Form **8288**
(Rev. August 1998)
Department of the Treasury
Internal Revenue Service

U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests

OMB No. 1545-0902

Complete Part I or Part II. Also complete and attach Copies A and B of Form(s) 8288-A.
(Attach additional sheets if you need more space.)

Part I — To Be Completed by the Buyer or Other Transferee Required To Withhold

1 Name of withholding agent (buyer or other transferee) | **Identification number**

Street address (apt. or suite no., or rural route. Do not use a P.O. box.)

City or town, state, and ZIP code

2 Description and location of property acquired

3 Date of transfer | 4 Number of Forms 8288-A attached | 5 Amount realized on the transfer

6 **Check applicable box.**
- a Withholding is at 10% ☐
- b Withholding is of a reduced amount ☐

7 Amount withheld

Part II — To Be Completed by a Corporation, Partnership, Trust, or Estate Subject to the Provisions of Section 1445(e)

1 Name of withholding agent (corporation, partnership, or fiduciary) | **Identification number**

Street address (apt. or suite no., or rural route. Do not use a P.O. box.)

City or town, state, and ZIP code

2 Description of U.S. real property interest transferred or distributed

3 Date of transfer | 4 Number of Forms 8288-A attached

5 **Check all applicable boxes.**
- a Withholding is at 10% or 35% ☐
- b Withholding is of a reduced amount ☐
- c Large trust election to withhold at distribution ☐

6 Total amount withheld

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of withholding agent, partner, fiduciary, or corporate officer | Title (if applicable) | Date

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ► ☐ | Preparer's social security number

Firm's name (or yours if self-employed) and address | EIN ► | ZIP code ►

General Instructions

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

Purpose of Form

A withholding obligation is generally imposed on the buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person. The withholding obligation also applies to certain partnerships, foreign and domestic corporations, and the fiduciary of certain trusts and estates. This withholding serves to collect tax that may be owed by the foreign person. Use this form to report and transmit the amount withheld.

Note: *You are not required to withhold if any of the* ***Exceptions*** *listed on page 3 apply.*

Amount To Withhold

Generally, you must withhold 10% of the amount realized on the disposition by the transferor (see **Definitions** on this page).

See **Corporations, Partnerships, Trusts, and Estates Subject to Section 1445(e)** on page 4 for information about when withholding at 35% is required. Also see **Withholding Certificate Issued by the IRS** under **Exceptions** on page 3 for information about applying for reduction or elimination of withholding.

Joint transferors. If one or more foreign persons and one or more U.S. persons jointly transfer a U.S. real property interest, you must determine the amount subject to withholding in the following manner.

First, allocate the amount realized from the transfer among the transferors based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each.

Second, withhold on the total amount allocated to foreign transferors.

Third, credit the amount withheld among the foreign transferors as they mutually agree. The transferors must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the foreign transferors.

Who Must File

A buyer or other transferee of a U.S. real property interest, and a corporation, partnership, or fiduciary that is required to withhold tax, must file Form 8288 to report and transmit the amount withheld. If two or more persons are joint transferees, each is obligated to withhold. However, the obligation of each will be met if one of the joint transferees withholds and transmits the required amount to the IRS.

Publicly traded partnerships, publicly traded trusts, and REITs. Distributions from a publicly traded partnership are generally subject to the withholding requirements of section 1446 and are not subject to the withholding requirements of section 1445. See Rev. Proc. 89-31, 1989-1 C.B. 895. Distributions from a trust that is regularly traded on an established securities market and distributions from a real estate investment trust (REIT) are subject to section 1445 and its regulations. However, for such partnerships and trusts, generally the method of paying over and reporting the withholding to the IRS is governed by section 1461 and its regulations and the deposit rules in Regulations section 1.6302-2. Use **Form 1042,** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and **Form 1042-S,** Foreign Person's U.S. Source Income Subject to Withholding, to report and pay over the withheld amounts. **Do not** use Forms 8288 and 8288-A for these distributions. See Regulations section 1.1445-8.

When To File

A transferee must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of transfer.

