

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax Forms and Instructions.

Rev. Proc. 2000-35

SECTION 1. PURPOSE

This revenue procedure supersedes Rev. Proc. 88-23, 1988-1 C.B. 32, which provided the procedures to be followed to obtain a withholding certificate under sections 1.1445-3 and 1.1445-6 of the Income Tax Regulations.

SEC. 2. BACKGROUND

The Tax Reform Act of 1984, section 129, 1984-3 (Vol. 1) C.B. 163, added section 1445 to the Internal Revenue Code as a means of enforcing the tax imposed pursuant to section 897 on dispositions by foreign persons of investments in U.S. real property. Section 1445(a) provides that a transferee of a U.S. real property interest from a foreign person must deduct and withhold a tax equal to 10 percent of the amount realized by the foreign person on the disposition.

Section 1445(b) and the regulations thereunder provide several exceptions to this requirement, including an exemption from withholding for persons who purchase property for use as a residence for \$300,000 or less. Other exemptions include cases where the transferor furnishes an affidavit of nonforeign status, where the property transferred is stock that is regularly traded on an established securities market, where the transferor is not required to recognize any gain or loss with respect to the transfer and the requirements of section 1.1445-2(d)(2) are met, and where a statement is obtained from the Internal Revenue Service that excuses withholding. Similarly, section 1445(c) provides that the amount required to be withheld can be reduced pursuant to a determination by the Service of the transferor's maximum tax liability upon the disposition. Sections 1.1445-3 and 1.1445-6 of the regulations provide rules concerning the issuance by the Service of a withholding certificate that reduces or eliminates withholding.

Rev. Proc. 88-23 provided additional guidance concerning applications for withholding certificates. This revenue procedure supersedes Rev. Proc. 88-23, and provides additional guidance by way of modifications and clarifications to the provisions of former Rev. Proc. 88-23 concerning applications for withholding certificates.

SEC. 3. WITHHOLDING CERTIFICATES--IN GENERAL

.01 Purpose of Withholding Certificate. Withholding under section 1445 of the Code may be reduced or eliminated pursuant to a withholding certificate issued by the Service in accordance with the rules set forth in this revenue procedure. A withholding certificate may be issued by the Service in cases where reduced withholding is appropriate, where the transferor is exempt from U.S. tax, or where an agreement for the payment of tax is entered into with the Service. A withholding certificate that is obtained prior to a transfer notifies the transferee that no withholding is required or that reduced withholding is required. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund. See section 1.1445-3(g) of the regulations. A withholding certificate issued pursuant to the provisions of this revenue procedure serves to fulfill the requirements, as applicable, of section 1445(b)(4) concerning qualifying statements, section 1445(c)(1) concerning the transferor's maximum tax liability, or section 1445(c)(2) concerning the Secretary's authority to prescribe reduced withholding.

.02 Limited Effect of a Withholding Certificate. A withholding certificate serves only to adjust withholding obligations to correspond as closely as possible to the probable tax liability arising out of a transfer. Therefore, all determinations that are made by the Service in connection with the issuance of a withholding certificate apply solely for the limited purpose of determining withholding obligations under section 1445 of the Code, and do not necessarily represent the Service's final view with respect to any substantive issue that may arise in connection with a transfer. Similarly, the Service's acceptance in connection with the issuance of a withholding certificate of any evidence provided or any representation made by a taxpayer is made only for that purpose, is not binding for any other purpose, and does not constitute a final determination of the truth or accuracy of any such evidence or representation.

.03 Types of Withholding Certificates Available. Pursuant to section 1.1445-3 of the regulations, a withholding certificate may be issued on the basis of any of the following:

1. A determination by the Service that reduced withholding is appropriate because either:

- (a) The amount otherwise required to be withheld would exceed the transferor's maximum tax liability; or
- (b) Withholding of a reduced amount would not jeopardize collection of the tax.

2. The exemption from U.S. tax of all gain realized by the transferor; or

3. An agreement entered into by the transferee or transferor for the payment of tax providing security for the tax liability.

SEC. 4. APPLICATIONS FOR WITHHOLDING CERTIFICATES

.01 General rules. An application for a withholding certificate must be submitted to the Internal Revenue Service Center, P.O. Box 21086, Drop Point 8731 FIRPTA Unit, Philadelphia, PA 19114-0586. Either a transferee or a transferor may apply for a withholding certificate, but only a transferor may apply for a blanket withholding certificate. The Service ordinarily will act upon an application not later than the 90th day after all information necessary for the Service to make a determination is received. However, in the case of an application for a certificate described in section 4.03(6) below, or in unusually complicated cases, the Service may be unable to provide a withholding certificate by the 90th day. In such a case, the Service will notify the applicant by the 45th day after all information necessary for the Service to make a determination is received that additional processing time will be necessary. The Service's notice may request additional information or explanation concerning particular aspects of the application and will provide a target date for final action (contingent upon the applicant's timely submission of any requested information).

If an application for a withholding certificate is submitted before or on the date of a transfer and on the date of the transfer the application remains pending with the Service, the amount required to be withheld by the transferee is not required to be reported and paid over immediately. Similarly, if an

application for a blanket withholding certificate is submitted before or on the date of the first transfer covered by the application, and on the date of the first transfer the application remains pending with the Service, the amount required to be withheld by the transferee is not required to be reported and paid over immediately. Instead, that amount (or such other amount as is appropriate) must be reported and paid over by the 20th day following the day upon which a copy of the withholding certificate or notice of denial is mailed by the Service. If the application is not submitted before or on the date of the transfer, or in the case of a blanket withholding certificate application, before or on the date of the first transfer, the transferee must report and pay over any tax withheld by the 20th day after the date of the transfer. Treas. Reg. ' 1.1445-1(c)(1).

.02 Required signatures. An application for a withholding certificate must be signed by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, by a trustee, executor, or equivalent fiduciary in the case of a trust or estate, and, in the case of an individual, by that individual. In addition, an application may be signed by an agent authorized to do so by a power of attorney. Form 2848 may be used for this purpose. The person signing the application must verify under penalties of perjury that all representations made in connection with the application are true, correct, and complete to the best of that person's knowledge and belief. To the extent that an application is premised in whole or in part on information provided by another party to the transaction, this information is to be supported by a written verification attached to that application signed under penalties of perjury by the party to whom it pertains. The application must follow the format set forth in section 4.04 below.

