



## What Is FIRPTA and Why Does It Matter?

FIRPTA stands for the Foreign Investment in Real Property Tax Act. This law requires that when someone who isn't a US resident sells American real estate, 15% of the total sale price must be held back from the money they receive at closing.

This withholding amount goes directly to the Internal Revenue Service (IRS). Think of it as a deposit toward any taxes you might owe. The actual tax you owe depends on your profit from the sale, not the sale price itself.

**Important point:** The 15% withholding is not your final tax bill. You'll file a tax return later to calculate what you actually owe. If the withholding exceeds your tax liability, you'll receive a refund. If you owe more, you'll need to pay the difference.

## What is the FIRPTA Withholding Rate?

The current FIRPTA withholding rate is **15% of the gross sales price**. This rate became effective February 17, 2016, up from 10% prior.

## How is a “foreign person” defined for FIRPTA purposes?

A foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

## Do You Need a US Individual Tax Identification Number (ITIN) to close?

If you're paying the full withholding at closing, you don't need a US tax identification number beforehand. However, getting one soon after the sale is smart, as you'll need it to file your tax return.

If you're applying for reduced withholding, you must have a US tax identification number when you submit your application.

**For individuals:** You apply for an Individual Taxpayer Identification Number (ITIN) using Form W-7. You'll need to provide your original passport or a certified copy from the issuing government or a US consulate.

**If the buyer is also foreign:** Buyers don't need US tax identification numbers if the full withholding is paid. However, if the seller wants reduced withholding, both parties must have tax identification numbers.

## Who Is Responsible for the Withholding?

The buyer is technically responsible for ensuring the withholding is properly paid to the IRS. However, in practice, the closing agent (attorney or title company) typically handles the actual payment.

The closing agent isn't held liable as long as their role is limited to standard closing activities like disbursing funds, recording documents, and transmitting paperwork between parties.

## My country has a tax treaty with the United States. Does FIRPTA still apply?

Yes, tax treaties do not override or change FIRPTA withholding rules.





## When must FIRPTA be sent to the government?

This withholding must be remitted to the Internal Revenue Service (IRS) within 20 days after closing.

It's important to understand that the 15% FIRPTA withholding is not the actual tax owed—it functions as a deposit applied against your final tax liability. The actual tax owed is calculated when you file your U.S. income tax return reporting the sale.

If the withholding exceeds your actual tax liability, the IRS will refund the difference once a tax return is filed to report the sale of the property after the end of the calendar year of sale.

If your tax liability is higher than the FIRPTA withholding, you'll need to pay the additional amount. It is less common that this occurs.

## Are You Required to File a US Tax Return?

Yes, always. Every foreign person who sells US real estate must file a US income tax return reporting the sale.

This requirement applies regardless of whether:

- You qualified for the withholding exemption
- Withholding was paid at closing
- You applied for reduced withholding
- You made a profit or took a loss

Each owner listed on the property title must file their own return. Even married nonresidents must file separately. There is no “Married Filing Jointly” option.

## When Can You Avoid the 15% Withholding?

You can skip the withholding entirely if two conditions are met:

**The sale price is \$300,000 or less.** The buyer must intend to use the property as their personal home for at least half of the days the property is occupied during each of the first two years after purchase. Empty days don't count in this calculation.

Here's an example: A buyer plans to live in the property for six months per year and leave it vacant for six months. Since the property is only occupied for six months, and they're using it personally for all six of those months, they meet the 50% requirement.

**Critical restrictions:** This exemption doesn't apply to vacant land, even if someone plans to build a home there. The buyer must be an individual person, not a company, trust, or partnership. They must sign a sworn statement confirming their intention to use the property personally.

Even if you qualify for this exemption, you still must file a US tax return and report the sale.

## What About Sales Between \$300,000 and \$1,000,000?

If your property sells for more than \$300,000 but no more than \$1,000,000, you can't avoid withholding completely. However, the rate can drop from 15% to 10% if the buyer meets the same personal residence requirements described above.

This reduced rate can save you tens of thousands of dollars that would otherwise be held until you file your tax return.