You must withhold even if an application for a withholding certificate is or has been submitted to the IRS on the date of transfer. However, you do not have to file Form 8288 and transmit the withholding until the 20th day after the day the IRS mails you a copy of the withholding certificate or notice of denial. But if the principal purpose for filing the application for a withholding certificate was to delay paying the IRS the amount withheld, interest and penalties will apply to the period after the 20th day after the date of transfer.

Installment payments. You must withhold the full amount at the time of the first installment payment. If you cannot because the payment does not involve sufficient cash or other liquid assets, you may obtain a withholding certificate from the IRS. See the instructions for **Form 8288-B,** Application For Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, for more information.

Where To File

Send Form 8288 with the amount withheld, and Copies A and B of Form(s) 8288-A to the Internal Revenue Service Center, P.O. Box 21086, d.p. 543 East Bldg./FIRPTA-X, Philadelphia, PA 19114-0586.

Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete a **Form 8288-A,** Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, for each person subject to withholding. Copies A and B of Form 8288-A must be attached to Form 8288. Copy C is for your records.

After receipt of Form 8288 and Form(s) 8288-A, the IRS will stamp Copy B of Form 8288-A to show receipt of the withholding and will forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A.

You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor. To receive credit for the withheld amount, the transferor generally must attach the stamped Copy B of Form 8288-A to a U.S. income tax return (e.g., Form 1040NR or 1120F) or application for early refund filed with the IRS.

Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1445, the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to $10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

Definitions

Transferee. Any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other disposition.

Transferor. For purposes of this withholding, this means any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other disposition.

Withholding agent. For purposes of this return, this means the buyer or other transferee who acquires a U.S. real property interest from a foreign person.

Foreign person. A nonresident alien individual, a foreign corporation that does not have a valid election under section 897(i) to be treated as a domestic corporation, a foreign partnership, a foreign trust, or a foreign estate. A resident alien individual is **not** a foreign person.

U.S. real property interest. Any interest, other than an interest solely as a creditor, in:

1. Real property located in the United States or the Virgin Islands.

2. Certain personal property associated with the use of real property.

3. A domestic corporation, unless it is shown that the corporation was not a U.S. real property holding corporation during the previous 5 years (or during the period in which the transferor held the interest, if shorter).

A U.S. real property interest does not include:

1. An interest in a domestically controlled real estate investment trust (REIT).

2. An interest in a corporation that has disposed of all its U.S. real property interests in transactions in which the full amount of any gain was recognized as provided in section 897(c)(1)(B).

3. An interest in certain publicly traded corporations, partnerships, and trusts.

See Regulations sections 1.897-1 and -2 for more information. Also see **Transferred Property That Is Not a U.S. Real Property Interest** under **Exceptions** on page 3.

Amount realized. The sum of the cash paid or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee or to which the U.S. real property interest is subject immediately before and after the transfer. Generally, the amount realized for purposes of this withholding is the sales or contract price.

Date of transfer. The first date on which consideration is paid or a liability is assumed by the transferee. However, for purposes of sections 1445(e)(2), (3), and (4), and Regulations sections 1.1445-5(c)(1)(iii) and 1.1445-5(c)(3), the date of transfer is the date of distribution that creates the obligation to withhold. Payment of consideration does not include the payment before passage of legal or equitable title of earnest money (other than pursuant to an initial purchase contract), a good-faith deposit, or any similar amount primarily intended to bind the parties to the contract and subject to forfeiture. A payment that is not forfeitable may also be considered earnest money, a good-faith deposit, or a similar sum.

Exceptions

You are not required to withhold if any of the following applies:

1. You acquire the property for use as a residence and the amount realized (sales price) is not more than $300,000.

2. The transferor (seller) is not a foreign person.

3. You did not acquire a U.S. real property interest.

4. You receive a notice of nonrecognition of gain or loss from the transferor and you file a copy of the notice with the IRS.

5. You receive a withholding certificate from the IRS that excuses withholding.

6. The amount realized by the transferor is zero (e.g., the property is transferred as a gift and the recipient does not assume any liabilities or furnish any other consideration to the transferor).

7. An amount is realized by the grantor on the grant or lapse of an option to acquire a U.S. real property interest. However, withholding is required on the sale, exchange, or exercise of an option.

