

(A) gain from such disposition shall be taken into account under clause (iii) of paragraph (1)(A) only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest, and

(B) a rule similar to the rule of subparagraph (A) shall apply to a loss from such disposition.

**(5) Exception for distributions from qualified plans**

The term “net investment income” shall not include any distribution from a plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

**(6) Special rule**

Net investment income shall not include any item taken into account in determining self-employment income for such taxable year on which a tax is imposed by section 1401(b).

**(d) Modified adjusted gross income**

For purposes of this chapter, the term “modified adjusted gross income” means adjusted gross income increased by the excess of—

(1) the amount excluded from gross income under section 911(a)(1), over

(2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).

**(e) Nonapplication of section**

This section shall not apply to—

- (1) a nonresident alien, or
- (2) a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).

(Added Pub. L. 111-152, title I, §1402(a)(1), Mar. 30, 2010, 124 Stat. 1061.)

EFFECTIVE DATE

Pub. L. 111-152, title I, §1402(a)(4), Mar. 30, 2010, 124 Stat. 1063, provided that: “The amendments made by this subsection [enacting this chapter and amending section 6654 of this title] shall apply to taxable years beginning after December 31, 2012.”

**CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS**

Subchapter	Sec. <sup>1</sup>
A. Nonresident aliens and foreign corporations .....	1441
B. Application of withholding provisions ..	1461

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, §474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out “AND TAX-FREE COVENANT BONDS” after “FOREIGN CORPORATIONS” in heading of chapter 3, and struck out item for subchapter B “Tax-free covenant bonds” and redesignated the item for subchapter C as B.

**Subchapter A—Nonresident Aliens and Foreign Corporations**

Sec.	
1441.	Withholding of tax on nonresident aliens.

Sec.	
1442.	Withholding of tax on foreign corporations.
1443.	Foreign tax-exempt organizations.
1444.	Withholding on Virgin Islands source income.
1445.	Withholding of tax on dispositions of United States real property interests.
1446.	Withholding of tax on foreign partners’ share of effectively connected income. <sup>1</sup>

AMENDMENTS

1988—Pub. L. 100-647, title I, §1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted “Withholding of tax on foreign partners’ share of effectively connected income” for “Withholding tax on amounts paid by partnerships to foreign partners” in item 1446.

1986—Pub. L. 99-514, title XII, §1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98-369, div. A, title I, §129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97-455, §1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

**§ 1441. Withholding of tax on nonresident aliens**

**(a) General rule**

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

**(b) Income items**

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), and gains subject to tax under section 871(a)(1)(D). The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are—

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

<sup>1</sup> Section numbers editorially supplied.

<sup>1</sup> So in original. Does not conform to section catchline.