



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

21.8.5

AUGUST 18, 2023

## EFFECTIVE DATE

(10-01-2023)

## PURPOSE

- (1) This transmits revised IRM 21.8.5, International, Miscellaneous Foreign Investment in Real Property Tax Act, (FIRPTA) Related Issues.

## MATERIAL CHANGES

- (1) IRM 21.8.5.1.2 - Updated IRM reference for Accounts Management Authorities.
- (2) IRM 21.8.5.4 - Added reference to Form 8288-C in paragraphs 2, 8 and 10.
- (3) IRM 21.8.5.4.3 - Removed reference 2018 tax rate in paragraph 1b.
- (4) IRM 21.8.5.4.4 - Added reference to Form 8288-C in paragraphs 4 and 6. Added where to find seller information on Form 8288-B to paragraph 5g based on site clearance comments.
- (5) IRM 21.8.5.4.5 - Added reference to Form 8288-C in paragraph 1, Removed reference to 2018 transactions in paragraph 2. Added reference to IRM 3.11.6.4.4.1 to the if/then chart based on site clearance comments. Clarified which years are considered prior year returns in paragraph 4a based on site clearance comments.
- (6) IRM 21.8.1.5.4.1 - Added reference to IRM 3.11.6.4.4.1 to paragraph 1 based on site clearance comments.
- (7) IRM 21.8.5.4.11 - Added reference to Form 8288-C in paragraphs 2 and 4.
- (8) IRM 21.8.5.4.11.1 - Added reference to Form 8288-C in paragraph 1.
- (9) IRM 21.8.5.4.11.2 - Added reference to Form 8288-C in paragraph 4.
- (10) Editorial changes have been made throughout this IRM.

## EFFECT ON OTHER DOCUMENTS

IRM 21.8.5 effective October 1, 2022 is superseded.

## AUDIENCE

Wage and Investment, Accounts Management employees at the Ogden Campus who process Forms 8288-B, Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests.

Joseph Dianto  
Director, Accounts Management  
Wage and Investment Division



21.8.5

Miscellaneous Foreign Investment in Real Property Tax Act (FIRPTA) Related Issues

## Table of Contents

21.8.5.1 Program Scope and Objectives

- 21.8.5.1.1 Background
- 21.8.5.1.2 Authorities
- 21.8.5.1.3 Roles and Responsibilities
- 21.8.5.1.4 Program Management and Review
- 21.8.5.1.5 Program Controls
- 21.8.5.1.6 Acronyms
- 21.8.5.1.7 Related Resources

21.8.5.2 Taxpayer Advocate Service (TAS)

21.8.5.3 General Disclosure Guidelines

21.8.5.4 Form 8288-B, Withholding Certificate: Background

- 21.8.5.4.1 Submitting the Request for a Withholding Certificate
- 21.8.5.4.2 Initial Review Form 8288-B or Formal Letter Application
- 21.8.5.4.3 Categories for Withholding Certificate
- 21.8.5.4.4 Clerical Function
- 21.8.5.4.5 Processing the Withholding Certificate Application
- 21.8.5.4.6 Transactions Affecting the FIRPTA Tax Calculation
  - 21.8.5.4.6.1 Section 1031 Like-Kind Exchanges
    - 21.8.5.4.6.1.1 Requests for Withholding Certificates for Section 1031 Transactions
  - 21.8.5.4.6.2 Distributions from Real Estate Investment Trusts (REITS)
    - 21.8.5.4.6.2.1 Calculating the Gain on a REIT
    - 21.8.5.4.6.2.2 Reporting and Paying Over Withheld Amounts
  - 21.8.5.4.6.3 Estates and Stepped-up Basis
- 21.8.5.4.7 The Application and the Database
- 21.8.5.4.8 Follow-up on Rejected and Reduced Withholding Amount Forms 8288-B
- 21.8.5.4.9 Updating the database
- 21.8.5.4.10 Referrals to SBSE International Examination
- 21.8.5.4.11 Request for an Early FIRPTA Refund
  - 21.8.5.4.11.1 Processing a BMF Early FIRPTA Refund
  - 21.8.5.4.11.2 Working the "Prior Early Refund" Transcripts

21.8.5.5 IRC 897(i) Elections

- 21.8.5.5.1 FIRPTA Coordinator Responsibilities
- 21.8.5.5.2 897(i) Election with No Payment
- 21.8.5.5.3 897(i) Election with Payment
- 21.8.5.5.4 Direct Receipt Instructions

