16th Annual Robert C. Sneed

TEXAS LAND TITLE INSTITUTE

IRS – LIENS AND PAYOFFS

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Gene Moren

Gene Moren is a Senior Stakeholder Liaison with the IRS Communication, Liaison and Disclosure division. Gene has been with the IRS for 23 years and most recently served as a Revenue Officer Group Manager in Dallas. He has also served as a Revenue Officer, Revenue Officer Advisor and a Branch Chief. Gene is a graduate of the University of Texas at Arlington and Southwestern Theological Seminary.

Certificate of Release of Federal Tax Lien

Section 6325(a) of the Internal Revenue Code directs us to release a Federal Tax Lien after a tax liability becomes fully paid or legally unenforceable. We also must release a lien when we accept a bond for payment of the tax.

If we haven't released the lien within 30 days, you can ask for a Certificate of Release of Federal Tax Lien.

Requesting a Copy of the Certificate

If you have paid the tax you owed and have not received a copy of the Certificate of Release of Federal Tax Lien, you may call 1-800-913-6050. If you prefer to write, see page 2 for the address to which your request should be mailed or faxed.

The certificate you receive will not show the official recording information. For a copy of the recorded certificate, you must contact the recording office where the Certificate of Release of Federal Tax Lien was filed.

Other Requests

Requests for certificates of release for any other reason should be mailed to IRS, Attn: Technical Services Advisory Group Manager. Use Publication 4235, Technical Services Advisory Group Addresses, to determine where to mail your request.

Send your written request with any required documents to the appropriate address.

Your request must contain the following information:

- 1. The date of your request,
- 2. The name and address of the taxpayer,
- 3. One copy of each Notice of Federal Tax
- Lien you want released, and
- 4. Why you want us to release the lien.

If you've paid the tax, enclose a copy of either of the following:

An Internal Revenue receipt,
 A canceled check, or
 Any other acceptable proof.

Please include a telephone number with the best time for us to call you should we need additional information.

We may need to research your account to confirm you no longer have a liability. We will provide a release once we have done so.

If you have an immediate or urgent need for a Certificate of Release of Federal Tax Lien, visit or telephone your local IRS office. Be prepared to show proof of payment.

You can pay any unpaid tax with a certified check, cashier's check, or postal or bank money order to receive the certificate of release.

🔊 IRS

Department of the Treasury Publication 1450 (Rev. 12-2005) Internal Revenue Service Catalog Number 10665H www.irs.gov Send your written request with any required documents to:

Internal Revenue Service CCP - Lien Unit P.O. Box 145595 Stop 8420G Team *(enter Team Number from list below)* Cincinnati, Ohio 45250-5595

State	Team	Fax Number	State	Team	Fax Number
Alabama	205	859-669-3805	Pennsylvania	202	859-669-3805
Alaska	206	859-669-5152	Puerto Rico	204	859-669-4961
Arizona	206	859-669-5152	Rhode Island	203	859-669-4954
Arkansas	205	859-669-3805	South Carolina	201	859-669-3805
California	207	859-669-4954	South Dakota	206	859-669-5152
Colorado	206	859-669-5152	Tennessee	205	859-669-3805
Connecticut	203	859-669-4954	Texas	205	859-669-3805
District of Columbia	201	859-669-3805	Utah	206	859-669-5152
Delaware	201	859-669-3805	Vermont	203	859-669-4954
Florida	201	859-669-3805	Virginia	201	859-669-3805
Georgia	205	859-669-3805	Washington	206	859-669-3805
Hawaii	206	859-669-5152	West Virginia	202	859-669-5152
Idaho	206	859-669-5152	Wisconsin	206	859-669-5152
Illinois	206	859-669-5152	Wyoming	206	859-669-5152
Indiana	206	859-669-5152			
lowa	206	859-669-5152			
Kansas	206	859-669-5152			
Kentucky	202	859-669-5152			
Louisiana	205	859-669-3805			
Maine	203	859-669-4954			
Maryland	201	859-669-3805			
Massachusetts	203	859-669-4954			
Michigan	202	859-669-5152			
Minnesota	206	859-669-5152			
Mississippi	205	859-669-3805			
Missouri	206	859-669-5152			
Montana	206	859-669-5152			
Nebraska	206	859-669-5152			
Nevada	206	859-669-5152			
New Hampshire	203	859-669-4954			
New Jersey	202	859-669-5152			
New Mexico	206	859-669-5152			
New York	203	859-669-4954			
North Carolina	201	859-669-3805			
North Dakota	206	859-669-5152			
Ohio	202	859-669-5152			
Oklahoma	205	859-669-3805			
Oregon	206	859-669-5152			