.03 Categorizing of applications. To facilitate the processing of applications for withholding certificates, this revenue procedure divides all applications into six basic categories as follows:

1. Applications for withholding certificates based on a claim that the transferor is entitled to nonrecognition treatment or is exempt from tax;

2. Applications for withholding certificates based solely on a calculation of the transferor's maximum tax liability;

3. Applications for withholding certificates under the special installment sales rules of section 7 of this revenue procedure;

4. Applications for withholding certificates based on an agreement for the payment of tax with conforming security;

5. Applications for blanket withholding certificates under section 9 of this revenue procedure; and

6. Applications for withholding certificates on any other basis.

.04 Format for application. All applications for withholding certificates must provide the following information in paragraphs labeled to correspond with the numbers and letters set forth below. Place "N/A" in the relevant space if the information requested is not applicable to the application being submitted.

1. (a) State which category of section 4.03, above, describes the application;
- (b) In the case of category 4 applications (agreement for the payment of tax with conforming security):
 - (1) State whether the proposed agreement secures (A) the transferor's maximum tax liability, or (B) the amount that would otherwise be required to be withheld; and
 - (2) State whether the proposed agreement and security instrument conform to the standard formats set forth in this revenue procedure.
2. (a) Provide the name, taxpayer identification number (to the extent required in regulations), and home address (for an individual) or office address (for an entity) of the person applying for the withholding certificate. A mailing address should also be included if different.
- (b) State whether the applicant is the transferee or transferor.
- (c) Provide the name, address, and taxpayer identification number (to the extent required in regulations) of all other transferees and

transferors (specifying whether such party is a transferee or transferor) of the U.S. real property interest with respect to which the withholding certificate is sought. The applicant must determine if a taxpayer identification number exists for each party concerned and if none exists for a particular party the application must so state. Any application that is combined with the transferor's request for an early refund must include the transferor's taxpayer identification number.

3. Provide the following information concerning the U.S. real property interest with respect to which the withholding certificate is sought:

- (a) Type of interest (that is, interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation);
- (b) The contract price;
- (c) Date of transfer;
- (d) In the case of an interest in real property, its location and a general description of the property (for example, "10-story, 100 unit luxury apartment building"); and
- (e) In the case of an interest in a U.S. real property holding corporation, the class or type and amount of the interest.
- (f) Whether in the three preceding taxable years: (1) U.S. income tax returns were filed relating to the U.S. real property interest, and if so, when and where those returns were filed, and if not, why returns were not filed; and (2) whether U.S. income taxes were paid relating to the U.S. real property interest, and if so, the amount of the tax paid.

4. Provide full information concerning the basis for the issuance of the withholding certificate, in accordance with the rules of sections 4.05 through 4.11 below. Although the information to be included in this section of the application will necessarily vary from case to case, the rules set forth

below provide general guidelines for the inclusion of appropriate information with respect to each category of application.

5. The use of Form 8288-B to apply for a withholding certificate under categories 1 through 3 will expedite the application process. An application that is not substantially complete when submitted will be rejected. For example, an application without a specific or estimated date of transfer will not be considered to be substantially complete.

.05 Information concerning category 1 applications (nonrecognition or exempt transfer). If a withholding certificate is sought on the basis of a claim that the transaction is entitled to nonrecognition treatment or is exempt from U.S. taxation, provide the following:

1. A brief description of the transfer;
2. A brief summary of the law and facts supporting the claim of nonrecognition or exemption;
3. Evidence that the transferor has no unsatisfied withholding liability, as described in section 4.06(3); and
4. The contract price (if any), or if no contract price is available, the most recent assessed value, for state or local property tax purposes, of the U.S. real property interest to be transferred, or, if such assessed value is not available, then the good faith estimate of its fair market value (no supporting evidence concerning the value of the property need be supplied).

.06 Information concerning category 2 applications (determination of maximum tax liability).

1. In general. If a withholding certificate is sought on the basis of a determination of the transferor's maximum tax liability, information must be provided to establish the two elements of that liability: (a) the maximum tax that may be imposed on the disposition, and (b) the transferor's unsatisfied withholding liability. Paragraphs 4.06(2) and .06(3), below, provide guidelines for the furnishing of such information. For further information concerning the determination of the transferor's maximum tax liability, see section 1.1445-3(c) of the regulations.

2. Maximum tax on disposition. (a) The applicant must provide a calculation of the maximum tax that may be imposed on the disposition, including the following information:

- (1) The amount to be realized by the transferor plus evidence confirming this amount, such as a copy of the signed contract relating to the transfer;
- (2) Adjusted basis of the property plus evidence confirming the basis claimed, such as schedules of depreciation for tax purposes (if no depreciation schedules are provided, the application must state the nature of the use of the property and why depreciation was not allowed);
- (3) Amounts to be recaptured with respect to depreciation, investment tax credit, or other items subject to recapture;
- (4) Maximum capital gain and/or ordinary income tax rates applicable to the transfer;
- (5) Tentative tax owed;
- (6) Amount of any increase or reduction of tax to which the transferor is subject, including any reduction to which the transferor is entitled under a provision of a U.S. income tax treaty as well as evidence supporting the adjustment claimed. See section 1.1445-3(c)(2) of the regulations.

(b) For purposes of calculating the maximum tax that may be imposed upon a disposition, unused credit carryovers shall not be taken into account, and net operating loss carry-overs (NOLs) (see section 172 of the Code) may be taken into account only if:

- (1) The transferor claiming the NOL has been engaged in a trade or business in the U.S. during the three preceding tax years and has timely filed an income tax return for each of those years (copies of which should be attached);
- (2) The claimed NOL has been reflected on previously-filed returns (no anticipated loss with respect to current year operations may be considered);

- (3) The claimed NOL is not currently the subject of an examination by or a dispute with the Service;
- (4) The transferor agrees that, if the amount of gain that the transferor claimed would be offset by the NOL exceeds the amount of the gain actually recognized and offset by the claimed NOL when the transferor files its tax return for the current tax year, the transferor will pay interest upon the excess of the amount that should have been subject to withholding over the amount, if any, actually withheld, which interest will be computed:
 - (A) At the rates and in the manner prescribed by sections 6621 and 6622 of the Code; and
 - (B) With respect to the period between the date on which withholding would otherwise have been required and the date on which payment is made (for purposes of determining whether gain recognized on the disposition was in fact offset by the claimed NOL, the NOL is deemed first to offset income from sources other than the disposition of U.S. real property interests, and then to offset gain from such dispositions with respect to which a withholding certificate was issued in the order to which such dispositions occurred);
- (5) The claimed NOL has not previously been used to reduce withholding upon other dispositions of U.S. real property interests or to reduce the amount of any other obligation or liability under U.S. internal revenue laws; and
- (6) As part of the application, the transferor represents that:
 - (A) At least 80 percent of its gross income subject to U.S. taxation in the taxable year of disposition will be derived from U.S. real property interests; and
 - (B) In calculating the maximum tax that may be imposed on the disposition, the application calculates the NOL in the manner prescribed

by the provisions of this section 4.06(2)(b), and the NOL is taken into account only to the extent permitted by such provisions.