8. The property is acquired by the United States, a U.S. state or possession or political subdivision, or the District of Columbia.

For rules that apply to foreclosures, see Regulations section 1.1445-2(d)(3).

1. Purchase of residence for $300,000 or less. No withholding is required if one or more individuals acquire U.S. real property for use as a residence and the amount realized is not more than $300,000. A U.S. real property interest is acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. Do not take into account the number of days the property will be vacant in making this determination. No form or other document is required to be filed with the IRS for this exception; however, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

This exception applies whether or not the **transferor** is an individual, partnership, trust, corporation, or other transferor. However, this exception does not apply if the actual **transferee** is not an individual, even if the property is acquired for an individual.

2. Transferor not a foreign person. You are not required to withhold if you receive a certification of nonforeign status from the transferor, signed under penalties of perjury, stating that the transferor is not a foreign person and containing the transferor's name, address, and identification number (social security number (SSN) or employer identification number (EIN)). If you receive a certification, the withholding tax cannot be collected from you unless you knew that the certification was false or you received a notice from your agent or the transferor's agent that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

A foreign corporation electing to be treated as a domestic corporation under section 897(i) must attach to the certification a copy of the acknowledgment of the election received from the IRS. The acknowledgment must state that the information required by Regulations section 1.897-3 has been determined to be complete. If the acknowledgment is not attached, you may not rely on the certification. Keep any certification of nonforeign status you receive in your records for 5 years after the year of transfer.

You may also use other means to determine that the transferor is not a foreign person. But if you do, and it is later determined that the transferor is a foreign person, the withholding tax may be collected from you.

Late notice of false certification. If, after the date of transfer, you receive a notice from your agent or the transferor's agent that the certification of nonforeign status is false, you do not have to withhold on consideration paid before you received the notice. However, you must withhold the full 10% of the amount realized from any consideration that remains to be paid, if possible. You must do this by withholding and paying over the entire amount of each successive payment of consideration until the full 10% has been withheld and paid to the IRS. These amounts must be reported and transmitted to the IRS by the 20th day following the date of each payment.

3. Transferred property that is not a U.S. real property interest. No withholding is required if you acquire an interest in property that is not a U.S. real property interest. A U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property (see **Definitions** on page 2).

No withholding is required on the acquisition of an interest in a domestic corporation if **(1)** any class of stock of the corporation is regularly traded on an established securities market, or **(2)** the transferee receives a statement by the corporation that the interest is not a U.S. real property interest, unless you know that the statement is false or you receive a notice from your agent or the transferor's agent that the statement is false. A corporation's statement may be relied on only if it is dated not more than 30 days before the date of transfer.

Late notice of false statement. If after the date of transfer you receive a notice that a statement that an interest in a corporation is not a U.S. real property interest is false, follow the instructions under ***Late notice of false certification*** above.

Generally, no withholding is required on the acquisition of an interest in a foreign corporation. However, withholding may be required if the foreign corporation has made the election under section 897(i) to be treated as a domestic corporation.

4. Transferor's nonrecognition of gain or loss. You may receive a notice signed under penalties of perjury stating that the transferor is not required to recognize gain or loss on the transfer because of a nonrecognition provision of the Internal Revenue Code (see Temporary Regulations section 1.897-6T(a)(2)). You may rely on the transferor's notice unless **(1)** only part of the gain qualifies for nonrecognition, or **(2)** you know or have reason to know that the transferor is not entitled to the claimed nonrecognition treatment.

No particular form is required for this notice. By the 20th day after the date of transfer, you must send a copy of the notice of nonrecognition with a cover letter giving your name, identification number, and address to the address listed under **Where To File** on page 2. See Temporary Regulations section 1.1445-9T(b) for more information on the transferor's notice of nonrecognition.

5. Withholding certificate issued by the IRS. A withholding certificate may be issued by the IRS to reduce or eliminate withholding on dispositions of U.S. real property interests by foreign persons. Either a transferee or transferor may apply for the certificate. The certificate may be issued if:

1. Reduced withholding is appropriate because the 10% or 35% amount exceeds the transferor's maximum tax liability,

2. The transferor is exempt from U.S. tax or nonrecognition provisions apply, or

3. The transferee or transferor enters into an agreement with the IRS for the payment of the tax.

An application for a withholding certificate must comply with the provisions of Regulations sections 1.1445-3 and 1.1445-6 and Rev. Proc. 88-23, 1988-1 C.B. 787. In certain cases, you may use **Form 8288-B** to apply for a withholding certificate. The IRS will normally act on an application by the 90th day after a complete application is received.