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Federal Tax Liens - Discharges and Subordinations

Certificate of Discharge of Property From Federal Tax Lien

Before applying for a certificate of discharge, determine how much you owe in order to pay the lien(s) in full. You may obtain a payoff by calling 1-800-913-6050 or by visiting the nearest IRS Taxpayer Assistance Center. If the amount you expect to get from the sale of your property is enough to full pay the amount you owe, we will usually not issue a certificate of discharge.

There is no standard form available for an application for a Certificate of Discharge of Property from a Federal tax lien, a computer-generated request will be considered as an application *(please no handwritten request)*. Submit your request and all accompanying documents in duplicate to:

IRS, Attn: Technical Services Group Manager

(Address to the IRS office in which the lien was filed. Use Publication 4235, Technical Services Addresses, to determine where to mail your request).

Information Required on Application

Give date of the application.

Give the name and address of the person applying under section 6325(b) of the Internal Revenue Code, for a certificate of discharge. See the "Additional Information" section of this publication for applicable Internal Revenue Code sections. Give the name and address of the taxpayer, and describe the property as follows:

- Give a detailed description, including the location of the property for which you are requesting the certificate of discharge. If real property is involved, submit a legible copy of the title or deed to the property, and the complete address (street, city, state and ZIP code). If the certificate is requested under section 6325(b)(1), also give a description of all the taxpayer's remaining property subject to the lien.
- Show how and when the taxpayer has been or will be divested of all rights, title and interest in and to the property for which a certificate of discharge is requested.

- 3. Attach a copy of each notice of Federal tax lien, or furnish the following information as it appears on each filed Notice of Federal Tax Lien:
 - a. The name of the Internal Revenue Office;
 - b. The name and address of the taxpayer against whom the notice was filed;
 - c. The serial number shown on the lien;
 - d. The taxpayer social security number or employer identification number shown on the lien; and
 - e. The date and place the notice was filed.
- 4. In lieu of the above, a preliminary title report may be substituted listing the required information.
- List the encumbrances (or attach a copy of the instrument that created each encumbrance) on the property, which you believe have priority over the Federal tax lien. For each encumbrance show:
 - a. The name and address of the holder.
 - b. A description of the encumbrance.
 - c. The date of the agreement.
 - d. The date and place of the recording, if any.
 - e. The original principal amount and the interest rate.
 - f. The amount due as of the date of the application, if known (show costs and accrued interest separately); and
 - g. Your family relationship, if any, to the taxpayer and to the holders of any other encumbrances on the property.
- 6. In lieu of the above, a preliminary title report may be substituted listing the required information.
- 7. Itemize all proposed or actual costs, commissions and expenses of any transfer or sale associated with the property. In lieu of the above, a proposed closing statement, also known as a preliminary Form HUD-1, may be submitted.



