

Looking Into the FIRPTA Withholding Rule



PROPERTY	AMOUNT REALIZED	WITHHOLDING RATE
Not acquired to be buyer's residence	Any amount	Fifteen Percent (15%)
Acquired to be buyer's residence	Up to \$300,000	None (0%)
	Over \$300,000 and up to \$1,000,000	Ten Percent (10%)
	Over \$1,000,000	Fifteen Percent (15%)

FIRPTA Withholding Rule

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), a foreign person who sells a real property interest located in the U.S. is subject to a tax withholding at disposition. This regulation requires the buyer in such a transaction to withhold 10-15 percent of the "amount realized" from the sale and remit it to the Internal Revenue Service (IRS) unless one or more exemptions apply to the seller or the transaction.

Although the requirement to withhold and remit funds to the IRS falls on the buyer, typically the closing agent does withhold and remit funds or prepare exemption affidavit forms to be delivered to the IRS at the time of closing. The seller's real estate agent plays

an important role in encouraging the seller to consult with their tax professional early in the transaction process to address any potential issues that may delay their closing. Some tax professionals may recommend submitting an early tax return application for any excess withholding. This is particularly important as the IRS has reported that refunds filed after withholding may take up to 12 months to process.

If a foreign person is selling a U.S. real property interest, a withholding is required as noted above, unless one or more of the following **exceptions** apply (this is not a complete list of **exceptions**):

- Buyer acquires the real property as a personal residence and sales price not more than \$300,000
- Seller provides Non-Foreign Affidavit
- Seller provides a Withholding Certificate from the IRS which excuses the withholding
- The amount realized by the seller is zero
- The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia

FIRPTA calculations are available on ortc.com/netsheet

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