

PATH Act Changes to FIRPTA Withholding

The Protecting Americans from Tax Hikes (PATH) Act brought about significant changes to the Foreign Investment in Real Property Tax Act (FIRPTA).

Effective February 16, 2016, the withholding rate for the sale of real property by foreign persons increased from 10% to 15% under certain circumstances, which we have outlined below.

Under the provisions of the Foreign Investment in Real Property Tax Act (FIRPTA), the buyer of a United States real property interest from a foreign person is required to withhold as much as 15% of the sales price and forward the funds to the IRS with the required documentation on the seller's behalf. This is to insure that the foreign seller files the appropriate tax return documentation when receiving monetary benefit for disposing of real property in the United States. To be clear, the withheld amount is not an additional tax on the foreign seller, it is an estimated payment against the tax ultimately imposed on gain from the sale.

The following quick reference chart of withholding amounts will be adhered to:

Buyer Intends to Use Property as a Residence?	Yes	No
\$300,000 and Under	0%	15%
\$300,001 - \$1,000,000	10%	15%
Over \$1,000,000	15%	15%

If buyers are purchasing a U.S. real estate interest from a foreign seller, this information **MUST** be relayed to the buyers so that they can adequately withhold. If not, buyers could find themselves liable for extra withholdings.

There are many factors involved in this process that can have significant effects to both buyers and sellers. Contact your tax professional with any questions regarding FIRPTA.