3. Transferor's unsatisfied withholding liability. The applicant must provide a calculation of the transferor's unsatisfied withholding liability or evidence that it does not exist. That liability is the amount of any tax that the transferor was required to but did not withhold and pay over under section 1445 of the Code upon the acquisition of the subject U.S. real property interest or a predecessor interest. The transferor's unsatisfied withholding liability is included in the calculation of maximum tax liability so that such prior withholding liability may be satisfied by the transferee's withholding upon the current transfer. For purposes of this paragraph 3, a predecessor interest is one that was exchanged for the subject U.S. real property interest in a transaction in which the transferor was not required to recognize the full amount of the gain or loss realized upon the transfer. For further information, see section 1.1445-3(c)(3) of the regulations. Evidence that the transferor has no unsatisfied withholding liability includes any one of the following items:

- (a) Evidence that the transferor acquired the subject or predecessor U.S. real property interest before January 1, 1985;
- (b) A copy of the Form 8288 that was filed by the transferor, and proof of payment of the amount shown due thereon, with respect to the transferor's acquisition of the subject or predecessor U.S. real property interest;
- (c) A copy of a withholding certificate issued with respect to the transferor's acquisition of the subject or predecessor U.S. real property interest, plus a copy of Form 8288 and proof of payment with respect to any withholding required under that certificate;
- (d) A copy of the nonforeign certificate (see Treas. Reg. '1.1445-2(b)(2)) furnished by the person from whom the subject U.S. real property interest was acquired, executed at the time of that acquisition;

- (e) Evidence that the transferor purchased the subject or predecessor U.S. real property interest for \$300,000 or less and a statement, signed by the transferor under penalties of perjury, that the transferor purchased the property for use as a residence within the meaning of section 1.1445-2(d)(1);
- (f) Evidence that the person from whom the transferor acquired the subject or predecessor U.S. real property interest fully paid any tax imposed on that transaction pursuant to section 897;
- (7) A copy of a notice of nonrecognition treatment provided to the transferor pursuant to section 1.1445-2(d)(2) by the person from whom the transferor acquired the subject or predecessor U.S. real property interest; and
- (h) A statement, signed by the transferor under penalties of perjury, setting forth the facts and circumstances that support the transferor's conclusion that no withholding was required under section 1445(a) with respect to the transferor's acquisition of the subject or predecessor U.S. real property interest.

.07 Information concerning category 3 applications (installment sales). See section 7 of this revenue procedure.

.08 Information concerning category 4 applications (agreement for the payment of tax with conforming security). If a withholding certificate is sought on the basis of an agreement for the payment of tax, the application must include:

1. Information establishing:
 - (a) The transferor's maximum tax liability, in accordance with section 4.06; or
 - (b) The amount otherwise required to be withheld pursuant to section 1445(a) of the Code;
2. A signed copy of the agreement proposed by the applicant; and

3. A copy of the security instrument proposed by the applicant. For further information concerning agreements for the payment of tax and security instruments, see sections 5 and 6 of this revenue procedure and section 1.1445-3 of the regulations.

.09 Information concerning category 5 applications (blanket withholding certificate). See section 9 of this revenue procedure.

.10 Information concerning Category 6 applications (non-standard applications).

1. Agreement for payment of tax with nonconforming security. If the applicant seeks to enter into an agreement for the payment of tax, but wishes to provide a nonconforming type of security, the application must include:

- (a) The information required by section 4.08 concerning category 4 applications;
- (b) A description of the nonconforming security proposed by the applicant; and
- (c) A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government's interest.

2. Other non-standard applications. An application for a withholding certificate not otherwise described in this revenue procedure must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

.11 Information submitted by foreign governments. In addition to the information required in Sec. 4.04 and Sec. 4.05, a foreign government submitting an application on the basis that the subject U.S. real property is used by the foreign government for a diplomatic mission should submit the following information:

1. Information identifying the diplomatic property;
2. Information establishing that the property is used by the foreign government for a diplomatic mission; and
3. Information describing whether the property has been recognized by the State Department as being diplomatic property

subject to the Foreign Missions Act, ' 202, 22 U.S.C. ' 4305 (1982).

.12 Availability of records. The applicant shall make available to the Commissioner, within the time prescribed by the Commissioner, all information that may be required by the Commissioner in order to verify that representations relied upon by the Commissioner in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly will usually result in rejection of the application. Instead of such rejection, the Commissioner, in his discretion, may also consider extension of an established target date for issuing a withholding certificate. The parties shall agree that the review of books and records pursuant to the agreement shall not constitute an examination for purposes of section 7605(b) of the Code.

SEC. 5. AGREEMENT FOR THE PAYMENT OF TAX

.01 In general. The Service will issue a withholding certificate that excuses withholding or that permits a transferee to withhold a reduced amount if either the transferor or the transferee enters into an agreement for the payment of tax. An agreement for the payment of tax is a contract between the Service and any other person that consists of two necessary elements. Those elements are:

1. A detailed description of the rights and obligations of each; and
2. A security instrument or other form of security acceptable to the Commissioner.

.02 Contents of agreement--In general. An agreement for the payment of tax must either provide adequate security for the payment of the tax in accordance with section 6 of this revenue procedure or provide for the payment of the tax through a combination of security and withholding of tax by the transferee. The agreement must cover an amount described in subdivision (a) or (b) of this paragraph.

(a) Tax that would otherwise be withheld. An agreement for the payment of tax may cover the tax that would otherwise be required to be withheld pursuant to section 1445(a) of the Code. In addition to securing the amount computed pursuant to section 1445(a), the agreement must provide that the applicant will pay

interest upon that amount, at the rates and in the manner prescribed by section 6621 and 6622, with respect to the period between the date on which the tax imposed by section 1445(a) would otherwise be due (i.e., the 20th day after the date of transfer) and the date on which the transferor's payment of tax with respect to the disposition will be due. Interest and additions with respect to the tax also must be secured. In most instances, payments of interest and additions to tax may be secured by the same agreement that secures payment of taxes. At the discretion of the Commissioner, however, separate security agreements may be required.

(b) Maximum tax liability. An agreement for the payment of tax may provide for the payment of the transferor's maximum tax liability, determined in accordance with section 4.06(2) of this revenue procedure. The agreement must also provide for the payment of an additional amount equal to 25 percent of the amount determined under section 4.06(2). This additional amount secures the interest and additions to tax that would accrue between the date of a failure to file a return and pay tax with respect to the disposition and the date on which the Service collects the tax pursuant to the agreement.

.03 Parties to the agreement. All agreements for the payment of tax will be between the Commissioner and the applicant furnishing the security or personally guaranteeing payment of any tax later determined to be due. In addition, the Commissioner may require as a signatory any other party deemed to be appropriate. The Commissioner may require such other terms and conditions, or vary the format as appropriate in the particular case, to provide adequate security.