If you receive a withholding certificate from the IRS that excuses withholding, you are not required to file Form 8288. However, if you receive a withholding certificate that reduces (rather than eliminates) withholding, there is **no** exception to withholding, and you are required to file Form 8288. Attach a copy of the withholding certificate to Form 8288. See **When To File** on page 2 for more information.

Liability of Agents

If the transferee or other withholding agent has received **(1)** a transferor's certification of nonforeign status, or **(2)** a corporation's statement that an interest is not a U.S. real property interest, and the transferee's or transferor's agent knows that the document is false, the agent must provide notice to the transferee or other withholding agent. If the notice is not provided, the agent will be liable for the tax that should have been withheld, but only to the extent of the agent's compensation from the transaction.

If you are the transferee or withholding agent and you receive a notice of false certification or statement from your agent or the transferor's agent, you must withhold tax as if you had not received a certification or statement. But see ***Late notice of false certification*** above.

The terms "transferor's agent" and "transferee's agent" mean any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. For purposes of section 1445(e), a transferor's or transferee's agent is any person who represents or advises an entity, a holder of an interest in an entity, or a fiduciary with respect to the planning, arrangement, or completion of a transaction described in sections 1445(e)(1) through (4).

A person is not treated as an agent if the person only performs one or more of the following acts in connection with the transaction:

1. Receiving and disbursing any part of the consideration.

2. Recording any document.

3. Typing, copying, and other clerical tasks.

4. Obtaining title insurance reports and reports concerning the condition of the property.

5. Transmitting documents between the parties.

6. Functioning exclusively in his or her capacity as a representative of a condominium association or cooperative housing corporation. This exemption includes the board of directors, the committee, or other governing body.

Corporations, Partnerships, Trusts, and Estates Subject to Section 1445(e)

Withholding is required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates. A domestic trust or estate must withhold 35% of the amount distributed to a foreign beneficiary from a "U.S. real property interest account" that it is required to establish under Regulations section 1.1445-5(c)(1)(iii). A foreign corporation that has not made the election under section 897(i) must withhold 35% of the gain it recognizes on the distribution of a U.S. real property interest to its shareholders. Certain domestic corporations are required to withhold tax on distributions to foreign shareholders.

No withholding is required on the transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Also, no withholding is required on the transfer of an interest in a publicly traded partnership or trust.

No withholding will be required with respect to an interest holder if the entity or fiduciary receives a certification of nonforeign status from the interest holder. An entity or fiduciary may also use other means to determine that an interest holder is not a foreign person, but if it does so and it is later determined that the interest holder is a foreign person, the withholding may be collected from the entity or fiduciary.

Section 1445(e)(1) Transactions

Partnerships. A domestic partnership that is not publicly traded must withhold tax under section 1446 on effectively connected income of its foreign partners and must file **Form 8804,** Annual Return for Partnership Withholding Tax (Section 1446), and **Form 8805,** Foreign Partner's Information Statement of Section 1446 Withholding Tax. A publicly traded partnership generally must withhold tax under section 1446 on distributions to its foreign partners and must file Forms 1042 and 1042-S. Because a domestic partnership that disposes of a U.S. real property interest is required to withhold under section 1446, it is not required to withhold under section 1445(e)(1).

Trusts and estates. If a domestic trust or estate disposes of a U.S. real property interest, the amount of gain realized must be paid into a separate "U.S. real property interest account." For these purposes, a domestic trust is one that does not make the "large trust election" (explained below), is not a REIT, and is not publicly traded. The fiduciary must withhold 35% of the amount distributed to a foreign person from the account during the tax year of the trust or estate in which the disposition occurred. The withholding must be paid over to the IRS within 20 days of the date of distribution. Special rules apply to grantor trusts. See Regulations section 1.1445-5 for more information and how to compute the amount subject to withholding.

