Form **8288**

(Rev. March 1993)

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

Expires 2-29-96

Complete Part I or Part II. Also complete and attach Copies A and B of Form(s) 8288-A.
(Attach additional same size 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**
Address (number and street)	
City, 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**
Address (number and street)	
City, 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 34% . . . . ☐ b Withholding is of a reduced amount . . . . ☐ c Large trust election to withhold at distribution . . . . ☐	6 Total amount withheld

Please 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		E.I. No. ►	
		ZIP code ►	

General Instructions

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

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.

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., 28 min.	12 min.
Preparing and sending the form to the IRS	4 hr., 46 min.	15 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service,** Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget,** Paperwork Reduction Project (1545-0902), Washington, DC 20503. **DO NOT** send this form to either of these offices. Instead, see **Where To File** below.

Purpose of Form

A 10% 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 (at 34% or 10%) 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 "amount realized" under **Definitions** on this page. However, see **Corporations, Partnerships, Trusts, and Estates Subject to Section 1445(e),** on page 4, for information about when withholding at 34% is required. Also see **Withholding Certificate Issued by the IRS,** 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, first, determine the amount subject to withholding by allocating 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 of them 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 any 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 1042S,** Foreign Person's U.S. Source Income Subject to Withholding, to report and pay over the withheld amounts. **Do not** file Forms 8288 and 8288-A for these distributions. See Regulations section 1.1445-8.

When To File

A transferee must report and transmit to the IRS the tax withheld by the 20th day after the date of transfer. Timely mailing of Forms 8288 and 8288-A by U.S. mail will be treated as timely filing.

Even if an application for a withholding certificate (explained later) is or has been submitted to the IRS on the date of transfer, you must still withhold. However, do not file Form 8288 and transmit the withholding until the 20th day after the day the IRS mails 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.

Where To File

File Form 8288, with the amount withheld, and Copies A and B of Form(s) 8288-A with the FIRPTA Unit, Internal Revenue Service, Philadelphia, PA 19255.

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 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 forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A. The receipted Copy B of Form 8288-A is for the transferor's use in filing future income tax returns or making future claims. 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, generally the transferor must attach the stamped Copy B of Form 8288-A to any U.S. income tax return (e.g., Form 1040NR or 1120F) or application for refund the transferor files 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. Also, 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

A "transferee" means any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other disposition.

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

A "U.S. real property interest" means 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, or

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.

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

An "amount realized" means 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.

The “date of transfer” means 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 causes the obligation to withhold. Payment of consideration does not include the payment, before the passage of legal or equitable title (other than pursuant to an initial purchase contract), of earnest money, a good-faith deposit, or any similar sum primarily intended to bind the parties to the contract and subject to forfeiture. However, a payment that is not forfeitable will be considered earnest money, a good-faith deposit, or a similar sum.

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

An individual’s identification number is the social security number. For any other person, it is the U.S. employer identification number.

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. (See **Withholding Certificate Issued by the IRS** below.)

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

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

8. 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 such option.

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

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

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. 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 equivalent fiduciary of a trust or estate. Any foreign corporation electing to be treated as a domestic corporation must attach to the certification a copy of the acknowledgment of the election received from the IRS, and such 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. If you receive a certification of nonforeign status, keep it 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 you received is false, you can rely on the certification and not 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 so 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.

Transferred Property That Is Not a U.S. Real Property Interest.—If you acquire an interest in property that is not a U.S. real property interest, no withholding is required. 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 “U.S. real property interest” 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 specifying that the interest is not a U.S. real property interest. A corporation’s statement may be relied on only if it is dated not more than 30 days before the date of transfer. A corporation’s statement may be relied on 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.

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, it may be required if the foreign corporation has made the election under section 897(i) to be treated as a domestic corporation.

Transferor’s Nonrecognition of Gain or Loss.—If you 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 section 1.897-6T(a)(2) of the temporary regulations), 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 (if any), and address to the Assistant Commissioner (International); Director, Office of Compliance, IN:C:E:666; 950 L’Enfant Plaza South, S.W.; COMSAT Building; Washington, DC 20024. See Temporary Regulations section 1.1445-9T(b) for more information on the transferor’s notice of nonrecognition.

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. The certificate may be issued if (1) reduced withholding is appropriate because the 10% 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. Either a transferee or transferor may apply for the certificate.

Applications 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,** Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, to apply for a withholding certificate. See Form 8288-B. The IRS will normally act on an application by the 90th day after a complete application is received.

Attach a copy of the withholding certificate to Form 8288 if tax is withheld.

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 in (1) or (2) is false, the agent is required to provide notice to the transferee, entity, or fiduciary. 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 withholding agent and you receive such 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 notice of nonforeign status. But see ***Late notice of false certification*** on page 3.

The terms "transferor's agent" and "transferee's agent" mean any person who represents the transferor or transferee, respectively, 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 such entity, or a fiduciary with respect to the planning, arrangement, or consummation 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. The receipt and disbursement of any part of the consideration.

2. Recording of any document.

3. Typing, copying, and other clerical tasks.

4. The obtaining of the title insurance reports and reports concerning the condition of the property.

5. The transmission of documents between the parties.

6. Functions 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 34% of the amount distributed to a foreign beneficiary from a "U.S. real property interest account," which 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 34% 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 under section 1445(e) 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 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 file Forms 1042 and 1042S. Because a domestic partnership that disposes of a U.S. real property interest is required to withhold under section 1446, a domestic partnership is not also required to withhold under section 1445(e)(1).

Trusts and Estates.—If a domestic trust (that does not make the large trust election, explained below, or that is not a REIT or is not publicly traded) or estate disposes of a U.S. real property interest, the amount of gain realized is entered into a separate "U.S. real property interest account." The fiduciary must withhold 34% of the amount distributed from the account during the tax year of the trust or estate in which the disposition occurred to a foreign person and pay over the withholding to the IRS within 20 days of the date of distribution. Special rules apply to grantor trusts. For information about how to compute the amount subject to withholding and other special rules and exceptions, see Regulations section 1.1445-5.

Large Trust Election.—Trusts with more than 100 beneficiaries may make the large trust election to withhold upon distribution rather than at the time of transfer. The amount to be withheld from each distribution is 34% 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 real estate investment trust 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 (1) the total net gain realized by the trust on all section 1445(e)(1) transactions after the date of the election, minus (2) the total of all distributions made by the trust after the date of the election from such total net gain. For more information about the large trust election, see Regulations section 1.1445-5(c)(3).

Section 1445(e)(2) Transactions.—A foreign corporation that distributes a U.S. real property interest must generally withhold 34% 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.

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.—Under section 1445(e)(5), 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 consist of U.S. real property interests and at least 90% of the value of the gross assets consist 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). In addition, 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.

Lines 2.—Enter a description of the property including its location and the nature of any substantial improvements, such as an apartment building or warehouse, or the class or type and amount of interests in the case of interests in a corporation that constitute U.S. real property interests, such as "10,000 shares Class A Preferred Stock XYZ Corporation."

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

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