

regulations under that chapter is treated for purposes of section 1461 and this paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. In addition, a withholding agent is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the grace period provisions set forth in §1.1441-1(b)(3)(iv). This paragraph (e) does not apply to relieve a withholding agent from tax liability under chapter 3 of the Code or the regulations under that chapter.

(f) *Amounts paid not constituting gross income.* Any amount withheld in accordance with §1.1441-3 shall be reported and paid in accordance with this section, even though the amount paid to the beneficial owner may not constitute gross income in whole or in part. For this purpose, a reference in this section and §1.1461-2 to an amount shall, where appropriate, be deemed to refer to the amount subject to withholding under §1.1441-3.

(g) *Extensions of time to file Forms 1042 and 1042-S.* The IRS may grant an extension of time in which to file a Form 1042 or a Form 1042-S. Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns (or such other form as the IRS may prescribe), must be used to request an extension of time for a Form 1042. Form 8809, Request for Extension of Time to File Information Returns (or such other form as the IRS may prescribe) must be used to request an extension of time for a Form 1042-S. The request must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require. It must be mailed or delivered not later than March 15 of the year following the end of the calendar year for which the return will be filed.

(h) *Penalties.* For penalties and additions to the tax for failure to file returns or furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections.

(i) *Effective date.* Unless otherwise provided in this section, this section

shall apply to returns required for payments made after December 31, 2000.

[T.D. 8734, 62 FR 53467, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32201, 32212, May 22, 2000; 66 FR 18189, Apr. 6, 2001; T.D. 8952, 66 FR 33831, June 26, 2001; T.D. 9200, 70 FR 28740, May 18, 2005]

§ 1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax—*
 (1) *In general.* Except for partnerships or nominees required to withhold under section 1446, a withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code, and made a deposit of the tax as provided in §1.6302-2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. References in the previous sentence excepting from this section certain partnerships withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§1.1446-1 through 1.1446-5 apply by reason of an election under §1.1446-7. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a) (2) or (3) of this section. After such time, a refund of the amount overwithheld can only be claimed by the beneficial owner with the Internal Revenue Service (IRS) pursuant to the procedures described in chapter 65 of the Code. For purposes of this section, the term overwithholding means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income pursuant to chapter 3 of the Code or the regulations thereunder in excess of the actual tax liability due, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(2) *Reimbursement of tax—*(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of

tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302-2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The withholding agent states, on a timely filed (not including extensions) Form 1042-S for the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayment; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414-1.

(ii) *Record maintenance.* If the beneficial owner is repaid an amount of withholding tax under the provisions of this paragraph (a)(2), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment and the withholding agent must provide a copy of such receipt to the beneficial owner. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(3) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code or the regulations thereunder to be withheld from income paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such in-

come under chapter 3 of the Code and the regulations thereunder.

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 2001, a domestic corporation C pays a dividend of \$100 to N, at which time C withholds \$30 and remits the balance of \$70 to N. On February 10, 2002, prior to the time that C files its Form 1042, N furnishes a valid Form W-8 described in § 1.1441-1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15 percent under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only \$15 and not \$30 and requests reimbursement of \$15. Although C has already deposited the \$30 that was withheld, as required by § 1.6302-2(a)(1)(iv), C repays N in the amount of \$15.

(ii) During 2001, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2002, shows total tax withheld of \$30, an adjusted total tax withheld of \$15, and \$30 previously paid for such year. Pursuant to § 1.6414-1(b), C claims a credit for the overpayment of \$15 shown on the Form 1042 for 2001. Accordingly, it is permitted to reduce by \$15 any deposit required by § 1.6302-2 to be made of tax withheld during the calendar year 2002. The Form 1042-S required to be filed by C with respect to the dividend of \$100 paid to N in 2001 is required to show tax withheld of \$30 and tax released of \$15.

Example 2. The facts are the same as in *Example 1*. In addition, during 2002, C makes payments to N upon which it is required to withhold \$200 under chapter 3 of the Code, all of which is withheld in June 2002. Pursuant to § 1.6302-2(a)(1)(iii), C deposits the amount of \$185 on July 15, 2002 (\$200 less the \$15 for which credit is claimed on the Form 1042 for 2001). On March 15, 2003, C Corporation files its return on Form 1042 for calendar year 2002, which shows total tax withheld of \$200, \$185 previously deposited by C, and \$15 allowable credit.

Example 3. The facts are the same as in *Example 1*. Under § 1.6032-2(a)(1)(ii), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of \$100 between February 8 and February 15, 2002, and deposits \$75 [(\$100×90 percent) less \$15] of the withheld tax within 3 banking days after February 15, 2002, and by depositing \$10 [(\$100-\$15) less \$75] within 3 banking days after March 15, 2002.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding

agent may withhold from future payments (or distributions of effectively connected income under section 1446) made to a beneficial owner the tax that should have been withheld from previous payments (or distributions subject to section 1446) to such beneficial owner under chapter 3 of the Internal Revenue Code. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See § 1.6302-2 for making deposits of tax or § 1.1461-1(a) for making payment of the balance due for a calendar year. See also §§ 1.1461-1, 1.1461-3, and 1.1446-1 through 1.1446-7 for rules relating to withholding under section 1446. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7.

(c) *Definition.* For purposes of this section, the term *payment period* means the period for which the withholding agent is required by § 1.6302-2(a)(1) to make a deposit of tax withheld under chapter 3 of the Code.

(d) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

[T.D. 8734, 62 FR 53470, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 9200, 70 FR 28741, May 18, 2005]

§ 1.1461-3 Withholding under section 1446.

For rules relating to the withholding tax liability of a partnership or nominee under section 1446, see §§ 1.1446-1 through 1.1446-7. For interest, penalties, and additions to the tax for failure to timely pay the tax required to be paid under section 1446, see sections 6601, 6651, 6655 (in the case of publicly traded partnerships, see section 6656), 6672, and 7202 and the regulations under

those sections. For additional penalties and additions to the tax for failure to comply with the regulations under section 1446, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. This section shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7.

[T.D. 9200, 70 FR 28741, May 18, 2005]

§ 1.1462-1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in § 1.1441-3(f)(1)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code on payments to (or effectively connected taxable income allocable to) a fiduciary, partnership, or intermediary are deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. See § 1.1446-3 for examples applying this rule in the context of a partnership interest held by a foreign trust or estate. Further, if a partnership withholds an amount under chapter 3 of the Internal Revenue Code with respect to the allocable share of a partner that is a partnership (upper-tier