.04 Contents of agreement--Stated purpose and warranties. The agreement for the payment of tax should state the purpose and basis of the agreement. It should also recite any warranties or representations upon which the Commissioner will be required to place material reliance in accepting the agreement.

.05 Contents of agreement--Identification of security. The agreement for the payment of tax must set forth in detail the obligations to be assumed and identify the nature of the security that is being offered. To the extent that the security is embodied in an instrument or document collateral to the agreement, such instrument or document must be incorporated by reference in the agreement.

.06 Sample agreement. The following example sets forth the language of an agreement for the payment of tax that in most circumstances will be acceptable to the Service:

1. This agreement is entered into pursuant to the provisions of section 1445 of the Internal Revenue Code (the "Code") and the regulations thereunder.

The signatories warrant that they are authorized under applicable law to enter into the agreement and undertake the actions and obligations specified herein.

2. _____ (name) warrants that (s)he/it will make timely payment of any liability (including tax, penalties, interest, and additions to tax) that may become lawfully due and owing under the Code as a result of the disposition or distribution by _____ of the interest, or any part thereof, described in Exhibit(s) _____ [the "subject interest(s)"] giving rise to tax liability by reason of the operation of sections 871(b), 882, and/or 897 of the Code. The related security secures payment of such amounts. Security for the payment of such liability is provided in the amount of _____, in accordance with the requirements of section 1.1445-3(e)(2) of the Income Tax Regulations. The computation of the proper amount of security to be provided is set forth in Exhibit _____ and such computation is hereby incorporated by reference.

3. The provisions of this agreement shall be construed as binding upon all signatories to this agreement, unless the intent to exclude any one or more signatories is clearly set forth in the provisions or is clearly implicit in the terms hereof.

4. The amount of each deposit of estimated tax that will be required with respect to the amount recognized on the subject disposition may be collected by levy upon or recourse to the security as of the date following the date on which each such deposit is due (unless such deposit is timely made).

5. The entire amount of the liability may be collected by levy upon or recourse to the security at any time during the nine months following the date on which the payment of tax with respect to the subject disposition is due, subject to release of the security upon the full payment of the tax and any interest and penalties due. If the transferor requests an extension of time to file a return with respect to the disposition, the Commissioner may require that the term of the security instrument

be extended until the date that is nine months after the filing deadline as extended.

6. The applicant shall make available to the Commissioner within 30 days of a request from the Commissioner all information that may be required by the Commissioner in order to verify that representations relied upon by the Commissioner in accepting the agreement are accurate, and that the obligations assumed by the applicant are performed pursuant to this agreement.

7. The parties agree that the review of books and records pursuant to this agreement shall not constitute an examination for purposes of section 7605(b) of the Code.

8. Nothing in this agreement shall limit the Commissioner from performing the obligations imposed upon or delegated to him under the law.

9. Upon the occurrence of any default by the applicant under the applicable provisions of this agreement, in addition to any and all other rights and remedies which the Commissioner may have hereunder, or under any other applicable law, or otherwise, the Commissioner may reduce the claim to judgment, otherwise enforce the security interests by any available judicial procedure, and exercise any other rights and remedies the Commissioner may have at law, or in equity, or otherwise, including, but not limited to the right to apply toward payment of the obligations hereunder, without notice to the applicant, any sums which may then be held by the Commissioner for said applicant.

10. For purposes of this agreement, the term "default" means a material misrepresentation of material fact or a failure to honor an obligation or warranty agreed to herein.

11. Except as otherwise provided in this agreement, no provision of this agreement shall be deemed to constitute a waiver of any right that any party may have to recover any amount in accordance with the laws, statutes, and regulations of the United States, nor shall any provision of the agreement be deemed to be an admission by any person, whether or not a party hereto, that such person is liable for any federal income tax, or, if a foreign corporation or nonresident alien, that such person is subject to the taxing jurisdiction of the United States, or if the Commissioner, that the facts upon which this agreement is based are true and accurate.

12. This agreement and all of its terms and conditions shall inure to the benefit of, and be binding upon, the Commissioner and the applicant, and their respective successors.

13. All notices, instructions and other communications ("Notices") required or permitted to be given, forwarded, or transmitted hereunder or necessary or convenient in connection herewith shall be in writing and addressed to:

Internal Revenue Service Center
P.O. Box 21086
DP 8731 FIRPTA Unit
Philadelphia, PA 19144-0586

or

To [the applicant: the applicant's address etc]. and shall be deemed to have been given only when delivered personally or by private delivery service as designated by the Internal Revenue Service under I.R.C. '7502(f) (see Notice 99-41, 1999-35 I.R.B. 325, or its successor for a listing of private delivery services); or sent by first class U.S. mail (postage pre-paid, by registered or certified mail, return receipt requested); or sent by cable, telex, telegram or facsimile transmission (for example, telecopier) and confirmed by letter mailed the same day to the party receiving the notice. Any notice sent by mail to or from a place outside the continental United States shall be sent by air mail. Any notice sent by cable, telegram, or telex may be addressed to any published cable, telegram, or telex address that the addressee may have specified by notice to all the signatories. Any signatory may change the address or addresses to which communications are to be directed to it by giving written notice of such change to the persons above specified in the manner provided above, provided, however, that [the applicant] may establish or change an address to which notices are to be directed only if the new address is the address of [the applicant] itself or the address of a person with power of attorney to act for [the applicant] with respect to the disposition or distribution described in paragraph 2.

14. This agreement may not be amended, modified, superseded, or canceled and none of the terms hereof may be waived, except by a written instrument executed by the Commissioner and the other party or parties hereto sought to be charged thereby. In the case of a waiver of the breach of any term contained in this agreement in any one or more instances, the waiver shall be neither deemed to be nor construed as a further or continuing waiver of any such breach or term or any other term contained in this agreement.

15. This agreement may be in any number of counterparts with all the counterparts together constituting one and the same agreement.

16. The term "Commissioner" as used herein also shall include any successors in office, and any and all agents or employees thereof duly authorized for the purpose.

17. This agreement shall not be binding upon any signatory hereto until it has been signed by the Commissioner and the Commissioner has received counterparts thereof duly executed by each of the signatories whose names appear at the end of this agreement.

18. No provision of this agreement shall relieve any party or person of any obligation or liability under the internal revenue laws of the United States, except as specifically provided in this agreement.

19. This agreement is made without prejudice to the assertion and/or collection of tax liabilities other than for any tax imposed by section 871(b)(1) or 882(a)(1) of the Code on any gain realized by the transferor on the disposition of the subject United States real property interest.

20. This agreement shall be governed, construed, and enforced in accordance with the laws of the United States of America and, where applicable, the laws of the State of [insert applicable local jurisdiction.]

