



**ROTH
HRYWKIW
FIDEK** LLP

CHARTERED PROFESSIONAL ACCOUNTANTS

Canadians Selling US Real Property

FIRPTA Withholding tax

- The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires the buyer to withhold 15% of the purchase price of US real property interests sold by a Non-resident alien (NRA).
- The buyer's estate agent remits the FIRPTA withholding tax to the IRS within 10 days of closing.

FIRPTA Exceptions

- There is an exception for the FIRPTA withholding tax when the sale of the real property is less than \$300,000 **and** the buyer is using the home as their main residence (more than 180 days per year) for the first two years after the date of transfer.
- If the exception applies, your realtor or estate agent will ask that the buyer certify their residence intentions

Reducing or Eliminating FIRPTA Withholding Tax

- NRA 's can file an election (form 8288-B) with the IRS to reduce the withholding tax to be 20% of the gain on sale.
- If there is no gain on sale, then there would be no FIRPTA withholding tax required.
- In order to file the 8288-B election, you will first need a signed offer from the buyer and documentation to support the purchase price of the home as well as any capital improvements.
- Capital improvements do not include general maintenance or removable appliances, furniture, etc.
- If the 8288-B form is filed with the IRS prior to the closing date, the buyer's estate agent can hold the funds (15% of the purchase price) in their office while they wait for the IRS to return the Withholding Certificate.
- When the estate agent receives the FIRPTA Withholding Certificate from the IRS, they will remit the amount requested by the IRS and send the balance to you.
- The Withholding Certificate generally takes 4 to 6 weeks to process by the IRS.

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Individual Tax Identification Numbers

- The IRS requires you to have Individual Tax Identification Numbers (ITIN's) to file the 8288-B forms.
- If you do not have ITIN's you can apply for these when filing the 8288-B's.
- You apply for the ITIN by filing form W7.
- With the W7, you will need a certified copy of your passport from a passport office in Canada or you will need to meet with a Certified Acceptance Agent with your passports.
- Our office has two Certified Acceptance Agents.

Income Tax Filing Requirements

- A sale of US real property will require you to file a federal non-resident income tax return (form 1040NR) as well as a state non-resident income tax return.
- You will report the gain on sale of the property on these tax returns.
- The tax on the gain on sale will be between 0 and 20%. depending on the amount of the gain.
- If the home was not used as a rental or in a business, the first \$40,000 for each owner would be exempt from income tax.
- The FIRPTA withholding tax is applied to the actual income tax owing on the 1040NR and any excess is refunded to you.
- The income tax returns can be filed no earlier than February of the year following the sale.
- As refunds generally take six months to receive after filing the income tax returns, we recommend filing form 8288-B to reduce the withholding tax.

Assistance

- Our office can assist you in filing the 8288-B and W7 forms as well as the 1040NR and state income tax returns.
- We will contact your realtor or estate agent prior to closing to gather the buyer's contact information and other related information required to complete the 8288-B forms.
- We will also contact the buyer's estate agent prior to closing to ensure that they know that you are asking for a reduced withholding tax requirement.
- Any IRS or estate agent queries can be forwarded to our office.
- We will be available throughout the entire process to answer any questions or concerns that you may have.

Professional Fees

Our fees for the above will be based on the time spent, but generally will not exceed \$1,000. If you already have ITIN's, the fees would be reduced accordingly.