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- Federal Tax Liens Discharges and Subordinations
 Furnish information to establish the value of the property. If the certificate is requested under section 6325(b)(1) furnish an estimate of the fair market value of the property, which will remain subject to the lien. In addition,
 - a. If private sale Submit written appraisals by two disinterested persons qualified to appraise the property, and a brief statement of each appraiser's qualification.
 - b. If public sale (auction) already held Give the date and place the sale was held, and the amount for which the property was sold.
 - c. If public sale (auction) to be held Give the proposed date and place of the sale, and include a statement that the United States will be paid in the proper priority from the proceeds of the sale.
- 9. Give any other information that might, in your opinion, have bearing upon the application, such as pending judicial actions.
- 10. The Technical Services Group Manager may request that you furnish additional information.
- 11. If you are submitting the application under the provisions of **section 6325(b)(3)**, dealing with the substitution of proceeds of sale, attach a copy of the proposed agreement containing the following:
 - a. The name and address of the proposed es crow agent.
 - b. The caption, type of account, name and address of depositary for the account.
 - c. The condition under which the escrowed funds are to be held.
 - d. The conditions under which payment will be made from escrow, including the limitation for negotiated settlement of claims against the fund.
 - e. The estimated costs of the escrow.
 - f. The name and address of any other party you and the Technical Services Group Manager determine to be a party to the escrow agreement.
 - g. Your signature, and those of the escrow agent, the Technical Services Group Manager and any other party to the escrow agreement; and
 - h. Any other specific information the Technical Services Group Manager requests.

12. As discussed further below under "Additional Information," making an application and deposit (or providing a bond) under section 6325(b)(4) provides a judicial remedy not available for an application and payment made under section 6325(b)(2). Therefore, unless the right to make a deposit under section 6325(b)(4) is waived in writing, an application made by a third party owner of property will be treated as one made under section 6325(b)(4), and any payment made will be treated like a deposit under section 6325(b)(4).

If you are an owner of property (other than the taxpayer) and you wish to submit an application under section 6325(b)(2), you must waive the rights that would be available if the application were made under section 6325(b)(4). Add the following language to the application immediately prior to the declaration described in paragraph 15, below: "I understand that an application and payment made under section 6325(b)(2) does not provide the judicial remedy available under section 7426(a)(4). In making such an application/payment, I waive the option to have the payment treated as a deposit under section 6325(b)(4) and the right to request a return of funds and to bring an action under section 7426(a)(4)."

- 13. Give the name, address and telephone number where you may be reached.
- 14. Give the name, address and telephone number of your attorney or other representative, if any.
- 15. If you have made an application under section 6325(b)(4) and disagree with the Service's determination of the value of the government's interest, you should provide the Service with specific reasons why you disagree with it's determination.
- 16. Make the following declaration over your signature and title: "Under penalties of perjury, I declare that I have examined this application, including any accompanying schedules, exhibits, affidavits, and statements and to the best of my knowledge and belief it is true, correct, and complete."

Additional Information

Please follow the instructions in this publication when applying for a Certificate of Discharge of Property from Federal Tax Lien. 2006 Texas Land Institute

Federal Tax Liens - Discharges and Subordinations The Technical Services Group Manager has the authority to issue a certificate of discharge of a lien that is filed on any part of a taxpayer's property subject to the lien. The following sections and provisions of the Internal Revenue Code apply:

Section 6325(b)(1) – A specific property may be discharged; if the taxpayer's property remaining subject to the lien has a Fair Market Value (*FMV*) which is double the sum of: a) the amount of the liability secured by such liens, and b) all other liens which have priority over the federal tax lien(s). (FMV=(a+b)x2)

Section 6325(b)(2)(A) – If there is paid in partial satisfaction of the liability secured by the lien an amount determined to be not less than the value of the interest of the United States in the property to be discharged. In the case of entireties property sold, if only one spouse is liable for the tax, the United State's must generally be paid one-half of the proceeds in partial satisfaction of the liability secured by the tax lien.

NOTE: Because making an application and deposit (or providing a bond) under section 6325(b)(4) provides a judicial remedy not available for an application and payment made under section 6325(b)(2), owners (other than the taxpayer) wishing to apply for a certificate of discharge under this provision must waive, in writing, their rights to make a deposit allowed under Section 6325(b)(4) and to file suit for return of the deposit or accepted bond allowed under section 7426(a)(4). Unless the waiver has been provided in writing, the Service will treat an application made by an owner of the property (other than the taxpayer) as an application made under section 6325(b)(4), with all funds treated as a deposit.