21. It is agreed that nothing herein shall be construed to increase, decrease, or otherwise affect in any way the substantive tax liability of the taxpayer under any other provision of the Code.

22. The Commissioner will not, in part or in full, release, subordinate, or return the security held with respect to this agreement except upon the payment of any liability determined to be due or upon the deposit of an acceptable amount of estimated tax or upon a showing to the satisfaction of the Commissioner that the liability is zero.

____ I accept this Agreement
____ Under penalties of perjury, I

declare that I have examined this Agreement, related exhibits, schedules and statements and to the best of my knowledge and belief it is true, correct and complete.

____Signature
____Signature of Signatory/Power
of Attorney

____Title

[Commissioner or person acting on behalf of the Commissioner]

SEC. 6. SECURITY

.01 Major types of security. There are four major types of security acceptable to the Service. These are:

1. Bond with surety or guarantor.

The Service may accept as security with respect to a transferor's tax liability a bond that is executed with a satisfactory surety or guarantor. Only the following persons may act as surety or guarantor for this purpose:

- (a) A surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds, as listed in Treasury Department Circular No. 570, published annually in the Federal Register on the first working day in July and as supplemented from time to time thereafter;
- (b) A person who is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of section 1.864-4(c)(5) of the regulations, and who is subject to U.S. or foreign

(local or national) regulation of such business, if that person is otherwise acceptable to the Service; and

- (c) A person who is engaged within or without the United States in the conduct of an insurance business that is subject to U.S. or foreign (local or national) regulation, if that person is otherwise acceptable to the Service.

2. Bond with collateral. The Service may accept as security with respect to a transferor's tax liability a bond that is secured by acceptable collateral. All collateral must be deposited with a responsible financial institution acting as escrow agent, or in the Service's discretion, with the Service. Only the following types of collateral are acceptable:

- (a) Bonds, notes, or other public debt obligations of the United States, in accordance with the rules of 31 CFR Part 225; and
- (b) A certified, cashier's, or treasurer's check, drawn on an entity acceptable to the Service that is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of section 1.864-4(c)(5) of the regulations and that is subject to U.S. or foreign (local or national) regulation of such business.

3. Letter of credit. The Service may accept as security with respect to a transferor's tax liability an irrevocable letter or credit issued by an entity acceptable to the Service that is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of section 1.864-4(c)(5) of the regulations and that is subject to U.S. or foreign (local or national) regulation of such business. The Service will accept a letter of credit from an entity that is not engaged in a trade or business in the United States only if such letter may be drawn on an advising bank within the United States.

4. Guarantee. The Service may accept as security with respect to a corporate transferor's tax liability a guarantee of the payment of such liability. The Service will accept such a guarantee only if (a) the corporation providing the guarantee is a corporation, foreign or domestic, any class of the stock of

which is regularly traded on an established securities market on the date of the transfer; (b) the corporation providing the guarantee (1) is the transferor or holds, directly or indirectly, more than 80 percent of the voting stock of the transferor and (2) is engaged in a trade or business within the United States; and (c) the corporation providing the guarantee has net assets in the United States at least \$25 million in excess of the value of the U.S. real property interest which is being disposed of.

5. Other forms of security. The Service, at its discretion, may in unusual circumstances accept any additional form of security that it finds to be adequate.

.02 Sample Forms. Listed below are sample forms of security instruments that in most circumstances are acceptable to the Service, to be used when requesting a withholding certificate pursuant to section 1.1445-3 of the regulations.

1. BOND WITH SURETY/GUARANTOR

OBLIGATION. The undersigned, _____, the Guarantor(s), is (or if more than one, jointly and severally are) irrevocably held and firmly bound to pay the Internal Revenue Service the following portion of any tax (including any penalties, interest, and additions to tax) lawfully due and owing by any person listed below as a specified taxpayer as a result of the disposition or distribution of all or part of the subject interest in U.S. real property listed below as the subject interest(s):

* * *

CONDITIONS OF THIS OBLIGATION. The Internal Revenue Service may demand payment of the secured liability or any portion thereof at any time and for any reason. If the secured liability or requested portion is paid when requested by the Internal Revenue Service, this Guarantee shall be released to the extent so paid; otherwise, it shall remain in full force and effect until released in writing by the Internal Revenue Service.

SUBJECT INTEREST(S):

SPECIFIED TAXPAYER(S):

SIGNED, SEALED, AND DATED THIS _____ day of ____ 19__,

Guarantor [Seal]

Guarantor [Seal]

Corporate Guarantor

(Corporate Seal)

Attest:

By: _____ [Corporate Seal]

Surety/Guarantor

Secretary

By: _____ [Corporate Seal]
Title

2. BOND WITH COLLATERAL

OBLIGATION: The undersigned, _____, the Guarantor(s) (or if more than one, jointly and severally are) irrevocably held and firmly bound to pay the Internal Revenue Service the following portion of any tax (including any penalties, interest, and additions to tax) lawfully due and owing by any person listed below as a specified taxpayer as a result of the disposition or distribution of all or part of the subject interest in U.S. real property listed below as the subject interest(s):

SECURITY: The above-bound Guarantor(s), in order to more fully secure the Internal Revenue Service in the payment of this obligation, hereby pledge(s) as security therefor the following collateral:

* * *

CONDITIONS OF THE OBLIGATION. The Internal Revenue Service may demand payment of the secured liability or any portion thereof at any time and for any reason. If the Guarantor(s) fail(s) to pay the amount requested by the Internal Revenue Service. The Commissioner and his designates are authorized and empowered, in their sole discretion, in whole or in part, to exercise the power of attorney, contemporaneously executed and delivered to collect, sell, transfer, or assign the above described security and apply the funds so received in full or partial satisfaction of any liability for taxes, interest, penalties, or additions to tax

secured hereby. If the secured liability or portion requested is paid by the Guarantor(s) when requested by the Internal Revenue Service, this security shall be released to the extent so paid; otherwise, this obligation shall remain in full force and effect until released in writing by the Internal Revenue Service.

SUBJECT INTEREST(S):

SPECIFIED TAXPAYER(S):

SIGNED, SEALED, and DATED THIS ____ day of ____ 19__.

Guarantor [Seal]

Guarantor [Seal]

Corporate Guarantor

By: _____
Title [Corporate Seal]

(Corporate Seal)

Attest:

Secretary

Individual's power of attorney

3. POWER OF ATTORNEY

I (we)... do hereby constitute and appoint the Commissioner (and his/her designate) as attorney for me (us) and in my (our) name to collect, sell, assign, and transfer the following:

* * *

which has been deposited by me (us) as security for the faithful performance of my (our) bond, which is attached and incorporated by reference, and I (we) agree that, in case of any default in the performance of any of the conditions and stipulations of the bond, my (our) said attorney shall have full power to collect said security or any part thereof, or to sell, assign to another for the purposes of effecting either public or private sale, free from any equity of redemption and without appraisal or valuation notice and right to redeem being waived, and the proceeds of such

sale for collection, in whole or in part, to be applied to the satisfaction of the liability secured by the bond in such manner as may be deemed in the best interest of the United States. I (We) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of this power of attorney.