- 
- 21.8.5.5.5 Reviewing for Completeness
  - 21.8.5.5.6 The 897(i) Elections Package
  - 21.8.5.6 Notices Transferor (Seller) is Not Subject to FIRPTA Withholding
    - 21.8.5.6.1 Exceptions to FIRPTA Withholding
      - 21.8.5.6.1.1 Required Transferor (Seller) Actions
  - 21.8.5.7 Requests for Relief from Late Filing Late Notices of Nonrecognition
    - 21.8.5.7.1 Form of Request
      - 21.8.5.7.1.1 Processing Request for Relief
      - 21.8.5.7.1.2 Reasonable Cause Established
      - 21.8.5.7.1.3 Reasonable Cause Not Established

Exhibits

- 21.8.5-1 8288-B Withholding Certificate / Letter Menu
- 21.8.5-2 Glossary

---

# Miscellaneous Foreign Investment in Real Property Tax Act (FIRPTA) Related Issues 21.8.5

---

page 1

21.8.5.1  
(10-01-2017)  
**Program Scope and Objectives**

- (1) Audience: This IRM is intended for Customer Account Service issues involving Form 8288-B, Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests, and other miscellaneous issues involving the Foreign Investment in Real Property Tax Act (FIRPTA). The primary users of this IRM are Wage and Investment employees.
- (2) Policy Owner: Director Accounts Management.
- (3) Program Owner: Accounts Management, Process and Program Management, Business Management.
- (4) Primary Stakeholders: Wage and Investment (W&I), Large Business and International (LB&I).
- (5) Program Goals: Program goals for this type of work are included in the Accounts Management Program Letter as well as IRM 1.4.16, Accounts Management Guide for Managers.

21.8.5.1.1  
(10-01-2017)  
**Background**

- (1) Employees in the Accounts Management (AM) organization respond to telephone calls and taxpayer correspondence, process claims, certain applications and other internal adjustment requests
- (2) This IRM provides guidance to Accounts Management employees assigned to work Form 8288-B, Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests, along with other miscellaneous FIRPTA issues.

21.8.5.1.2  
(10-01-2023)  
**Authorities**

- (1) Information about authorities delegated to Accounts Management can be found in IRM 1.2.61.2, Current W&I Division Delegations of Authority.

21.8.5.1.3  
(10-01-2017)  
**Roles and Responsibilities**

- (1) IRM 1.1.13.7.3, Accounts Management (AM) provides information about roles and responsibilities in AM.
- (2) IRM 21.1.1, Accounts Management and Compliance Services Overview provides responsibility guidance to AM employees.

21.8.5.1.4  
(10-01-2017)  
**Program Management and Review**

- (1) IRM 1.4.16, Accounts Management Guide for Managers provides guidance for program management and review of programs assigned to AM.

21.8.5.1.5  
(10-01-2017)  
**Program Controls**

- (1) The current year Accounts Management Program Letter, Measures and Operating Guidelines.
- (2) IRM 21.10.1, Embedded Quality (EQ) Program for Accounts Management, Campus Compliance, Field Assistance, Tax Exempt/Government Entities, Return Integrity and Compliance Services (RICS), and Electronic Products and Services Support.

21.8.5.1.6  
(10-01-2017)  
**Acronyms**

- (1) You can review acronyms used in Exhibit 21.8.5-2.

21.8.5.1.7  
(10-01-2022)  
**Related Resources**

- (1) Use the following list of publications and Internal Revenue Codes (IRC) as related resources
- Pub 515, Withholding of Tax on Nonresident Aliens and Foreign Entities is used as a related resource
  - Pub 523, Selling Your Home
  - Pub 527, Residential Rental Property (Including Rental of Vacation Homes)
  - Pub 535, Business Expenses
  - Pub 544, Sales and Other Dispositions of Assets
  - Pub 550, Investment Income and Expenses
  - Pub 551, Basis of Assets
  - IRC 897, Disposition of investments in United States real property
  - Pub 901, U.S. Tax Treaties
  - IRC 1031, Exchanges of property held for productive use or investment
  - IRC 1033, Involuntary Conversion
  - IRC 1041, Transfers of property between spouses or incident to divorce
  - IRC 1445, Withholding of tax on dispositions of United States real property interests
  - IRC 1446, Withholding tax on foreign Partners' share of effectively connected income.