Other than the judicial review available under the deposit/bond procedures under sections 6325(b)(4) and 7426(a)(4), there is no remedy available to the third party for the return of payment (or portion thereof). An administrative request for refund and a refund suit in district court is not available.

Section 6325(b)(2)(B) – It is determined that the interest of the United States in the property to be discharged has no value.

Section 6325(b)(3) – If the property subject to the lien is sold, and, under an agreement with the Internal Revenue Service, the proceeds from the sale are to be held as a fund subject to the liens and claims of the United States in the same manner and with the same priority as the liens and claims on the discharged property.

Section 6325(b)(4) – A discharge may be issued to third parties if a deposit is made or an acceptable bond is furnished in an amount equal to the value of the government's interest in the property. In the case of former entireties property, a deposit of one-half the value of the property or a bond equal to one-half of the value of the property will be determined to be the government's interest. An owner of property (other than the taxpayer) who makes a deposit or furnishes a bond and obtains a discharge under section 6325(b)(4) has, under section 7426(a)(4), 120 days after the discharge to file an action in federal district court challenging the Service's determination of the government's lien interest.

This is the exclusive remedy available to the third party for the return of the deposit or accepted bond or a portion thereof. An administrative request for refund and a refund suit in district court is not available. See section 7426(a)(4).

- No payment is required for the issuance of a certificate under section 6325(b)(1) or 6325(b)(2)(B) of the Internal Revenue Code. Payment is required for certificates issued under section 6325(b)(2)(A). Do not send the payment with your application. The Technical Services Group Manager will notify you after determining the amount due.
- 2. The Technical Services Group Manager will have your application investigated to determine whether to issue the certificate and will let you know the outcome.
- 3. A certificate of discharge under section 6325(b)(2)(A) will be issued upon receipt of the amount determined to be the interest of the United States in the subject property under the Federal tax lien. In the case of entireties property sold by the taxpayer or taxpayer spouse, the Service's interest will generally be one-half the value of the property if only one spouse is liable for the tax. Make payments in cash, or by certified, cashier's, or treasurer's check. It must be drawn on any bank or trust company incorporated under the laws of the United States, or of any state, or possession of the United States. Payment can also be made by United States postal, bank, express or telegraph money order. (If you pay by uncertified personal check, issuance of the certificate of discharge will be delayed until the bank honors the check.)

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- Federal Tax Liens Discharges and Subordinations
 4. If application is made under sections
 6325(b)(2)(A) or 6325(b)(2)(B) and is for the sale of a principal residence, the taxpayer may be eligible for a relocation expense allowance based on an inability to pay, and subject to limitations. This allowance will be taken from sale proceeds and will not reduce the tax liability. To apply for the allowance, complete and submit Form 12451, Request for Relocation Expense Allowance, with the application for discharge.
- If application is made under provisions of section 6325(b)(2)(A), or 6325(b)(2)(B) because a mortgage foreclosure is contemplated, there will be a determination of the amount required for discharge or a determination that the Federal tax lien interest in the property is valueless.

Within 30 days from the date of the application, the applicant will receive a written conditional commitment for a certificate of discharge. When the foreclosure proceeding has been concluded, a certificate of discharge will be issued in accordance with the terms of the commitment letter. Also, see **Publication 487**, *How to Prepare Application Requesting the United States to Release Its Right to Redeem Property Secured by a Federal Tax Lien.*

- 6. If application is made under the provisions of section 6325(b)(3), the Technical Services Group Manager has the authority to approve an escrow agent selected by the applicant. Any reasonable expenses incurred in connection with sale of the property, the holding of the fund, or the distribution of the fund shall be paid by the applicant or from the proceeds of the sale before satisfaction of any claims or liens. Submit a copy of the application.
- 7. A certificate of discharge under section 6325(b)(4) will be issued when an amount equal to the United States interest in the property is received. In the case of former entireties property, the Service's interest will be one-half the value of the property. Payment of the interest of the United States in the property may be made in the form of cash, other certified funds, or the posting of a bond acceptable to the Secretary.