In witness whereof, I (we), herein above named, have executed this instrument and affixed my (our) seal this ___ day of _____, 19__.

_____[SEAL]

State of _____)

ss

County of _____)

Before me, the undersigned, a notary public within and for the said county and State, personally appeared... [name(s) of Guarantor(s)], and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this __ day of _____, 19__.

Notary Public

My Commission expires _____

Corporation's power of attorney

4. POWER OF ATTORNEY

_____, a corporation duly incorporated under the laws of the State of _____ and having its principal office in the city of _____, State of _____ in pursuance of a resolution of the Board of Directors, of said corporation passed on the day of _____, 19__, a duly certified copy of which resolution is attached hereto, does hereby constitute and appoint the Commissioner (and his designates) as attorney for said corporation, for and in the name of said corporation, to collect or to sell, assign, and transfer the following:

* * *

which has been deposited by it as security for the faithful performance of the bond, a copy of which is attached, and which

is incorporated by reference, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of the bond, its said attorney shall have full power to collect said security or any part thereof, or to sell, assign, and transfer said security or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisal or valuation, notice and right to redeem being waived, and the proceeds of such sale for collection, in whole or in part, to be applied to the satisfaction of the liability secured by the bond, in such manner as may be deemed in the best interests of the United States. The undersigned further agrees that the authority granted is irrevocable.

And said corporation, hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of this power of attorney.

In witness whereof, _____, the corporation above named, by _____ (Name and title of officer), duly authorized to execute this instrument has caused the seal of the corporation to be affixed hereto this day of _____ 19__.

Attest:

(Corporate seal) Secretary

By: _____
Title

State of _____)
 ss
County of _____)

Before me, the undersigned, a notary public within and for the said county and State, personally appeared _____ (name and title of officer), and for and in behalf of said _____ corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ___ day of _____, 19__.
[Notarial seal]

Notary Public
My Commission expires _____

5. LETTER OF CREDIT

Place:

Cable Address:

Date:

_ IRREVOCABLE STANDBY LETTER OF CREDIT	All drafts must be marked: Drawn under credit no.	Advising bank reference to
---	--	-------------------------------

Advising bank	For account of
---------------	----------------

To beneficiary
Internal Revenue Service

950 L-Enfant Plaza South, S.W.
Washington, DC 20224
Attention: Collection

-	Expiration date
	This refers to preliminary cable advice of this credit

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor available by your drafts drawn at SIGHT and accompanied by documents specified below: NONE

_We hereby engage with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored if drawn and presented for payment at this office on or before the expiration date of this credit. The advising bank is requested to notify the beneficiary without	Advising bank's notification Place, date, name, and signature of the advising bank
---	---

adding their confirmation.

Sincerely yours,
Authorized counter signature
Authorized signature

6. GUARANTEE

OBLIGATION: The undersigned, _____,
the Guarantor(s), is (or if more than one, jointly and
severally are) irrevocably held and firmly bound to pay the
Internal Revenue Service the following portion of any tax
(including any penalties, interest, and additions to tax)
lawfully due and owing by any person listed below as a specified
taxpayer as a result of any disposition or distribution taxable
by reason of sections 871(b)(1), 882(a)(1), and/or 897 of the
Code as to all or part of the subject interest in U.S. real
property listed below as the subject interest:

CONDITIONS OF THIS OBLIGATION: The Internal Revenue Service may
demand payment of the secured liability or any portion thereof at
any time and for any reason. If the secured liability or
requested portion is paid when requested by the Internal Revenue
Service, this Guarantee shall be released to the extent so paid;
otherwise, it shall remain in full force and effect until
released in writing by the Internal Revenue Service.

SUBJECT INTEREST(S):

SPECIFIED TAXPAYER(S):

SIGNED, SEALED AND DATED THIS ____ day of _____ 19__.

Guarantor [SEAL]

Corporate Guarantor

By: _____
[CORPORATE SEAL]

Attest:

Secretary

SEC. 7. INSTALLMENT SALES

01. In general. A transferee as a result of a disposition of a U.S. real property interest occurring after December 31, 1984, is required to satisfy its withholding obligation based on the amount realized regardless of the amount of the payment by the transferee. If the transferor is a person other than a dealer and will report gain from the disposition under section 453 of the Code, a withholding certificate that permits the transferee to withhold at a reduced rate may be obtained under the rules of this section. Any withholding certificate must provide for payment of the interest on the deferred tax liability under section 453A(c) of the Code when applicable. No refund of the amount withheld will be made unless such a withholding certificate is obtained.

.02 Withholding certificate requests. With respect to installment sales subject to withholding under section 1445(a) of the Code, the Service will entertain requests for certificates based on the transferee's agreement to do the following:

1. Withhold and pay over 10 percent, or such lesser amount as determined by the Commissioner, of any down payment, including any liabilities of the transferor assumed by the transferee or liabilities to which the subject U.S. real property interest was subject immediately before and after the transfer;

2. Withhold 10 percent, or such lesser amount as may be determined by the Commissioner, of each subsequent payment and the interest on the deferred tax liability under section 453A(c) of the Code (these amount are in addition to any other amount required to be withheld under section 1441 or 1442);

3. Pay over all amounts withheld using Forms 8288 and 8288-A, including thereon the taxpayer identification number of the transferor; and

4. Notify the Commissioner prior to the disposition or encumbrance of the subject U.S. real property interest, and upon such disposition or encumbrance pay over to the Service the amount remaining to be withheld pursuant to section 1445(a).

5. If the transferor pledges the installment obligation in exchange for all or a portion of the proceeds due on the installment obligation and includes in gross income under section 453A(d) of the Code the net proceeds of the secured indebtedness, the transferee's obligation to withhold under a reduced withholding certificate nevertheless continues until an amended

withholding certificate is issued even though the transferor includes the proceeds in gross income.

SEC. 8. APPLICATION FOR WITHHOLDING CERTIFICATES FOR AMOUNTS REQUIRED TO BE WITHHELD UNDER SECTION 1445(e)

.01 In general. Pursuant to the provisions of sections 1.1445-5(c), (d), and (e) of the regulations, withholding under section 1445(e) of the Code may be reduced or eliminated pursuant to a withholding certificate issued by the Service in accordance with the rules of section 1.1445-6. A withholding certificate may be issued in cases where adjusted withholding is appropriate, where the relevant taxpayers are exempt from U.S. tax, or where an agreement for the payment of tax is entered into with the Service. If a domestic partnership's transfer of a U.S. real property interest is subject to both section 1445(e)(1) and section 1446, a withholding certificate will not be issued. See Rev. Proc. 89-31, 1989-1 C.B. 899. The term "relevant taxpayer" shall mean any foreign person that will bear substantive income tax liability by reason of a transaction upon which withholding is required under section 1445(e).