## What About Sales of more than \$1,000,000?

There is no exemption, exception, reduction or elimination when the sales price is greater than \$1,000,000. A reduced withholding certificate submission may still be an option.

## What about Requesting Lower Withholding Through IRS Certificates?

When standard withholding would significantly exceed your true tax liability, you can petition tax authorities to reduce the amount held back. This process involves obtaining an official certificate that authorizes lower withholding.

This approach makes sense when:

- Your sale will generate a loss rather than a profit
- Your taxable gain represents only a small fraction of the sale price
- You expect minimal or zero tax liability

### Timeline and Process Considerations:

Your certificate application must reach tax authorities by your closing date at the latest. Processing typically requires at least three months, but may be much longer, before the certificate gets issued.

The closing agent is authorized to withhold the standard percentage from your proceeds but doesn't immediately send it to the government is an application for reduced withholding is submitted. These funds sit in a protected escrow account awaiting your certificate. Once the certificate arrives, the agent forwards any required amount to the government and releases the remainder directly to you.

### EXAMPLE: Application for FIRPTA Withholding Certificate

You're selling a property for \$500,000 that you purchased for \$600,000. You'll incur a \$100,000 loss, meaning no U.S. tax is owed. However, the standard FIRPTA withholding would be \$75,000 (15% of \$500,000).

By applying for a withholding certificate, you can demonstrate that the transaction results in a loss. The IRS will issue a certificate reducing the withholding to zero, allowing you to receive your full sale proceeds.

## What About Short Sales?

FIRPTA withholding requirements apply even in short sales where proceeds are insufficient to cover the mortgage balance.

Your only options for avoiding withholding in these circumstances are:

- Qualifying for the small transaction exception (Sales prices of three hundred thousand or less with buyers signing the affidavit of use)
- Securing an IRS certificate reducing withholding

Without meeting one of these conditions, mortgage lenders rarely approve these sales since withholding reduces what they receive from the transaction.





## **What If You're Married to a US Citizen?**

When property is jointly owned by a foreign national and their US citizen spouse, only the foreign spouse's portion is subject to withholding. Unless evidence shows otherwise, each spouse is considered to own 50% of the property.

**Example:** A property sells for \$500,000. One spouse is foreign, one is a US citizen. The withholding would be \$37,500 (50% of the sale price times 15%).

## **Am I subject to withholding on the sale of a U.S. partnership interest?**

While not exactly FIRPTA withholding, there is "FIRPTA like" withholding under a different part of the tax code.

### **Author's Notes:**

There are other planning opportunities related to the sale of U.S. real estate. Each situation is unique.

This article is not intended to be tax advice.

Real estate transactions involving foreign sellers present unique complexities. Each situation involves different property values, ownership structures, gain calculations, and timing and fact pattern considerations that affect the strategy that is right for you.

Consulting with tax professionals who regularly handle international property transactions helps ensure you understand your specific obligations and exploring available options that can help you maximize your proceeds and minimize delays in receiving your funds.

I am happy to advise you on the options available to you in complying with this requirement on the sale of your property.

### **About the author:**

David A Cumberland, CPA CGMA has presented at the local, state, and national level. David has authored articles intended for both the taxpayer and the tax professional. He is vice chair of the FICPA International tax committee and founder of Cumberland CPA & Co. which serves clients worldwide. He has published in the FICPA's Florida CPA Today magazine and produces client-based tax articles in English and Spanish to educate both current and prospective clients and advisors to those clients. He primarily practices in the area of inbound international tax work covering both individual and business tax preparation and consulting. Fluent in Spanish, his emphasis is working with international clients or clients with international considerations. David brings unique value and perspective to advising clients as a CPA as he has more than two decades of operational management experience in business in addition to a technical tax background. Having retired as lead shareholder of the International Tax Department of one of the largest independent certified public accounting firms in Southwest Florida his focus now is on continuing to serve clients he is passionate about in a boutique setting.

For full bio please click here or go to [www.cumberlandcpa.com/about/](http://www.cumberlandcpa.com/about/)

Questions can be sent to: [articles@cumberlandcpa.com](mailto:articles@cumberlandcpa.com)

