



ITIN Guidance for Foreign Property Buyers/Sellers

Effective June 22, 2012, the IRS has made interim changes that affect the Individual Taxpayer Identification Number (ITIN) application process. Some of the information below, including the documentation requirements for individuals seeking an ITIN, has been superseded by these changes. Taxpayers and their representatives should [review these changes](#), which are further explained in these [Frequently Asked Questions](#), before requesting an ITIN.

ITIN Guidance for Foreign Buyers/Sellers of U.S. Property

Foreign buyers and sellers of U.S. real property interests need Taxpayer Identification Numbers (TINs) to request reduced tax withholding when disposing of the property interest, and to pay any required withholding. Individuals who do not qualify for Social Security Numbers (SSN) may obtain Individual Taxpayer Identification Numbers (ITINs) to meet the requirement to supply a TIN.

The Internal Revenue Service implemented new procedures, effective December 17, 2003, to strengthen controls on ITINs and ensure the numbers are issued for tax administration purposes only. To help your qualifying clients obtain ITINs without undue burden, see the instructions for Forms [W-7](#) and [W-7SP](#) and the information below, which describes how the new process impacts FIRPTA (Foreign Investment in Real Property Tax Act) processing.

TINs required for withholding (Forms 8288 and 8288-A)

- Treasury Decision 9082 (effective November 4, 2003) requires all transferees (buyers) and foreign transferors (sellers) of U.S. real property interests to provide their TINs, names and addresses on withholding tax returns, applications for withholding certificates, notice of non-recognition, or elections under sections 897(i) when disposing of a U.S. real property interest. The transferee withholds tax under section 1445 and remits it to the Internal Revenue Service on Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interest, and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (FIRPTA).

TINs required for requests for reduced withholding (Form 8288-B)

- A transferor looking to reduce or eliminate the FIRPTA withholding amount must file a Form 8288-B, Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests. Since Form 8288-B requires a TIN, a transferor and/or transferee who does not qualify for an SSN may apply for an ITIN by attaching Form 8288-B to Form W-7 and mailing the documents to Internal Revenue Service, Austin Service Center, ITIN Operation, PO Box 149342, Austin TX 78714-9342.

Requesting an ITIN to meet FIRPTA TIN requirements

- In order to obtain an ITIN number for FIRPTA purposes you must complete Form W-7 or W-7SP. Select Box "h" (other) in the "Reason you are submitting Form W-7" section of Form W-7, and Exception 4 (explained in the instructions). Write "Exception 4" in the write-in area to the right of Box h (other).

ITIN requests to claim reduced withholding (Form 8288-B)

- The IRS will only issue ITINs based on applications that are complete and demonstrate a tax need for the numbers. If the IRS rejects the ITIN application, the attached Form 8288-B will not be processed. The IRS' ITIN Unit will notify the applicant by mail that the Form W-7 was not processed and the FIRPTA Unit will also send Letter 3793 SC/CG to the transferee and foreign transferor with instructions to complete Form W-7 and reapply. This letter will include instructions to resolve the issue outlined in the ITIN rejection letter. When reapplying, the applicant must include a copy of Letter 3793 SC/CG with Form W-7 to be considered under Exception 4. If the reason for rejection cannot be resolved, then the transferee must file Form 8288/8288-A and remit the 10% tax.

ITIN requests to pay withholding on Forms 8288 and 8288-A

- If a transferee does not have a TIN, and an amount withheld under section 1445 is due to the IRS, complete Form 8288, 8288-A and mail the forms along with the payment to Internal Revenue Service, Ogden Submission Processing Campus, PO Box 409101, Ogden UT 84409, by the 20th day from the date of the sale.

In a separate package, mail a completed Form W-7 with supporting documentation and a photocopy of Form 8288 and 8288-A (do not send any payment) to Internal Revenue Service, Austin Submission Processing Campus, ITIN Operation, PO Box 149342, Austin TX 78714-9342. Make sure you select reason "h" and write "Exception 4" on right side of reason line "h." The Austin IRS campus will fax Form 8288/8288-A to the Ogden campus.

