



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9394]

RIN 1545-BD80

Special Rules To Reduce Section 1446 Withholding; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9394, which was published in the **Federal Register** on Tuesday, April 29, 2008. Treasury Decision 9394 contained final regulations regarding when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner.

DATES: These corrections are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and applicable as of April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit at (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9394) that are the subject of this correction are under section 1446 of the Code.

Need for Correction

As published on April 29, 2008 (73 FR 23069), the final regulations (TD 9394; FR Doc. E8-9356) contained errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1446–3 is amended by adding paragraph (b)(2)(i)(B) to read as follows:

§ 1.1446-3 Time and manner of calculating and paying over the 1446 tax.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Calculation rules when certificates are submitted under §1.1446-6--(1) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under §1.1446-6(c)(1)(i) or (ii) and the amount of state and local taxes permitted to be considered under §1.1446-6(c)(1)(iii). For the purposes of applying this paragraph (b)(2)(i)(B), a partnership shall first annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before--

(i) Considering under §1.1446-6(c)(1)(i) the partner's certified deductions and losses;

(ii) Determining under §1.1446-6(c)(1)(ii) whether the 1446 tax otherwise due with respect to that partner is less than \$1,000 (determined with regard to any certified deductions or losses); or

(iii) Considering under §1.1446-6(c)(1)(iii) the amount of state and local taxes withheld and remitted on behalf of the partner.

(2) The amount of the limitation provided in §1.1446-6(c)(1)(i)(C) shall be based on the partner's allocable share of these annualized amounts. For any installment period in which the partnership considers a partner's certificate, the partnership must also consider the following events to the extent they occur prior to the due date for paying the 1446 tax for such installment period--

(i) The receipt of an updated certificate or status update from the partner under §1.1446-6(c)(2)(ii)(B) certifying an amount of deductions or losses that is less than the amount reflected on the superseded certificate (see §1.1446-6(e)(2) Example 4);

(ii) The failure to receive an updated certificate or status update from the partner that should have been provided under §1.1446-6(c)(2)(ii)(B); and

(iii) The receipt of a notification from the IRS under §1.1446-6(c)(3) or (5) (see §1.1446-6(e)(2) Example 5).

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