FIRPTA Withholding: Tax on non-resident aliens selling real property in the U.S.

The Foreign Investment in Real Property Tax Act (FIRPTA) of 1980 authorizes the United States to tax foreign persons who are nonresident aliens selling U.S. real property interests. A U.S. real property interest includes sales of interests in parcels of real property.

Persons purchasing U.S. real property interests (transferee) from nonresident aliens (transferor), certain purchasers’ agents, and settlement officers are required to withhold 10% of the amount realized (the purchase/sales price of the real estate going to transferor) and remit that amount to the Internal Revenue Service within 20 days of the transaction.

The rules of FIRTPA changed February 16, 2016 when the withholding rate on properties over $1 million increased to 15%. Read our coverage of the [increase of FIRPTA withholding](https://www.federaltitle.com/firpta-withholding-rate-to-increase-to-15-for-sales-exceeding-1-million/) to learn more.

Withholding is intended to ensure U.S. taxation of gains realized on disposition of real property interests. The transferee/buyer is the withholding agent. If you are the transferee/buyer, you must find out if the transferor/seller is a foreign person/nonresident alien. If the transferor is a foreign person/nonresident alien and you fail to withhold, you may be held liable for the tax.

Exemptions

* **Home Use/$300K Exemption**

One of the most common exemptions to FIRPTA withholding is that the transferee is not required to withhold tax in a situation in which the transferee purchases real estate for use as his/her home and the purchase price is not more than $300,000. In this case, the transferee or a member of his family must have 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.

* **Withholding Certificate**

Another exception from FIRPTA withholding occurs when the IRS issues a withholding certificate. The transferee, the transferee’s agent, or the transferor may request a withholding certificate and the IRS will generally act on these requests within 90 days after receipt of a complete application (Form 8288-B), including the Taxpayer Identification Numbers (TINs) of all parties to the transaction.

Form 8288-B requires a description of the real property interest being sold, the sales price, a calculation of the maximum tax owed, and evidence that the seller has no unsatisfied FIRPTA withholding obligations with respect to the purchase of the real property interest.

A transferor that applies for a withholding certificate must notify the transferee in writing that the certificate has been applied for on the day of or the day prior to the transfer. If the withholding certificate is obtained, the nonresident alien must file a U.S. tax return for the year of sale and pay the appropriate amount of tax due at that time.

FIRPTA Additional Information:

<https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>

<https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding>