



## *The Foreign Investment in Real Property Tax Act*

The Foreign Investment in Real Property Tax Act (FIRPTA), codified in Internal Revenue Code § 1445, seeks to ensure that foreign persons - individuals and entities - report and pay applicable capital gains tax when they sell United States real property interests. This withholding obligation is imposed on the buyer/transferee when a U.S. real property interest (USRPI) is acquired from a foreign person.

It requires every buyer/transferee of real property must withhold fifteen (15) percent of the "amount realized" (generally the sales price) in a transaction and transmit that amount to the Internal Revenue Service within 20 days after closing. Withholding for acquisitions of \$1 million or less to be used as a residence is ten (10) percent. No withholding if acquisition is for a residence and the purchase price does not exceed \$300,000.

The Purchase Contract instructs escrow to withhold under FIRPTA unless seller provides buyer with an authorized exemption or waiver prior to closing. Purchase Contract P-2. It is the seller's burden to provide applicable exemption approval to the buyer prior to closing to adjust amounts to be withheld.

Escrow officers do not offer legal or tax advice, however, are well versed in the process to comply with the withholding requirements and can help avoid delays and frustrating situations.

The following will provide you with an overview of the process at Premier Title:

Escrow sends sellers the FIRPTA Certification form and requests the seller to acknowledge the form if the seller is exempt from withholding due their status as a U.S. resident and provide the appropriate tax identification number. sign if it applies, certifying that the seller is exempt from FIRPTA. Please see your escrow officer for a Certification form for specification requirements.

Upon receipt of the completed and signed Certification from the seller, escrow will provide a copy to the buyer for their acknowledgment, and sign instructions that escrow need not withhold FIRPTA taxes pursuant to the Certification from the seller and acknowledgment from the buyer.

The seller may also apply for and obtain a Withholding Certificate from the IRS wherein the IRS waives or reduces the withholding amount for reasons provided by the seller. These forms are typically prepared with the assistance of a tax professional. The application, Form 8288B must be filed with the IRS in sufficient time for the IRS may review and issue a Withholding Certificate prior to closing.

In the absence of waivers affecting the amount to be withheld, escrow will withhold an appropriate amount from seller's proceeds and forward it to the IRS along with Forms 8288 and 8288A.

It is recommended that the seller work with a qualified attorney or tax advisor to complete Forms 8288, 8288A, and 8288B to ensure accuracy of the submittal.



## ***The Hawaii Real Property Tax Act Applications for Withholding Certificate For Dispositions by Nonresident Persons***

Every buyer/transferee of real property is required to withhold a percentage of the sales price when acquiring Hawaii real property from a nonresident seller. Buyer will remit the amount directly to the State Tax Department within 20 days after closing. Hawaii is an escrow state, and while escrow is not responsible to withhold the required amount per the Purchase Contract, escrow is instructed to collect and disburse the funds to the State Department of Taxation. It is the seller's burden to provide proof of residency exempting them from this withholding.

Escrow officers do not offer legal or tax advice. They are however well versed in the process to comply with the withholding requirements and can help avoid delays and frustrating situations. This flyer discusses the situation where a nonresident seller applies for a certificate for a reduction or waived withholding prior to closing.

- If escrow does not receive a properly completed N-289 to establish residency before closing or an N-288B withholding certificate, escrow will withhold the appropriate amount from seller's proceeds and forward it to the State Tax Department.
- The seller may obtain a withholding certificate from the State Tax Department wherein the State approves a waiver or reduction of the withholding amount because the seller shows that it will not recognize gain on the transfer or there will be insufficient proceeds to pay the withholding after payment of all costs, including payoffs.
- The application, Form N-288B, must be filed with the State Tax Department no later than 10 working days prior to closing or it will not be accepted. In the absence of an approved waiver or adjustment form from the State Department of Taxation prior to closing, Escrow will withhold the appropriate a.
- It is recommended that the seller work with a qualified attorney or tax advisor to complete Form N-288B. Form N-288B instructs that if two or more non-resident transferors jointly transfer a Hawaii real property interest, a separate Form N-288B should be filed for each non-resident transferor/seller.

Copies of Form N-288B and accompanying Instructions are available at: [http://www.state.hi.us/tax/a1\\_forms.htm](http://www.state.hi.us/tax/a1_forms.htm)

**DISCLAIMER** - This flyer is for general informational purposes only, and should not be relied upon for any legal, business, economic, or tax decision. It is not intended to provide legal or business advice. Before making any decision regarding this matter, you should consult with a qualified advisor.