

UNDERSTANDING FIRPTA



FIRPTA (Foreign Investment in Real Property Tax) is a tax law passed in 1981 that requires buyers to withhold payments to sellers on U.S. real estate unless an exception applies.

The duty is on the buyer (and not the settlement agent) to deduct and remit a portion of the sales price along with the appropriate forms. In some situations a buyer or seller can apply for a withholding certificate to reduce the withholding amount. Buyers can remit less than the statutory amount if provided a determination of the specific amount of tax owed by the seller. A settlement agent may, upon mutual instructions remit payment on behalf of the buyer, however the buyer remains responsible. Per the IRS regulations, the buyer or transferee is legally responsible for any withholding due.

Buyers are required to remit up to 15% of the Sales Price unless the transaction is exempt from FIRPTA withholding.

Common Exemptions:

- Sales Price is not more than \$300,000 AND the buyer or a member of the buyer's 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. When counting the number of days the property is used, do not count the days the property will be vacant. For this exception, the transferee must be an individual;
- Seller provides to the buyer a certification stating they are not a foreign person in accordance with IRS Regulations;
- The buyer receives a withholding certificate from the Internal Revenue Service that excuses withholding.

Rates of withholding:

- If the sale price \$300,000 or less and the property will not be used as a residence within IRS regulations, the withholding rate is 15% of the sale price;
- If the sale price is greater than \$300,000 and not over \$1 million and the buyer intends to use the property as a residence within IRS regulations the withholding rate is 10% of the sale price;
- If the sale price is greater than \$300,000 and not over \$1 million and the buyer does not intend to use the property as a residence within IRS regulations the withholding rate is 15% of the sale price;
- If the amount realized exceeds \$1 million, then the withholding rate is 15% on the sales price.

For additional information on FIRPTA, please visit the IRS website at www.irs.gov.

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests.