

IRC Section 1446

Election to Withhold From Foreign Partners of Publicly Traded Partnerships Based Upon Effectively Connected Income Rather Than Distributions

Overview

Rev. Proc. 89-31, 10.01 requires a publicly traded partnership ("PTP") that has "effectively connected taxable income" to apply the 1446 rules applicable to non-PTPs. These rules require the payment of a withholding tax from distributions to a foreign partner. However, Rev. Proc. 89-31, 10.08 permits a PTP to elect to pay a withholding tax based on a foreign partner's allocable share of "effectively connected taxable income," rather than on distributions to foreign partners.

IRC Section 1446 requires partnerships to make installment payments of the withholding tax based on the amount of "effectively connected taxable income" of the partnership allocable to its foreign partners for each payment period. The withholding tax is computed by applying an "applicable percentage" to the partner's share of the "effectively connected taxable income." The "applicable percentage" is the highest rate of tax for non-corporations and corporations, currently 39.6% and 35%, respectively. The installment payments are due on or before the 15th day of the fourth, sixth, ninth, and twelfth months of a partnership's taxable year. If the Rev. Proc. 89-31, 10.08 election is made, the same reporting and payment requirements must be met by the PTP.

The term "effectively connected taxable income" refers to a partnership's effectively connected gross income over allowable deductions, as determined under the principles of 864, computed with certain adjustments provided in Section 1446(c) and Rev. Proc. 89-31.

The election is retroactive to the partnership's first taxable year beginning after December 31, 1987. It is revocable only with the consent of the Commissioner.

When to File

The election is made by attaching a statement to the partnership's first annual return of 1446 tax.

Where to File

The election statement is attached to the partnership's timely-filed annual return of §1446 tax, which is mailed to the designated Internal Revenue Service Center.

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1. Code Section: 1446, 864
2. Topic: Partnerships; Foreign
3. Return Type: 1065

Authorities

IRC 1446; Rev. Proc. 89-31, Section 10