership must pay the withholding tax for a foreign partner even if it doesn't have a U.S. TIN for that partner. See *Taxpayer Identification Number (TIN)*, earlier, for details.

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 *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 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), Partner's Share of Income, Deductions, Credits, etc.) to the foreign partner that lists each type of ECTI included on line 9. The types of ECTI that can be included on line 9 are:

- Ordinary income;
- 28% rate gains;
- Unrecaptured section 1250 gains; and
- Adjusted net capital gain, including qualified dividend income and net section 1231 gains.

The partnership must also provide any additional information to foreign partners that they may reasonably need to complete Schedule P (Form 1120-F), List of Foreign Partner's Interests in Partnerships.

Line 10

To figure 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 *Applicable percentage*, 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 isn't required to pay any section 1446 withholding 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 calculation described in the first paragraph of these line 10 instructions. Furthermore, if the total section 1446 withholding 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 withholding 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 statement showing the calculation 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 withholding 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 statement showing the calculation of the tax due.

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

Caution: A partnership must attach all applicable items referred to above to reduce its section 1446 withholding 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 can 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 can vary from beneficiary to beneficiary, depending on the ownership interests of the respective beneficiaries.

Form 1040-NR, U.S. Nonresident Alien Income Tax Return. A foreign trust or estate must attach to the Form 1040-NR it files any Form(s) 8805 it receives and copies of the Form(s) 8805 it must furnish to its beneficiaries with the Schedule(s) T completed.

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 to each of its beneficiaries that lists each type of ECTI included on line 12. The types of ECTI that can be included on line 12 are:

- Ordinary income;
- 28% rate gains;
- Unrecaptured section 1250 gains; and
- Adjusted net capital gain, including qualified dividend income and net section 1231 gains.

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 *Applicable percentage*, earlier.

Form 8813

Line 1

A partnership without a U.S. EIN must obtain one and must pay any section 1446 withholding tax due (see *Applying for an EIN*, earlier). If the partnership hasn't 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 under *Where To File*, earlier. Failure to provide an EIN can delay processing of payments on behalf of the partners.

Line 2

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

Attachments

If the total section 1446 withholding 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 later 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 statement showing the calculation 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 statement showing the calculation of the tax due.

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

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

Privacy Act and 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.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 1446 generally imposes a withholding obligation on partnerships with effectively connected taxable income allocable to foreign partners. These forms are used to report and pay the withholding tax required under section 1446.

You are required to provide this information. Section 6109 requires you to provide your identification number. We need this information to ensure that you are complying with the Internal Revenue laws and to allow us to figure and collect the right amount of tax. Failure to provide this information in a timely manner, or providing false information, may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and territories for administration of their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You aren't 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 can 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 burden for business taxpayers filing this form is approved under OMB control number 1545-0123.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we'd be happy to hear from you. You can send us comments through *IRS.gov/FormComments*. Or, you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Don't send the tax forms to this address. Instead, see *Where To File*, earlier.