

**§ 1.1441-5****WITHHOLDING OF TAX**

**Reg. §1.1441-5 Claiming to be a person not subject to withholding.** (TD 6187, filed 5-5-66 as amended by TD 6238, filed 6-10-57; republished in TD 6500, filed 11-25-60; amended by TD 6908, filed 12-30-66; TD 7277, filed 5-14-73; TD 7842, filed 11-2-82; TD 7977, filed 9-19-84; TD 8160, filed 9-8-87.)

(a) **Individuals.** For purposes of chapter 3 of the Code an individual's written statement that he or she is a citizen or resident of the United States may be relied upon by the payer of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate. An alien may claim residence in the United States by filing Form 1078 with the withholding agent in duplicate in lieu of the above statement.

(b) **Partnerships and corporations.** For purposes of chapter 3 of the Code a written statement from a partnership or corporation claiming that it is not a foreign partnership or foreign corporation may be relied upon by the withholding agent as proof that such partnership or corporation is domestic. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the cor-

poration. The official title of the corporate officer shall also be given.

(c) **Disposition of statement and form.** The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to <sup>1</sup>Internal Revenue Service <sup>2</sup>Center, Philadelphia, Pa. 19255. The original statement shall be retained by the withholding agent.

(d) **Definitions.** For determining whether an alien individual is a resident of the United States see §1.871-2. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a)(4) and (5) and §301.7701-5 of this chapter. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with §1.1441-1, a resident for purposes of this section. For definition of the term "United States" and for other geographical definitions relating to the continental shelf see section 638 and §1.638-1.

**Reg. §1.1441-6 Withholding pursuant to the application of a tax treaty which confers a reduced rate of, or an exemption from, United States income tax.** (TD 7157, filed 12-29-71; amended by TD 7842, filed 11-2-82; TD 7977, filed 9-19-84.)

(a) **In general.** The rate of 30 percent or 14 percent shall be reduced as may be provided by a treaty with any country. In case of payments of any of the items specified in §1.1441-2 (other than dividends) made on or before December 31, 1971, and in the case of payments of dividends made at any time, the withholding agent shall determine the applicable rate pursuant to the appropriate tax treaty and the regulations issued thereunder. In case of payment on or after January 1, 1972, of any of the items specified in §1.1441-2 (other than dividends), the requirements of paragraphs (b) and (c) of this section shall apply in lieu of the ownership certificate or the exemption (or reduced rate) certificate (or corresponding letter) required by the regulations under the various income tax conventions in effect to which the United States is a party.

(b) **Coupon bond interest.** To secure the reduced rate of, or exemption from, United States income tax at source in the case of coupon bond interest, the recipient shall, if entitled to such treatment pursuant to a tax convention, for each issue of bonds file Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) with the withholding agent when presenting the interest coupons for payment. This form shall be com-

pleted and shall include such information as is required by the form and accompanying instructions. The form shall contain a statement that the owner of the income is entitled to a reduced rate of, or an exemption from, tax pursuant to a tax convention. The Form 1001 shall be retained by the withholding agent for at least 4 years after the close of the calendar year in which the interest is paid.

(c) **Income other than coupon bond interest or dividends.** (1) To secure the reduced rate of, or exemption from, United States income tax at source in case of items of income specified in §1.1441-2 other than coupon bond interest and dividends, the recipient shall, if entitled to such treatment pursuant to a tax convention, file Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) with the withholding agent. This form shall be completed and signed by either the owner of the income, his trustee, or his agent, and shall include such information as is required by the form and accompanying instructions. A separate Form 1001 shall be used for each type of income. For this purpose, all income from a trust, estate, or investment account shall be considered as a single type of income. Each form shall also contain a statement that the

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rate of, or exemption from, tax pursuant to a tax convention. If, after filing such form, the owner ceases to be eligible for the benefits of the tax convention for such income, he shall promptly notify the withholding agent by letter. *Form 1001 shall not be used to secure a reduced rate of, or exemption from withholding on independent personal services income. See §1.1441-4(b)(2).*

(2) Form 1001 shall be effective for the successive 3-calendar-year period during which the income to which the form applies is paid. Each such form filed with any withholding agent shall be filed as soon as practicable. Once a form has been filed for a type of income (other than coupon bond interest) with respect to such a 3-year period, no additional Form 1001 for such income need be filed with respect to such period unless the Commissioner of Internal Revenue notifies the withholding agent that the taxpayer shall file another form. If any change occurs in the ownership of income subject to a Form 1001 recorded on the

books of the withholding agent, the Form 1001 shall no longer be effective. The Form 1001 shall be retained by the withholding agent for at least 4 years after the end of the last calendar year in which income subject to the form is paid.

(3) Form 1001 need not be filed with respect to payments (other than payments of coupon bond interest) made prior to December 31, 1974, if an exemption (or reduced rate) certificate (or corresponding letter) required by the regulations under the applicable income tax convention has been filed with respect to such payments prior to December 31, 1971.

(d) **Section 6013(g) election.** A nonresident alien individual with respect to whom a section 6013(g) election to be treated as a resident is in effect may not, in accordance with §1.6013-6(a)(2)(v), claim a reduced rate of, or exemption from, United States income tax under an income tax treaty.

**Reg. §1.1441-7 General provisions relating to withholding agents.** (TD 7977, filed 9-19-84.)

(a) **Withholding agent defined—(1) In general.** For purposes of chapter 3 of the Code, the term "withholding agent" means any person who pays or causes to be paid an item of income specified in §1.1441-2 (or to the agent of) a nonresident alien individual, a foreign partnership, a nonresident alien or foreign fiduciary of a trust or estate, or a foreign corporation, and who is required to withhold tax under section 1441, 1442, 1443, or 1451 from such item of income. Any person who meets the definition of a withholding agent is required to file the returns prescribed by §1.1461-2. For example, an employer (as defined in §31.3401(d)-1 of this chapter), to the extent the employer pays remuneration for services performed by a nonresident alien individual in the United States and such remuneration is excepted from the term "wages" under §31.3401(a)(6)-(1)(c) or (e) of this chapter, must file a return as required by §1.1461-2(c)(1).

(2) **United States obligations.** If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States shall be assumed and discharged by:

(i) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt,

(ii) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise,

(iii) Each Federal Reserve Bank, for interest paid by it, whether by check or other-

(b) **Person designated to act for withholding agent—(1) Notice of duly authorized agent.** A withholding agent (including a state or possession of the United States or any agency or instrumentality thereof) that appoints a duly authorized agent to act on its behalf under the withholding provisions of chapter 3 of the Code is required to file a notice of such appointment with the Director of the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225. Such notice must be filed before the first payment with respect to which the authorized agent acts as such.

(2) **In general—liability of withholding agent.** If a duly authorized agent has become insolvent or for any other reason fails to make payment of money deposited with it by the withholding agent to pay tax required to be withheld under chapter 3 of the Code, or of money withheld under such chapter, the withholding agent is not discharged of its liability under such chapter since the authorized agent is merely the agent of the withholding agent.

(3) **Tax-free covenant bonds—liability of withholding agent.** If the duly authorized agent designated by a withholding agent to act for it has not withheld any tax from the income nor received any funds from the withholding agent to pay the tax which the withholding agent assumed in connection with its tax-free covenant bonds, then that authorized agent cannot be held liable for the tax assumed by the withholding agent merely by reason of the appoint-