- The Ogden Submission Processing Campus will not date stamp or mail out Form 8288-A, Copy B to the foreign transferor, if the transferors TIN is missing. Instead, Ogden IRS will mail letter 3794 SC/CG to the transferor with instructions to apply for an ITIN. Once the transferor receives the ITIN number they are to write it on the letter 3794 SC/CG and mail it back to the Ogden IRS office. The Ogden IRS office will document the ITIN number on Form 8288-A Copy B, date stamp "Copy B mailed" on it, and mail it out to the transferor.

- If the Ogden IRS office receives a completed Form W-7 application with supporting documentation attached to Form 8288 and 8288-A, then the Ogden IRS office will detach Form W-7 with supporting documentation and mail it to the Austin IRS Campus ITIN Operation along with a photocopy of Form 8288 and 8288-A. Once Austin processes the W-7 application they will edit the ITIN number on Form 8288 or 8288-A and fax it to the Ogden IRS office FIRPTA unit. The Ogden IRS office will document the ITIN number on Form 8288-A Copy B, date stamp "Copy B mailed" on it, and mail it out to the transferor.

Claiming reduced withholding on a tax return

- A foreign person who has an ITIN and is claiming credit for FIRPTA withholding shown on Form 8288-A must complete a federal tax return (1040-NR) using the ITIN assigned, and attach the date stamped Form 8288-A to the return as evidence of FIRPTA withholding.
- A foreign person who does not have a TIN (and as a result, will not have a date stamped Form 8288-A from the IRS)

and wishes to claim a credit for FIRPTA must request an ITIN. To request an ITIN the foreign person must send the following items to Internal Revenue Service, Austin Service Center, ITIN Operation, PO Box 149342, Austin TX 78714-9342:

- o a federal tax return (Form 1040-NR) for the year of the transfer;
- o an original Form W-7;
- o the required documentation listed in the Form W-7 instructions; and
- o a copy of the settlement statement from the sale that reflects the 10% withholding.

Notice of nonrecognition

- When a transferor exchanges a U.S. real property interest, and the exchange qualifies for nonrecognition treatment under the Internal Revenue Code (IRC), the transferor must draft a notice of nonrecognition in accordance with IRC § 1445 and include on the notice the transferor's TIN, name and address. The transferor must present this notice to the transferee before the date of sale. The transferee must mail the notice of nonrecognition to the IRS no later than 20 days from the date of the exchange. If the notice of nonrecognition does not contain the transferor's TIN, name and address, then the transferee cannot rely on the notice and is required to withhold tax.
- If the transferor needs to request an ITIN, he must attach a Form W-7 application requesting processing under Exception 4 to the notice of nonrecognition marked "DRAFT." The transferor must send these documents to Internal Revenue Service, Austin Service Center, ITIN Operation, PO Box 149342, Austin TX 78714-9342. If the IRS approves the Form W-7, a notice assigning an ITIN number will be mailed to the transferor. The transferor must finalize his copy of the notice of nonrecognition and present it to the transferee.
- If no ITIN is assigned to the transferor because the Form W-7 application is incomplete or does not demonstrate a tax purpose, the IRS will send a letter notifying the applicant and providing additional instructions. The transferee will not be able to rely on the notice of nonrecognition until the transferor obtains a TIN and completes the notice. If the exchange occurs without the transferor's obtaining and providing a TIN, the transferee must withhold the FIRPTA tax and file Forms 8288 and 8288-A with the IRS.

IRC §897(i) Election

- When a foreign corporation holding a U.S. real property interest wants to be treated as a domestic corporation for FIRPTA reporting, it must submit an election under IRC §897(i). This election must contain the U.S. Employer Identification Number (EIN), name and address of the foreign corporation. To obtain an EIN, the foreign corporation must complete Form SS-4, Application for Employer Identification Number, and apply either by choosing one of the options listed in the form instructions.

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