- 8. Provide the name, address and telephone number of your attorney or representative as well as the closing attorney or Settlement Company.
- 9. If your application is denied, you have appeal rights, **Form 9423**, *Collection Appeal Request* and **Publication 1660**, *Collection Appeal Rights*, will be issued, along with an explanation of why your application was denied.

Certificate of Subordination of Federal Tax Lien

There is no standard form available for an application for a Certificate of Subordination of Federal tax lien. Prepare your request in the form of a typed letter and submit it with all accompanying documents to:

IRS, Attn: Technical Services Group Manager

(Address to the IRS office that filed the lien. Use **Publication 4235**, Technical Services Group Addresses, to determine where to mail your request.)

Information Required on Application

Give date of the application.

Give the name and address of the person applying for the certificate of subordination under either **section 6325(d)(1) or 6325(d)(2)** of the Internal Revenue Code. See the "*Additional Information*" section of this publication for applicable Internal Revenue Code sections. Give the name and address of the taxpayer, and describe the property as follows:

- Give a detailed description, including the location of the property for which you are requesting the certificate of subordination. If real property is involved, submit a legible copy of the title or deed to the property and the complete address (street, city, state, and ZIP code).
- 2. Attach a copy of each notice of Federal tax lien, or furnish the following information as it appears on each filed notice of Federal tax lien:
 - a. The location of the Internal Revenue Office that filed the lien
 - b. The name and address of the taxpayer against whom the notice was filed
 - c. The date and place the notice was filed
 - d. The taxpayer social security number or employer identification number shown on the lien
- 3. Submit a copy of each instrument to which you believe an encumbrance exists or describe the encumbrance to which the Federal tax lien is to be subordinated, including:
 - a. The present amount of the encumbrance
 - b. The nature of the encumbrance (such as mortgage, assignment, etc.)
 - c. The date the transaction is to be completed

- 4. List or attach a copy of the liens, mortgages or other encumbrances against the property that you believe have priority over the Federal tax lien. For each encumbrance show:
 - a. The name and address of the holder
 - b. A description of the encumbrance
 - c. The date of the agreement to the encumbrance
 - d. The date and place of the recording, if any
 - e. The original principal amount and the interest rate
 - f. The amount due as of the date of the application, if known (show costs and accrued interest separately)
 - g. Your family relationship, if any, to the taxpayer and to the holders of any other encumbrances on the property
- 5. Instead of the information in 4a through f above, you may substitute a preliminary title report listing the required information.
- 6. The name and address of any new mortgage holder to which you are requesting the federal tax lien be subordinated, the amount of the proposed loan, and a schedule showing all fees and expenses related to obtaining the loan.
- 7. Furnish an estimate of the fair market value of the property for which you would like a certificate of subordination.
- If you are submitting the application under section 6325(d)(1), show the amount to be paid to the United States.
- If you are submitting the application under section 6325(d)(2), attach a complete statement showing how the amount the United States may realize will ultimately increase and how collection of the tax liability will be made easier.
- 10. Furnish any other information that might help the Technical Services Group Manager decide whether to issue a certificate of subordination.
- 11. The Technical Services Group Manager may request that you furnish additional information.
- 12. Give a daytime telephone number where you may be reached.

- 13. Give the name, address and telephone number of your attorney or other representative, if any.
- 14. Write the following declaration over your signature and title: "Under penalties of perjury, I declare that I have examined this application, including any accompanying schedules, exhibits, affidavits, and statements, and to the best of my knowledge and belief it is true, correct, and complete."

Additional Information

Before applying for a certificate of subordination, determine how much you owe in order to pay the lien(s) in full. You may obtain a payoff by calling 1-800-913-6050 or by visiting the nearest IRS Taxpayer Assistance Center. If you have the ability to borrow enough to full pay the amount you owe, we will usually not issue a certificate of subordination.

The Technical Services Group Manager has the authority to issue a certificate of subordination of a lien that is filed on any part of a taxpayer's property subject to the lien. The following sections and provisions of the Internal Revenue Code apply:

Section 6325(d)(1) - If you pay an amount equal to the lien or interest to which the certificate subordinates the lien of the United States.

