

What is F.I.R.P.T.A?

Understanding the Foreign Investment in Real Property Tax Act



WHAT IS F.I.R.P.T.A

FIRPTA stands for the **Foreign Investment in Real Property Tax Act of 1980**. The Internal Revenue Code (IRC) Section 1445 governs this Act. F.I.R.P.T.A is the act which authorizes the IRS to withhold a portion of the total consideration from foreign transferors upon the disposition of U.S. real property interest. The IRS regulation which specifies who, what, where, when and why of F.I.R.P.T.A is set out in section 1445 of the Internal Revenue Code. The withholding must be remitted to the IRS within 20 days from the date of transfer (closing) along with IRS forms 8288 and 8288A.

Whose Responsibility is it to withhold said funds?

The IRS makes the buyer responsible for determining if the seller or transaction qualifies for an exemption to the withholding. If an exemption does not apply to the buyer, the withholding agent must withhold 10% of the gross sale price from the seller's proceeds and remit the withholding to the IRS. Why would the IRS make the buyer responsible? Good Question. The buyer is the only recourse the IRS might have. The seller could sell their U.S. property, leave the country and never look back. If the IRS makes the buyer responsible they have recourse. They could levy the buyer's accounts and even lien the property if the buyer fails to comply with this regulation. The IRS makes the buyer their watch dog and provides the motivation to ensure they take their duty seriously.

What are the exceptions for F.I.R.P.T.A. withholding?

There are ten exceptions to F.I.R.P.T.A withholding and many of them are very complicated. The **three most common exceptions** are:

- **Residential Exemption:** The buyer acquires the property for use as a home and the sale price is not more than \$300,000.00. The buyer or a member of the buyer's family must have definite plans to reside at the home for at least 50% of the number of days the property is occupied for the first 2 years following the date of the sale.
- **Non Foreign Certification:** The seller gives the buyer a certification stating under penalties of perjury, that the home address, or office address if the seller is an entity.
- **Withholding Certificate:** The buyer is provided with original withholdings certifications from the Internal Revenue Service that excuse or reduces the withholding. If a seller is claiming they are exempt under any of the other 7 exemptions the buyer should ultimately accept or approve the seller's exempt status since F.I.R.P.T.A. is the buyer's obligation.

What if a seller won't cooperate with F.I.R.P.T.A compliance?

The IRC puts all the responsibility on the buyer to withhold and pay the F.I.R.P.T.A withholding. You can review your contract for the obligation for the seller to cooperate with the F.I.R.P.T.A withholding and pursue recourse per your contract remedies. If the buyer chooses to proceed to close without the seller's cooperation they should know they could be subject to the IRS levying an lien against the buyer for unpaid taxes, interest & penalties and that the IRS may hold any tax refunds due to the buyer to pay the F.I.R.P.T.A withholding an penalty & interest duo.

Where do I find out more about F.I.R.P.T.A?

If at any time you or your clients are faced with a situation which require withholding, you can refer to the IRS website at www.irs.gov and search for F.I.R.P.T.A., Publication 515 & ITIN. It is also strongly suggest that you **talk to a CPA** or licensed attorney who specializes in United States tax law.

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