

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.1441-5: Withholding on Payments to Partnerships, Trusts and Estates

Rev. Proc. 2005-77

SECTION 1. PURPOSE

This revenue procedure modifies the final withholding foreign partnership (“WP”) and withholding foreign trust (“WT”) agreements, contained in Rev. Proc. 2003-64, 2003-2 C.B. 306, by expanding the availability of certain documentation, reporting, and withholding procedures. This revenue procedure also makes a conforming change to the portion of the Qualified Intermediary (“QI”) withholding agreement (the “QI agreement”) contained in Rev. Proc. 2003-64.

SECTION 2. BACKGROUND

Rev. Proc. 2003-64 contains the WP and WT agreements described in Treasury Regulation § 1.1441-5(c)(2)(ii) and (e)(5)(v) and sets forth the application procedures for entering into such agreements. Rev. Proc. 2003-64 also amended the QI agreement, contained in Rev. Proc. 2000-12, 2000-1 C.B. 387, to add new Section 4A. In Rev. Proc. 2004-21, 2004-1 C.B. 702, the Internal Revenue Service (IRS) and the Treasury Department amended Section 10.01 of the WP and WT agreements and new Section 4A.01 of the QI agreement to eliminate a \$200,000 cap that restricted the application of those provisions.

Section 10.02 of the WP and WT agreements and new Section 4A.02 of the QI agreement provide generally that a QI, WP, or WT may apply simplified documentation, reporting, and withholding procedures to a foreign trust or foreign partnership if certain conditions are met (the “Agency Provision”). Currently a QI, WP, or WT may apply the Agency Provision only if, among other things, the QI (or an affiliate), WP or WT is a general partner of the partnership or a trustee of the trust (the “relatedness requirement”). Upon consideration of comments received, the IRS and the Treasury Department have concluded that the relatedness requirement is unnecessary and that its elimination will facilitate

compliance consistent with the objectives of the underlying reporting and withholding regimes.

SECTION 3. EXPANSION OF AGENCY PROVISION

Appendices 1, 2, and 3 of Rev. Proc. 2003-64, containing the WP and WT agreements and new Section 4A of the QI agreement, respectively, are amended as follows. In Appendices 1 and 2, the first paragraph of Section 10.02 of the WP and WT agreements is amended by inserting “and” before “(2)”, by replacing the semicolon before “(3)” with a period, and by deleting “and (3) the [WP/WT] is a general partner of the partnership or a trustee of the trust.” In Appendix 3, the first paragraph of Section 4A.02 of the QI agreement is amended by inserting “and” before “(2)”, by replacing the semicolon before “(3)” with a period, and by deleting “and (3) the QI, or an affiliate of the QI, is a general partner of the partnership or a trustee of the trust.”

SECTION 4. EFFECTIVE DATE

The modifications to Rev. Proc 2003-64 made by this revenue procedure are effective as of July 10, 2003, the effective date of Rev. Proc. 2003-64. Pursuant to Section 12.02 of the QI agreement, and Section 11.02 of the WP and WT agreements, these amendments apply to all existing QI, WP, and WT agreements. These amendments will be incorporated into the text of all QI, WP, and WT agreements entered into on or after the date this revenue procedure is released.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-64, 2003-2 C.B. 306 is modified.

SECTION 6. CONTACT INFORMATION

For further information regarding this revenue procedure contact Kathryn T. Holman at (202) 622-3840 (not a toll free call).