Section 6325(d)(2) - If the Tehnical Services Group Manager believes that issuance of the certificate will increase the government's interest, and make collection of the tax liability easier. This applies to the property that the certificate is for or any other property subject to the lien.

- No payment is required for the issuance of a certificate under section 6325(d)(2) of the Code. Payment is required for certificates issued under section 6325(d)(1). However, do not send the payment with your application. The Technical Services Group Manager will notify you after determining the amount due.
- 2. The Technical Services Group Manager will have your application investigated to determine whether to issue the certificate and will let you know the outcome.
- 3. A certificate of subordination under **section 6325(d)(1)** will be issued upon receipt of the amount determined to be the interest of the United States in the subject property under the Federal tax lien. Make payments in cash, or by a certified, cashier's, or treasurer's check. It must be drawn on any bank or trust company incorporated under the laws of the United States, or of any state, or possession of the United States. Payment can also be made by United States postal, bank, express, or telegraph money order. (*If you pay by personal check, issuance of the certificate of subordination will be delayed until the bank honors the check.*)
- 4. In certain cases the Technical Services Group Manager may require additional information such as written appraisals by disinterested third parties, a list of all the taxpayer's property, or other information needed to make a determination.



Department of Treasury Internal Revenue Service

www.irs.gov

Publication 784 (Rev. 8-2005) Catalog Number 46756T

Special information relating to **Purchase Money Security Interests, and Subordination of the Federal Tax Lien**

If the IRS has recorded a Notice of Federal Tax Lien (NFTL) against you and you are trying to obtain a loan to buy real or personal property, the following questions frequently arise:

Does the lien prevent a bank, mortgage company, or other lender from lending you money to buy a house, a motor vehicle, or other consumer goods or property?

When a loan is made to purchase real property, the lender may obtain a Purchase Money Mortgage (PMM); when a loan is made to purchase personal property, the lender may obtain a Purchase Money Security Interest (PMSI). Provided all requirements of state law are complied with, these types of financing agreements allow lenders to finance the purchase of real and personal property even though a NFTL has been filed against you.

If you borrow money from a lender for such a purpose and give the lender a security interest in the property purchased with the proceeds of the loan, will the lender's security interest have priority over the tax lien?

In 1968 the Internal Revenue Service published Revenue Ruling 68-57, which states that it is the position of the IRS that a PMM or a PMSI given in good faith to secure a loan for the purchase of real property or goods, has priority over an already recorded Notice of Federal Tax Lien. (See Revenue Ruling 68-57 at the end of this publication.)

Is it necessary for the Internal Revenue Service to issue a certificate of subordination giving the security interest priority over the NFTL?

It is not necessary for the Internal Revenue Service to issue a certificate of subordination in order for the lender's PMM or PMSI to have priority over the lien.

In order for the PMM or PMSI to have priority over the lien, the PMM or PMSI must meet all of the requirements under state law, including the following. The PMI or PMSI must:

Be allowed under local law – The creation of a PMM or a PMSI is based on state law. While allowed by all states, you or your lender should be familiar with the laws of the state in which you live. Make sure that your state's law does not put a limit on the dollar amount of a PMM or a PMSI.

The proceeds of the loan must be used to purchase the property – The PMM or PMSI will have priority over the federal tax lien in the property you are purchasing in an amount equal to the proceeds of the loan that are directly used to purchase the property. If the PMM or PMSI must be recorded – Make sure that the PMM or PMSI is recorded in the place directed by your state's law, and that it is recorded within any time frame that your state's law may require.

If the security interest that will be securing the loan you are making qualifies for the priority given to a PMM or a PMSI, you do not need a certificate of subordination from the Internal Revenue Service, and a certificate will not be provided if applied for.

If you or your lender have any questions about whether your loan is being secured by a qualifying purchase money mortgage or purchase money security interest, please call or write the Technical Services (Advisory) office in your area. Contact information is found in Publication 4235, *Technical Services (Advisory) Group Addresses*.

