

be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

**(2) Applicable percentage**

For purposes of paragraph (1), the term “applicable percentage” means—

(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

(B) the highest rate of tax specified in section 11(b)(1) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

**(c) Effectively connected taxable income**

For purposes of this section, the term “effectively connected taxable income” means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

(1) Paragraph (1) of section 703(a) shall not apply.

(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

**(d) Treatment of foreign partners**

**(1) Allowance of credit**

Each foreign partner of a partnership shall be allowed a credit under section 33 for such partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

**(2) Credit treated as distributed to partner**

Except as provided in regulations, a foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

(A) the day on which such tax was paid by the partnership, or

(B) the last day of the partnership's taxable year for which such tax was paid.

**(e) Foreign partner**

For purposes of this section, the term “foreign partner” means any partner who is not a United States person.

**(f) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including—

(1) regulations providing for the application of this section in the case of publicly traded partnerships, and

(2) regulations providing—

(A) that, for purposes of section 6655, the withholding tax imposed under this section shall be treated as a tax imposed by section 11 and any partnership required to pay such tax shall be treated as a corporation, and

(B) appropriate adjustments in applying section 6655 with respect to such withholding tax.

(Added Pub. L. 99-514, title XII, §1246(a), Oct. 22, 1986, 100 Stat. 2582; amended Pub. L. 100-647, title I, §1012(s)(1)(A), Nov. 10, 1988, 102 Stat. 3526; Pub. L. 101-239, title VII, §7811(i)(6), Dec. 19, 1989, 103 Stat. 2410.)

AMENDMENTS

1989—Subsec. (b)(2)(B). Pub. L. 101-239, §7811(i)(6)(A), substituted “section 11(b)(1)” for “section 11(b)”.

Subsec. (d)(2). Pub. L. 101-239, §7811(i)(6)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the last day of the partnership's taxable year (for which such tax was paid).”

Subsec. (f). Pub. L. 101-239, §7811(i)(6)(C), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships.”

1988—Pub. L. 100-647 amended section generally, substituting provisions relating to withholding tax on foreign partners' share of effectively connected income for provisions which related to withholding tax on amounts paid by partnerships to foreign partners.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(s)(1)(D), Nov. 10, 1988, 102 Stat. 3527, provided that: “The amendments made by this paragraph [amending sections 1446 and 6401 of this title] shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A)).”

EFFECTIVE DATE

Pub. L. 99-514, title XII, §1246(d), Oct. 22, 1986, 100 Stat. 2583, provided that: “The amendment made by this section [enacting this section and amending section 6401 of this title] shall apply to distributions after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 1446 of the Internal Revenue Code of 1986 as added by this section).”

**Subchapter B—Application of Withholding Provisions**

Sec.	
1461.	Liability for withheld tax.
1462.	Withheld tax as credit to recipient of income.
1463.	Tax paid by recipient of income.
1464.	Refunds and credits with respect to withheld tax.
[1465.	Repealed.]

PRIOR PROVISIONS

A prior subchapter B, consisting of section 1451, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L.