.02 Applications. An application for a withholding certificate pursuant to section 1.1445-6 of the regulations must follow the format set forth in section 4.04 of this revenue procedure and provide the information described in sections 4.05 through 4.10, with the following adjustments:

1. The application must include a preliminary item stating that it relates to withholding under section 1445(e) of the Code and specifying the applicable provisions of that section;

2. Item 2(b) of section 4.04 must state whether the applicant is a relevant taxpayer or a person required to withhold (and in what capacity that person is required to withhold; for example, as trustee);

3. Item 2(c) of section 4.04 must provide the required information with respect to each relevant taxpayer with respect to which adjusted withholding is sought; and

4. Information concerning the basis for the issuance of the certificate must be provided with respect to each relevant taxpayer.

.03 Installment sales. With respect to installment sales subject to withholding under section 1445(e) of the Code, the Service will entertain requests for withholding certificates

based on the entity's or the fiduciary's agreement to do the following:

1. Withhold and pay over a portion, in an amount determined appropriate under section 1445(e) by the Commissioner, of any down payment received, including any liabilities of the entity assumed by the transferee or liabilities to which the subject U.S. real property interest was subject immediately before and after the transfer;

2. Withhold a portion, in an amount determined appropriate under section 1445(e) by the Commissioner, of each subsequent payment received (this amount is in addition to any other amount required to be withheld under sections 1441 or 1442);

3. Pay over all amounts withheld using Forms 8288 and 8288-A, including thereon the taxpayer identification number of the interest holder subject to withholding; and

4. Notify the Commissioner, prior to the disposition or encumbrance of the subject installment obligation, and upon such disposition or encumbrance pay over to the Service the amount remaining to be withheld under section 1445(e).

SEC. 9. BLANKET WITHHOLDING CERTIFICATE

.01 In general. The Commissioner may issue a withholding certificate (blanket withholding certificate) that excuses withholding with respect to multiple dispositions of U.S. real property interests by the transferor or the transferor's legal representative during a period of no more than 12 months. A blanket withholding certificate may be issued if the transferor holding the U.S. real property interests provides a letter of credit as specified in paragraph 1 of this subsection .01 or a guarantee as specified in paragraph 2 of this subsection .01 and enters into an agreement with the Service that meets the requirements of paragraphs 3 and 4 of this subsection .01.

1. For dispositions not subject to section 1445(e) of the Code, the transferor must provide an irrevocable letter of credit in an amount equal to the greater of (i) \$100,000 or (ii) 10 percent of the amount to be realized on the projected dispositions covered by the certificate. For dispositions subject to section 1445(e), the transferor must provide an irrevocable letter of credit in an amount equal to the greater of (i) \$100,000 or (ii) the tax that section 1445(e) would require to be withheld. The letter of credit must meet the requirements

of paragraph 3 of subsection 6.01 of this revenue procedure and otherwise must be acceptable to the Commissioner. In addition, the letter of credit by its terms must be valid until at least the last day of the ninth month following the date (including extensions of time) on which a return will be required to be filed with respect to the tax year in which the 12th month covered by the withholding certificate falls. A letter of credit in the form specified in subsection 6.02(5) in most circumstances will be acceptable to the Service when requesting a blanket withholding certificate.

2. Alternatively, the Service may accept as security for a blanket withholding certificate with respect to a corporate transferor's tax liability a guarantee of the payment of such liability. The Service will accept such a guarantee only if (a) the corporation providing the guarantee is a corporation, foreign or domestic, any class of the stock of which is regularly traded on an established securities market on the date of the transfer; (b) the corporation providing the guarantee (1) is the transferor or holds, directly or indirectly, more than 80 percent of the voting stock of the transferor and (2) is engaged in a trade or business within the United States; and (c) has gross assets in the United States at least \$25 million in excess of the U.S. real property interest being disposed of.

Additionally, the transferor corporation must have filed United States corporate income tax returns for the prior consecutive three years and the guarantee otherwise must be acceptable to the Commissioner. The guarantee by its terms must be valid until at least the last day of the ninth month following the date (including extensions of time) on which a return will be required to be filed with respect to the tax year in which the 12th month covered by the withholding certificate falls. A guarantee in the form specified in subsection 6.02(6) will be acceptable to the Service in most circumstances when requesting a blanket withholding certificate.

3. The transferor must provide with the letter of credit described in paragraph 1 of this subsection or the guarantee described in paragraph 2 of this subsection an executed tax payment and security agreement securing the payment of tax with respect to the projected dispositions covered by the blanket withholding certificate. The agreement must generally meet the requirements of subsections 5.02 through 5.05 of this revenue procedure as modified to take account of this subsection 9.01 and otherwise must be acceptable to the Commissioner. The agreement must also list all the U.S. real property interests covered by

the agreement and give a brief description of each interest. In addition, the agreement must contain the terms as to notification of specific dispositions required by paragraph 4 of this subsection 9.01 and must provide that, in the event of a failure by the transferor to provide such notification or to file a return in a timely manner, deposit estimated tax in a timely manner, or to pay tax in a timely manner, with respect to the gain on one or more of the dispositions covered by the certificate, the Commissioner may draw upon the letter of credit or demand payment under the guarantee to satisfy the transferor's liability for any tax imposed by 871(b)(1) or 882(a)(1) of the Code, plus interest and penalties, if any, on any one or more dispositions covered by the certificate.

4. The agreement required by paragraph 3 of this subsection must state that the transferor agrees to notify the Commissioner before or on the date of any disposition of a U.S. real property interest covered by the blanket certificate. The notice shall include the following information:

- (a) The name, legal address, and taxpayer identification number (to the extent required in regulations) of the transferor or the name and legal address of a legal representative of the transferor with the power to bind the transferor with respect to the disposition;
- (b) The name, legal address, and taxpayer identification number (to the extent required in regulations) of the transferee or the name and legal address of a legal representative of the transferee with the power to bind the transferee with respect to the disposition;
- (c) A description of the U.S. real property interest to be transferred and the anticipated date of the transfer;
- (d) The amount that would otherwise have been required to be withheld on the transfer (10 percent of the amount realized unreduced by the maximum tax calculation or for any other reason);
- (e) The cumulative total of amounts that would otherwise have been required to be withheld with respect to dispositions (i) which have already taken place or are scheduled to take place prior

to the disposition with respect to which notice is being given and (ii) with respect to which the Commissioner has not sent the notice described in subsection .02(1) below;

- (f) The amount of the original letter of credit provided or the amount the guarantor is bound to pay the Service under the guarantee; and
- (g) A copy of the transferor's withholding certificate, or if the application is pending, a copy of the withholding certificate application.