Revenue Ruling 68-57

Section 6321 - LIEN FOR TAXES

26 cfr 301.6321-1: Lien for Taxes Rev.Rul. 68-57

The Federal Tax Lien Act of 1966, P.L. 89-719, C.B. 1966-2, 623, does not refer to a purchase money security interest of mortgage. However, the General Explanation of the Act, as set forth in House of Representatives Report No. 1884, C.B. 1966-2, at page 817, states as follows:

Although so-called purchase money mortgages are not specifically referred to under present law, it has generally been held that these interests are protected whenever they arise. This is based upon the concept that the taxpayer has acquired property or a right to property only to the extent that the value of the whole property or right exceeds the amount of the purchase money mortgage. This concept is not affected by the bill.

In view of the legislative history of the Federal Tax Lien Act of 1966, the Internal Revenue Service will consider that a purchase money security interest or mortgage valid under local law is protected even though it may arise after a notice of Federal tax lien has been filed.

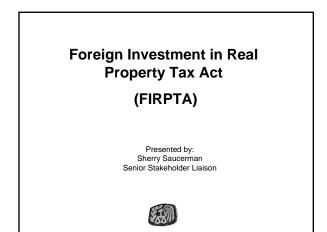


www.irs.gov

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Sherry Saucerman

Sherry Saucerman is a Senior Stakeholder Liaison with the Southwest Area of Stakeholder Liaison - Field Operations, a function of the Small Business and Self-Employed Division of the Internal Revenue Service. As a Liaison, she works with practitioner and business organizations to provide members with information about the policies, practices and procedures the IRS uses to ensure compliance with the tax laws. She has been with the IRS since 1987, working as a Revenue Officer and Offer in Compromise Specialist before coming to Stakeholder Liaison.



FEDERAL TAX REQUIREMENTS

 If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms.



FIRPTA Primer

- Purchaser of USRPI from a foreign seller must:
 - Withhold **10%** of the gross purchase price, and
 - Remit amount to IRS within 20-days of closing
- When tax is not withheld by purchaser per IRC §1445, Agent or Settlement Officer may be held liable.



Who is a Foreign Person?

".....a foreign person is a nonresident alien individual, foreign partnership, foreign trust, foreign estate, or foreign corporation (that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corp. for FIRPTA tax purposes)"



Resident vs. Nonresident Alien

- Two Residency Tests
 - Green Card Test
 - Substantial Presence Test
- Exceptions and Elections
 - Closer Connection to a Foreign Country
 - First Year Choice
 - MFJ with a U.S. Citizen or Resident Spouse



Agents Liability

• Agent:

" any person who represents the buyer/seller in any negotiation relating to the transaction, or in settling the transaction"

 Agents may be held liable for the buyer's failure to comply with FIRPTA withhold requirements



Tax Assessed on the Dispositions of USRPI

- Disposition of a USRPI owned by a foreign person includes:
 - Sale, Exchange, Capital Contribution, Gift, Foreclosures
- U.S. real property interest (USRPI)
 Property located in U.S. or Virgin Island
 - Domestic Corp. (Real Property Holding Co)



Reporting and Paying the Tax

- TRANSFEREE (buyer/designated agent)
 - File Form 8288/8288-A, along with withholding tax, by 20th day after transfer
 - Funds placed in escrow if awaiting a Withholding Certificate
 - Withholding Certificate attached to Form 8288/8288-A



Reporting and Paying the Tax

- TRANSFEROR (seller)
 - Attach receipted copy of IRS stamped Form 8288-A to appropriate Form:
 - <u>Individual</u>: File Form 1040NR, along with Schedule D and if required, Form 4797
 - <u>Corporation</u>: File Form 1120F with appropriate schedules



