

26 CFR 1.1441-4

§ 1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) Certain income connected with a U.S. trade or business -- (1) In general. No withholding is required under section 1441 [26 USCS § 1441] on income otherwise subject to withholding if the income is (or is deemed to be) **effectively connected with the conduct of a trade or business within the United States** and is includible in the beneficial owner's gross income for the taxable year. For purposes of this paragraph (a), an amount is not deemed to be includible in gross income if the amount is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and the beneficial owner claims an exemption from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States. To claim a reduced rate of withholding because the income is not attributable to a permanent establishment, see § 1.1441-6(b)(1). This paragraph (a) does not apply to income of a foreign corporation to which section 543(a)(7) [26 USCS § 543(a)(7)] applies for the taxable year or to compensation for personal services performed by an individual. See paragraph (b) of this section for compensation for personal services performed by an individual.

(2) **Withholding agent's reliance on a claim of effectively connected income** -- (i) In general. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim of exemption based upon paragraph (a)(1) of this section if, **prior to the payment to the foreign person, the withholding agent can reliably associate the payment with a Form W-8 upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii)**. For purposes of this paragraph (a), a withholding certificate is valid only if, in addition to other applicable requirements, it includes the **taxpayer identifying number of the person whose name is on the Form W-8** and represents, under penalties of perjury, that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States and is includable in the beneficial owner's gross income for the taxable year. In the absence of a reliable claim that the income is effectively connected with the conduct of a trade or business in the United States, the income is presumed not to be effectively connected, except as otherwise provided in paragraph (a) (2)(ii) or (3) of this section. See § 1.1441-1(e)(4)(ii)(C) for the period of validity applicable to a certificate provided under this section and § 1.1441-1(e)(4)(ii)(D) for changes in circumstances arising during the taxable year indicating that the income to which the certificate relates is not, or is no longer expected to be, effectively connected with the conduct of a trade or business within the United States. A withholding certificate shall be effective only for the item or items of income specified therein. The provisions of § 1.1441-1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.