An agreement in the form prescribed by subsection 5.06 of this revenue procedure in most cases will be acceptable to the Service for purposes of paragraphs 3 and 4 of this subsection 9.01, with the following modifications: (i) The form should reflect and describe, as the "subject interests," the projected dispositions to be covered by the blanket withholding certificate to which the agreement will relate, (ii) paragraph 2 of the form should be modified to state that the agreement is entered into in connection with an application for a blanket withholding certificate and will extend to all dispositions covered by the blanket withholding certificate, (iii) the third sentence of paragraph 2 should be revised to read "Security for the payment of such liability is provided by an irrevocable letter of credit in the amount of _____ in accordance with the requirements of subsection 9.01(1) of Rev. Proc. 2000- **[Add number of this revenue procedure]** or by a guarantee in accordance with the requirements of subsection 9.01(2) of Rev. Proc. 2000- **[Add number of this revenue procedure]**," (iv) a new paragraph should be added to the form (designated as paragraph 3, with the other paragraphs being renumbered accordingly), containing the terms of paragraph 4 of this subsection 9.01, and (v) paragraph 5 of the form (paragraph 6 as renumbered) should be revised to read:

"6. In the event of any failure by the transferor or the transferor's legal representative (i) to notify the Commissioner properly, in accordance with paragraph 4, of a disposition of a U.S. real property interest covered by this agreement and the blanket withholding certificate to which it relates, or (ii) to file a return in a timely manner, to deposit estimated tax in a timely manner, or to pay tax in a timely manner, with respect to the gain on one or more dispositions covered by this agreement and such certificate, the Commissioner may draw upon the letter of credit provided or the guarantee as related security under this agreement in full to the extent of the tax imposed by

section 871(b)(1) or section 882(a)(1) of the Code on any one or more dispositions covered by this agreement and such certificate, plus interest and additions to tax, if any. This amount shall be in addition to any other civil or criminal penalties that may apply with respect to the applicant's use of the withholding certificate in violation of the terms thereof."

.02 Withholding certificates--Provisions. A withholding certificate issued by the Commissioner under this section will state that no withholding is required with respect to any disposition of a U.S. real property interest by the applicant provided that (1) before the date of the transfer, the Commissioner does not provide notice to the person who would otherwise be required to withhold (discussed in paragraph 1 below) that such withholding is required, and (2) the person who would otherwise be required to withhold timely provides the information and material described in paragraph 2 below and the disposition as consummated does not materially fail to correspond to the information so provided.

1. If one of the following conditions occurs, the Commissioner will provide notice to the applicant, and to the person required to withhold, that withholding is required despite the prior issuance of a withholding certificate:

- (a) The applicant's letter of credit or amount under the guarantee, in light of prior dispositions, is not sufficient to cover the amount otherwise required to be withheld on the transfer, or
- (b) The applicant has otherwise violated the provisions of this section.

2. To be exempt from withholding tax liability, the person that would otherwise be required to withhold must, before or on the day of the closing of a transaction, provide a statement to the Commissioner containing the following information and material:

- (a) The name, legal address, and taxpayer identification number (to the extent required in regulations) of the transferee or the name and legal address of a legal representative of the transferee with the power to bind the transferee with respect to the acquisition;
- (b) The name, legal address, and taxpayer identification number (to the extent required in

regulations) of the transferor or the name and legal address of a legal representative of the transferor with the power to bind the transferor with respect to the acquisition;

- (c) A description of the acquired U.S. real property interest and the anticipated date of the acquisition;
- (d) The total contract price of the acquired U.S. real property interest; the amount of liabilities, if any, to be assumed by the transferee; and the amount of liabilities, if any, to which the property is to be acquired is subject; and
- (e) A copy of the transferor's withholding certificate.

.03 Copy of security agreement. The Commissioner will, upon request, provide the transferor with a copy of a security agreement submitted pursuant to paragraph 9.01(2) executed by the Commissioner, but such an executed copy is not needed to establish the validity of the blanket withholding certificate for purposes of the subject disposition. Provided that notice is not given by the Commissioner under section 9.02(1), and provided that the transferee timely provides the required information and materials, the withholding certificate remains valid.

.04 Consequences of failure to notify. In the event of any failure by the transferor or the transferor's legal representative to notify the Commissioner properly, in accordance with section 9.01(3), of a disposition of a U.S. real property interest, or to file a return in a timely manner, to deposit estimated tax in a timely manner, or to pay tax in a timely manner, with respect to the gain on one or more dispositions covered by the blanket withholding certificate, the letter of credit provided under section 9.01(1) or the guarantee provided under section 9.01(2) may be drawn upon in full to the extent of the tax imposed by section 871(b)(1) or section 882(a)(1) of the Code, plus interest and additions to tax, if any, on any one or more dispositions covered by the blanket withholding certificate.

This amount shall be in addition to any other civil or criminal penalties that may apply with respect to the applicant's use of the withholding certificate in violation of the terms thereof.

SEC. 10. AUTHORIZED REPRESENTATIVE

In any situation covered by this revenue procedure in which a person acts for or is designated as a legal representative of either a transferor or a transferee, such person must be authorized to so act by a power of attorney on file with the Commissioner. Form 2848 may be used for this purpose.

SEC. 11. INQUIRIES

Address all inquiries to:

Internal Revenue Service Center
P.O. Box 21086
Drop Point 8731 FIRPTA Unit
Philadelphia, PA 19114-0586

SEC. 12. EFFECTIVE DATE

This revenue procedure is effective for all applications for withholding certificates submitted after [the date 30 days after publication of this revenue procedure in the Internal Revenue Bulletin].

SEC. 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 88-23, 1988-1 C.B. 32 is superseded [as of the date in sec. 12].

SEC. 14. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1697.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information are contained in sections 4 through 9 of this revenue procedure. This information will be used to enable the Commissioner to determine whether to issue a withholding certificate to an applicant which reduces or eliminates withholding under section 1445 of the Code. The

likely respondents are individuals, corporations, partnerships, and foreign governments.

The estimated total annual reporting and/or recordkeeping burden is 60,000 hours.

The estimated average annual burden per applicant is 10 hours. The estimated number of applicants is 6,000.

The estimated number of responses is on occasion.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Sharon J. Bomgardner, formerly of the Office of Associate Chief Counsel (International), and Robert W. Lorence, of the Office of Associate Chief Counsel (International). For further information, contact Tom Logan of the Commissioner at (202) 874-1617 (not a toll-free number).