

What Is FIRPTA Withholding Tax

The US government introduced The Foreign Investment in Real Property Tax Act ("FIRPTA") several years ago. According to his legislation a tax of 15% will be withheld from the sales proceeds when you (a non-resident alien of the US) sell US real estate.

For example, Bob is a Canadian resident and non-resident of the US. Bob sold his US rental property for \$400,000 USD. A tax of \$60,000 (\$400,000 x 15%) will be deducted from the sale proceeds.

Exemptions to FIRPTA

No withholding of tax is required under FIRPTA if:

- ☐ The sales price is \$300,000 or less, and
- ☐ The buyer signs affidavit at or before closing stating they intend to use the property for personal purposes for at least 50% of the time.

For example, Bob (Canadian resident and non-resident of the US) sold his US rental property for \$250,000. The buyer signs an affidavit that he intends to use the property for himself for at least 50% of the time. In this case, no withholding of tax is required.

Role of your Title Company & Form 8288-A

A Title Company can act as the "Withholding Agent" and they will withhold tax from the sales proceeds in their Trust Account. The Title Company will submit Form 8288 Withholding Certificate Application to the IRS. This Application discloses the sales price, taxes withheld, property address, and buyer's information.

In many cases, the Title Company will ask the Accountant of the seller to prepare this Certificate Application.

US Tax ID Number

You (non-resident seller) will require a US Individual Taxpayer Identification Number (ITIN), in order to process your Certificate Application (see above). Individuals who do not have an ITIN, can apply by filling "Form W-7 Application for IRS Individual Taxpayer Identification Number".

US- 1040-NR Income Tax Return

You will be filling a "US 1040 – Non-Resident Income Tax Return", which is due by June 15 of the year following the year of sale. This Return will cover the following:

- ☐ Rental Income & Expenses up to the date of sale;
- ☐ Reporting the sale of your rental property; and
- ☐ Reporting the federal income tax withheld.

If the taxes withheld from the sales proceeds exceed the actual tax liability as per your US 1040-NR Tax Return, you will receive a refund for the excess amount.

Form 8288-B Application for Reduced Rate of Withholding (Optional)

You have the option of requesting the IRS to reduce the rate of tax withheld from 15% of the sales proceeds to a lower amount.

The application for a reduced withholding certificate requires a calculation of the adjusted cost basis of the seller's property, calculation of taxable gain, and tax on the sale.

*Please visit following Madan CA web page for more details on Form 8288-B Certificate:
<http://madanca.com/blog/reduce-withholding-taxes-sale-us-property/>

Steps to Take when Selling a US Property

In summary, follow these steps when selling a US property:

- 1) Hire a title company to facilitate the sales transaction
- 2) Determine if withholding tax is required
- 3) Contact your tax accountant (provide a copy of the agreement of purchase and sale)
- 4) Prepare form 8288-A and apply for an ITIN (if applicable)
- 5) File a US 1040-NR Tax Return to recover the taxes withheld and to report the sale

Withholding Certificate - (Form 8288/8288-A) & U.S. Tax Identification Number (ITIN) Checklist

Use this checklist to report withholding tax when a Canadian person sells U.S. real estate.

Seller 1 General Information:

Full Name: _____

Address: _____ Apt #: _____ City: _____

State: _____ Zip Code: _____ P.O. Box #: _____

SSN/ITIN: _____

(Note: Please complete the ITIN Checklist if you want to apply for an ITIN)

Seller Ownership for the Property:

Please indicate the percentage of ownership: _____

Seller 2 General Information: (if applicable)

Full Name: _____

Address: _____ Apt #: _____ City: _____

State: _____ Zip Code: _____ P.O. Box #: _____

SSN/ITIN: _____

(Note: Please complete the ITIN Checklist if you want to apply for an ITIN)

Buyer General Information:

Full Name: _____

Address: _____ Apt #: _____ City: _____

State: _____ Zip Code: _____ P.O. Box #: _____

SSN/EIN: _____

Title Company General Information:

Full Name: _____

Address: _____ Apt #: _____ City: _____

State: _____ Zip Code: _____ P.O. Box #: _____

Telephone Number: _____ Fax Number: _____

EIN: _____

Withholding Certificate - (Form 8288/8288-A) & U.S. Tax Identification Number (ITIN) Checklist

Use this checklist to report withholding tax when a Canadian person sells U.S. real estate.

Property Information:

Purchase Price of Property: _____

Sale Price of Property: _____

Date of Sale: _____

U.S. Individual Tax Identification Number Checklist

To help you in applying for your U.S. Individual Tax Identification Number, please keep this checklist handy. The checklist should be completed and returned to us together with the financial information assembled.

General Information	Details:
Name	Legal Name: _____ At Birth (if different): _____
Birth Information	Birth Country: _____ Birth City: _____ Province/State: _____
A Copy of Certified Passport	<i>*Please obtain one, but do not send us a copy</i>
Passport Information	Issuing Country: _____ Passport #: _____ Date of Expiry: ____/____/____ (MM/DD/YY)
Canadian Tax Identification Number (ex. SIN #)	Tax Identification #: _____
Date of Birth	Date of Birth (MM/DD/YY): _____
Current Address	Address: _____ City: _____ Province/State: _____ Postal Code: _____