

WHAT IS FIRPTA?



FIRPTA (FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980) IS A TAX LAW THAT MAY IMPOSE U.S. INCOME TAX ON FOREIGN PERSONS SELLING U.S. REAL ESTATE.

It is important to determine as early in the transaction as possible if this Tax Act may apply to your sales transaction.



Foreign sellers may be subject to percentage of the Gross Sales Price unless the transaction is exempt from FIRPTA withholding. **(To determine if this ACT pertains to your sale or purchase, see a CPA or tax attorney who is an expert in FIRPTA to discuss the withholding process and possible exemptions.)**

Republic Title of Texas is not responsible for determining whether the transaction will qualify for an exception or exemption.

Below are helpful links from the IRS to learn more about this ACT and ways to obtain an Individual Tax Identification Number, apply for a W-7 and fill out the W-7 form:

- <https://www.irs.gov/Individuals/International-Taxpayers/FIRPTA-Withholding>
- <https://www.irs.gov/Individuals/ITIN-Guidance-for-Foreign-Property-Buyers-Sellers>
- <https://www.irs.gov/pub/irs-pdf/iw7.pdf>
- <https://www.irs.gov/pub/irs-pdf/fw7.pdf>

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FIRPTA FAQ'S

Q: Who is responsible for FIRPTA withholding?

A: The IRS rules place the responsibility for withholding potential income tax due in the amount of 10% or 15% of the purchase price on the buyer of the real property from a foreign entity. The real property becomes the security for the IRS to ensure that they receive taxes that are due to them. If the payment is not made by the buyer, the IRS can seize the real property (or other assets of the buyer.)

Q: Can't the buyer assign the responsibility for withholding to the settlement or escrow agent?

A: There are no provisions in the IRS rules for the buyer to assign their responsibility to anyone else, including the escrow or real estate agents. The escrow agent cannot provide legal or tax advice.

Q: The seller is foreign, but has a social security number. We're okay right?

A: Foreign citizens doing business and earning income in the United State are required to have taxpayer identification numbers (TINs). These look similar to social security numbers. The test of whether FIRPTA withholding is required or not, is a statement made by the seller under penalty of perjury that they are not a non-resident alien for purposes of U.S. income taxation.

Q: What is a "non-resident alien" for purposes of U.S. income taxation?

A: Another way to explain that (although it may not cover all situations) is that the seller must either be a U.S. citizen or resident alien with a green card.

Q: The seller is taking a loss on their home. They don't need to pay FIRPTA withholding, right?

A: Under FIRPTA, there is no automatic exemption from withholding if the seller is taking a loss or no gain. If a foreign seller feels they are exempt from FIRPTA withholding because there is no gain on the sale, they need to consult with a tax expert and may find they need to apply for withholding certificate from the IRS that will grant them the exemption on the transaction using IRS form 8288-B. If this is the case, this should occur early in the transaction.

Q: The seller lives in another country, but says they are a U.S. citizen. Isn't withholding required?

A: U.S. citizens may be living in other countries. Current residency is not a good indication of FIRPTA status.

Q: A foreign seller doesn't have a TIN and is willing to pay the IRS. Can the money just be sent to the IRS without a TIN?

A: No, the IRS requires that sellers of real property have TINs.

Q: A foreign seller only owns a portion of the property. How much money does the foreign seller owe?

A: The foreign seller will owe withholding on their percentage of ownership of the property.

Q: The property is under \$300,000 and the buyer is going to live in it. Doesn't that automatically exempt it from withholding?

A: The buyer must agree to sign an affidavit stating that the purchase price is under \$300,000 and the buyer intends to occupy. The buyer may choose not to sign the form, in which case withholding must be done.

Q: Isn't a transaction from a foreign seller to a foreign buyer exempt from withholding?

A: No. The same rules apply, and both parties are required to have TINs.

Q: The FIRPTA withholding was paid at close of escrow, but not that much money was due to the IRS. How does the seller get their money back?

A: The seller can either in advance of closing file an 8288-B Application for Withholding Certificate to request a reduced amount or no withholding. The seller can also file a tax return the following year to obtain any refund due. A CPA or other tax expert should be consulted for guidance.

Q: The seller and buyer don't want to pay a CPA to answer their questions. Can't the real estate person or escrow person help with FIRPTA questions?

A: Escrow personnel and real estate agents may have experience with FIRPTA, but are not qualified to provide advice on individual taxpayer's situations.

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