

Section 1445. Withholding of Tax on Dispositions of United States Real Property Interests

a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

(b) Exemptions

(1) IN GENERAL -No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) TRANSFEROR FURNISHES NONFOREIGN AFFIDAVIT -Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) NONPUBLICLY TRADED DOMESTIC CORPORATION FURNISHES AFFIDAVIT THAT INTEREST IN CORPORATION NOT UNITED STATES REAL PROPERTY INTERESTS -Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that--

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

(4) TRANSFEREE RECEIVES QUALIFYING STATEMENT -

(A) IN GENERAL - This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) QUALIFYING STATEMENT - For purposes of subparagraph (A), the term "qualifying statement" means a statement by the Secretary that--

(i) the transferor either--

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) RESIDENCE WHERE AMOUNT REALIZED DOES NOT EXCEED \$300,000 - This paragraph applies to the disposition if--

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed \$300,000.

(6) STOCK REGULARLY TRADED ON ESTABLISHED SECURITIES MARKET -This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) SPECIAL RULES FOR PARAGRAPHS (2) AND (3) - Paragraph (2) or (3) (as the case may be) shall not apply to any disposition--

(A) if--

(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.

Excerpt from <http://www.intltaxlaw.com/inbound/firpta/irc.htm#Section 1445>.

**BUYER'S DECLARATION FOR \$300,000 RESIDENCE
EXEMPTION UNDER FIRPTA**

Section 1445 of the Internal Revenue Code requires a purchaser of U. S. real estate to deduct and withhold a tax equal to 10% of the purchase price of the property and to file IRS forms 8288 and 8288A to report and transmit the amount withheld to the Internal Revenue Service ("IRS").

You will not be required to withhold the tax if you receive a certification of nonforeign status from the seller, signed under penalties of perjury, stating that the seller is not a foreign person and containing the seller's name, address and taxpayer identification number. If you do not obtain such nonforeign status certification you may still avoid the obligation to withhold the 10% tax if you are purchasing a residence for \$300,000 or less.

Purchase of residence for \$300,000 or less. No withholding is required if an individual or individuals acquire U. S. real property for use as a residence and the amount realized is not more than \$300,000. U. S. real property is acquired for use as a residence if you or a member of your family has definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. Do not take into account the number of days the property will be vacant in making this determination. No form or other document need be filed with IRS for this exception; however, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

This exception does not apply if the actual transferee is not an individual, even if the property is acquired for an individual. However, this exception does apply whether or not the transferor is an individual, partnership, trust, corporation, or other transferor.

Buyer's Declaration. I have read the discussion above on the residence exemption to the withholding requirement of IRC § 1445 and I hereby notify all persons (including real estate agents) involved in my purchase of the property described below that I have definite plans to reside at the property for at least half of the number of days that the property is used by any person during the first two 12-month periods following the date of transfer.

Property Located at: _____

Purchase Price: \$ _____

Signature: _____ Date: _____

Print Name: _____

Signature: _____ Date: _____

Print Name: _____