Large trust election. Trusts with more than 100 beneficiaries may make an election to withhold upon distribution rather than at the time of transfer. The amount to be withheld from each distribution is 35% of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's section 1445(e)(1) account. This election does not apply to any REIT or to any publicly traded trust. Special rules apply to large trusts that make recurring sales of growing crops and timber.

A trust's section 1445(e)(1) account is the total net gain realized by the trust on all section 1445(e)(1) transactions after the date of the election, **minus** the total of all distributions made by the trust after the date of the election from such total net gain. See Regulations section 1.1445-5(c)(3) for more information.

Section 1445(e)(2) Transactions

A foreign corporation that distributes a U.S. real property interest must generally withhold 35% of the gain recognized by the corporation. No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

Section 1445(e)(3) Transactions

Generally, a domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must withhold 10% of the fair market value of the property distributed if:

1. The foreign person's interest in the corporation is a U.S. real property interest under section 897, and

2. The property is distributed either in redemption of stock under section 302 or in liquidation of the corporation under sections 331 through 341.

Similar rules apply in the case of any distribution to which section 301 applies and that is not made out of the earnings and profits of the corporation.

No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

Section 1445(e)(4) Transactions

No withholding is required under section 1445(e)(4), relating to certain taxable distributions by domestic or foreign partnerships, trusts, and estates, until the effective date of a Treasury Decision under section 897(e)(2)(B)(ii) and (g).

Section 1445(e)(5) Transactions

The transferee of a partnership interest must withhold 10% of the amount realized on the disposition by a foreign partner of an interest in a domestic or foreign partnership in which at least 50% of the value of the gross assets consists of U.S. real property interests and at least 90% of the value of the gross assets consists of U.S. real property interests plus any cash or cash equivalents. However, no withholding is required under section 1445(e)(5) for dispositions of interests in other partnerships, trusts, or estates until the effective date of a Treasury Decision under section 897(g). No withholding is required if, no earlier than 30 days before the transfer, the transferee receives a statement signed by a general partner under penalties of perjury that at least 50% of the value of the gross assets of the partnership does not consist of U.S. real property interests or that at least 90% of the value of the gross assets does not consist of U.S. real property interests plus cash or cash equivalents. The transferee may rely on the statement unless the transferee knows it is false or the transferee receives a false statement notice pursuant to Regulations section 1.1445-4.

Specific Instructions

Lines 1. If you are a fiduciary, list your name and the name of the trust or estate. Enter the home address of an individual or the office address of an entity.

Identifying Number. The buyer or other withholding agent must provide its U.S. taxpayer identification number. For a U.S. individual, this is a social security number (SSN). For any entity other than an individual (e.g., corporation, estate, or trust), this is an employer identification number (EIN).

If you are a nonresident alien individual who is not eligible for a social security number and you have already obtained an IRS Individual Taxpayer Identification Number (ITIN), you must provide it on Form 8288. If you do not already have an ITIN, you must apply for one before filing Form 8288. If you have applied for an ITIN but you have not yet received it when you file Form 8288, write "Applied For" in the Identification Number box. You must provide your ITIN to the IRS as soon as you receive it. See **Form W-7,** Application for IRS Individual Taxpayer Identification Number, for more information.

Lines 2. Enter the location and a description of the property, including any substantial improvements (e.g., "12-unit apartment building"). In the case of interests in a corporation that constitute a U.S. real property interest, enter the class or type and amount of the interest (e.g., "10,000 shares Class A Preferred Stock XYZ Corporation").

Lines 4. Copies A and B of each Form 8288-A should be counted as one form.

Part II, line 3. If you are a domestic trust or estate or you make the large trust election, enter the date of distribution.

Paperwork Reduction Act Notice. We ask for the information on this form 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.

You are not 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 may 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 these forms will vary depending on individual circumstances. The estimated average times are:

	Form 8288	Form 8288-A
Recordkeeping	5 hr., 30 min.	2 hr., 52 min.
Learning about the law or the form	4 hr., 40 min.	12 min.
Preparing and sending the form to the IRS	4 hr., 58 min.	15 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the forms to this address. Instead, see **Where To File** on page 2.