



FIRPTA: Reviewing the Tax Law for Foreign Sellers SHOULD KNOW



The Foreign Investment in Real Property Tax Act, better known as FIRPTA, is a United States tax law that imposes income tax on foreign sellers who are disposing of U.S. property.

Originally established as part of the Omnibus Reconciliation Act of 1980, the act ensures that foreign sellers, like U.S. citizens, are subject to capital gains tax. Specifically, it mandates that the buyer must withhold the tax at closing and remit it to the Internal Revenue Service as an advance payment against the seller's tax liability. (Before 1981, foreign people, non-resident, non-citizen individuals and non-U.S. corporations were often exempt from U.S. tax on the sale of real estate in the nation.)

As of February 2016, buyers of U.S. real property interests are required to withhold 15% of the full sales price; an increase from the previous 10% rate. However, the seller may apply to the IRS to reduce this 15 percent to the amount of tax estimated to be due. (The IRS routinely approves such seller applications.)

Rates also vary based on certain circumstances. The rate to be withheld is:

- 0 percent if the purchase price is \$300,000 or less and the buyer will use the property as a personal residence
- 10 percent if the purchase price is over \$300,000 but less than \$1 million and the buyer will use the property as a primary residence
- 15 percent if the amount realized is exceeds \$1 million regardless of the buyer's use of the property

In any case, penalties apply to buyers who fail to withhold or pay the required withholding within 20 days of the sale.

Because there are variations within the law, real estate professionals would be wise to have clients consult with their tax professional with FIRPTA-related questions.