

News Release

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FIRPTA Withholding Rate Increasing to 15%

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When I discuss FIRPTA with clients a number of questions are asked. In light of this rate increase I thought I would consolidate those questions in a brief memo.

1. **What is it?**

FIRPTA is the Foreign Investment in Real Property Tax Act of 1980. It was passed to prevent foreign investors from selling US real estate and then skipping off without paying any tax.

2. **How does it work?**

FIRPTA established a requirement on the purchaser of real estate interests owned by a foreign seller to withhold 10% of the purchase price and remit it to the Internal Revenue Service at the time of closing. There is no withholding in the sale of a residence intended for personal use by the buyer if the price does not exceed \$300,000. The new withholding rate of 15% instead of 10% only applies to sales of residences intended for personal use by the buyer if the purchase price exceeds \$1,000,000.

3. **What if there is a mortgage?**

The withholding rate is based on different criteria, but the easiest safest way is to withhold the required percentage of the entire sales price.

4. **Who is responsible to withhold that tax?**

The buyer is responsible. The title company would probably do the actual withholding.

5. **What happens if nothing is withheld?**

First of all, the buyer is responsible to the IRS for the amount that should have been withheld. Additionally, if a real estate agent or broker represents the buyer or the seller, that agent or broker can be responsible up to the amount of their commission for the payment.

6. **How do we avoid all of this?**

You need the seller to sign a certificate of non-foreign status. A sample form is available from the IRS. If the seller signs such a form even if it is false, the buyer and agent are not responsible.