



## **FIRPTA: FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT**

**What is it?** The Foreign Investment in Real Property Tax Act (FIRPTA) generally imposes a withholding requirement on a transferee (buyer) who acquires U.S. real property from a foreign person. The buyer must deduct and withhold a percentage (usually 15%) of the sales price. 26 U.S.C. §1445.

**Buyer Responsible?** FIRPTA puts the burden of compliance on the buyer. The buyer must determine if the seller is a foreign person. If the seller is a foreign person and no exemption applies, the buyer is responsible for withholding and timely remitting the withheld funds to the IRS.

**Determining if Withholding is Necessary.** Withholding is necessary if:

1. The seller is a "foreign person", and
2. No exception applies.

### **A Foreign Person Includes:**

- Nonresident alien
- Foreign corporation, LLC, or partnership
- Foreign Trust
- Single-member domestic LLC if the sole-member is a foreign person

An alien is considered a US resident, not subject to withholding, if the alien has lawful permanent resident status (green card), or meets the "substantial presence test".

**TOP TIP: Withholding is not required if seller furnishes buyer a non-foreign affidavit stating, under penalty of perjury, the seller's US taxpayer identification number and that the seller is not a foreign person or entity.**

**Exceptions?** FIRPTA withholding is not required if the buyer is acquiring the property for use as a residence and the sales price is \$300,000 or less. If the buyer is acquiring the property for use as a residence and the sales price is over \$300,000 but not more than \$1,000,000, withholding is required at the reduced rate of 10%.

**NOTE: A 15% withholding applies no matter the sales price when the purchaser does not intend to occupy the property as a residence.**

**Remitting Withheld Funds.** The amount withheld from the sale may be adjusted pursuant to a withholding certificate issued by the IRS. The amount withheld from the gross sales price must be transmitted to the IRS using IRS Form 8288. The buyer, buyer's agent, or the seller may request a withholding certificate. The IRS generally acts on these requests within **90 days** after receipt of a complete application.

A seller that applies for a withholding certificate must notify the buyer in writing that the certificate has been applied for on or before the day of the sale. *A withholding certificate cannot be applied for after the closing.* The amount withheld must be reported and paid over to the IRS within 20 days following the day on which the copy of the Withholding Certificate is mailed by the IRS.

**If you have any questions or would like to request more information, please contact us!**

**850-650-0077**

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