Exceptions to Withholding

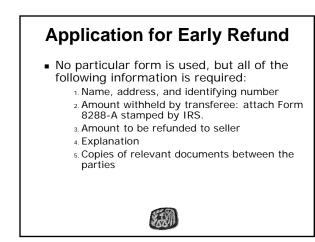
- Filing not required under certain conditions
- Most common Exception:
 - Residential Use Exception: Sales price is \$300,000 or less, AND will be the buyer's residence at least 50% of the days used during first two 12-month periods



Withholding Certificates

- Indicates a reduction or elimination of tax withholding
 - Form 8288-B filed by transferee, the transferee's agent, or the transferor
 - 90 day response by IRS
 - Withholding Certificate attached to Form 8288

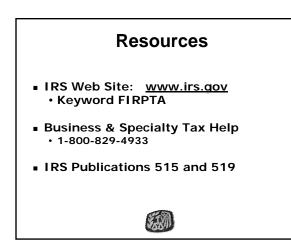


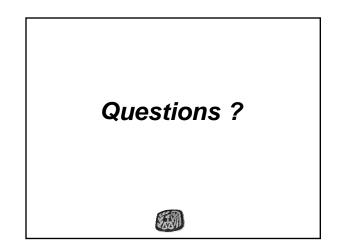


Individual Taxpayer Identification Numbers (ITIN's)

- Identification numbers required on Forms 8288, 8288-A and 8288-B
- All parties have a TIN: File Forms with <u>FIRPTA Unit</u>
- Buyer or Seller missing TIN: Attach Form W-7 and file with <u>ITIN Unit</u>









FIRPTA Withholding

Withholding of Tax on Dispositions of United States Real Property Interests

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. A U.S. real property interest includes sales of interests in parcels of real property as well as sales of shares in certain U.S. corporations that are considered U.S. real property holding corporations. Persons purchasing U.S. real property interests (transferee) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 10 percent of the amount realized (special rules for foreign corporations) Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The transferee/buyer is the withholding agent. If you are the transferee/buyer you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

The amount that must be withheld from the disposition of a U.S. real property interest can be adjusted pursuant to a withholding certificate issued by the IRS.

- A disposition includes the sale/purchase of U.S. real estate.
- Generally speaking, in reference to the sale/purchase of real estate, the person selling the real estate, the seller, is commonly referred to as the transferor.
- The purchaser/buyer of the real estate is commonly referred to as the transferee.
- Generally speaking the amount realized is the purchase/sales price of the real estate.
- Generally speaking the buyer must find out if the seller is a foreign person. If so, the purchaser/buyer must withhold income taxes.
- The purchaser/buyer may be held liable for the tax that should have been withheld on the purchase.

One of the most common exceptions to FIRPTA withholding is that the transferee (purchaser/buyer) is not required to withhold tax in a situation in which the purchaser/buyer purchases real estate for use as his home and the purchase price is not more than \$300,000.

http://www.irs.gov/businesses/small/international/article/0,,id=105000,00.html

- Exceptions from FIRPTA withholding
- Reporting and Paying Tax on U.S. Real Property Interests
- <u>Withholding Certificates</u>
- Format for Applications
- Road Map to Regulations
- Definitions of terms and procedures unique to FIRPTA
- Tax Information For Realtors, Rental Agents and Foreign Owners of U.S. Real Estate

For additional information on the withholding rules that apply to corporations, trusts, estates, and REITs, refer to section 1445 of the Internal Revenue Code and the related regulations. For additional information on the withholding rules that apply to partnerships, refer to discussion under <u>partnership withholding</u>. Also consult IRS <u>Publication 515</u>, Withholding of Tax on Nonresident Aliens and Foreign Entities, section U.S. Real Property Interest.

In 2006 information may be obtained from:

Internal Revenue Service Center P.O. Box 21086 Drop Point N-423 FIRPTA Unit Philadelphia, PA 19114-0586.

In 2007 information may be obtained from:

Internal Revenue Service Center P.O. Box 409101 Ogden, UT 84409.

Note: This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the <u>Tax Code</u>, <u>Regulations</u>, and <u>Official Guidance</u> page. To access any Tax Court case opinions issued after September 24, 1995, visit the <u>Opinions Search</u> page of the United States Tax Court