21.8.5.2  
(10-01-2016)  
**Taxpayer Advocate Service (TAS)**

- (1) Per the Taxpayer Bill of Rights (TBOR), taxpayers have the right to expect a fair and just tax system which provides taxpayers with the opportunity to have their facts and circumstances considered when it might affect their underlying liabilities, ability to pay, or ability to provide information timely.
- (2) Taxpayers have the right to receive assistance from the Taxpayer Advocate Service (TAS) when experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through normal channels. For more information on the Taxpayer Bill of Rights, visit <http://taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights>.
- (3) Refer taxpayers to the Taxpayer Advocate Service(TAS) (see IRM Part 13, Taxpayer Advocate Service ) when the contact meets TAS criteria (see IRM 13.1.7.2, Introduction to TAS Case Criteria), or when Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order), is attached and you cannot resolve the taxpayer's issue the same day.
- (4) "Same day" includes cases that can be resolved in 24 hours, as well as cases where steps can be taken within 24 hours to begin resolving the issue. Refer to IRM 13.1.7.5, Same-Day Resolution by Operations.
- (5) When referring cases to TAS, use Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order), and forward to TAS in accordance with your local procedures. Preparation instructions for the Form 911 are available on the form and in IRM 21.1.3.18, Taxpayer Advocate Service (TAS) Guidelines.

- (6) The National Taxpayer Advocate has reached agreements with the Commissioners of the Wage and Investment (W & I) , Small Business and Self-employed (SB/SE), Tax Exempt and Government Entities (TE/GE) , Criminal Investigation (CI), Appeals, and Large Business and International (LB&I) , outlining procedures and responsibilities for the processing of TAS casework when either the statutory or delegated authority to complete case transactions rests outside of TAS. These agreements are known as Service Level Agreements (SLAs). For more information about these agreements see *Service Level Agreements (sharepoint.com)*.
- (7) When referring cases to TAS, keep in mind TAS employees do not have the delegated authority to make international adjustments. TAS employees however, can help taxpayers with certain international issues. For more information about TAS's delegated authorities, see IRM 13.1.4.2.2, Delegation of Authority.
- (8) For taxpayers who prefer to contact TAS directly, provide the toll-free number 877-777-4778. International callers who cannot dial toll-free may call 787-522-8601 (English assistance) and 787-522-8600 (Spanish assistance). Publication 1546-EZ, We Are Here to Help You, contains addresses and phone contact information for each Taxpayer Advocate office.

## 21.8.5.3 (04-25-2019) **General Disclosure Guidelines**

- (1) IRC 6103 establishes the taxpayer's (TP's) right to confidentiality of returns and return information. You must be sure you provide correct information to the correct TP or authorized representative. Ensure the authenticity of the taxpayer and the third party by checking the Integrated Data Retrieval System (IDRS) Command Code (CC) CFINK for the Power of Attorney (POA).
- (2) IRC 7213, IRC 7213A, and IRC 7431 provide criminal penalties and civil remedies to ensure that T/P's returns and return information remain confidential.
- (3) For more information, refer to IRM 21.1.3.2, General Disclosure Guidelines and for full discussion, refer to IRM 11.3, Disclosure of Official Information.

## 21.8.5.4 (10-01-2023) **Form 8288-B, Withholding Certificate: Background**

- (1) The disposition/sale of a U.S. Real Property Interest (USRPI) by a foreign person is subject to income tax withholding.
- (2) Generally, the tax on the total amount realized must be withheld and submitted to IRS with:
  - Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests
  - Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
  - Form 8288-C, Statement of Withholding Under Section 1446(f) (for Withholding on Dispositions by Foreign Persons of Partnerships Interests)
- (3) The amount realized is the sum of:
  - The cash paid, or to be paid
  - The fair market value of other property transferred, or to be transferred

- The outstanding amount of any liability assumed by the transferee or to which the U.S. real property interest is subject immediately before and after the transfer.
- (4) Effective for dispositions on or after February 16, 2016, Public Law (PL) 114-113, the Protecting Americans from Tax Hikes (PATH) Act, generally increases the withholding rate from 10 to 15 percent of the amount realized.

**Note: Reduced rate for certain sale of residence:** The increased rate of withholding does not apply to the sale of a property for use by the buyer as a residence where the amount realized by the seller is \$1 million or less. The withholding rate for dispositions meeting this condition remains at 10 percent. The withholding rate is zero when the amount realized is \$300,000. or less.

- (5) The amount required to be withheld for any disposition can be adjusted with an approved Withholding Certificate.
- (6) Form 8288-B, Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests, is used to apply to the IRS for the reduction or elimination (by category of exemption or reduction) of withholding on a transfer made by a foreign seller.

**Note:** A formal letter of application is acceptable in lieu of Form 8288-B for all categories of exemption or reduction requests.

- (7) Form 8288-B, or formal letter, is generally submitted by either:
- The transferor (foreign seller)
  - The transferee (buyer) of a USRPI
  - Agent.
- (8) The Internal Revenue Code treats an option to acquire a USRPI as a USRPI itself. Therefore, if a foreign person disposes of an option to acquire a USRPI, the transferee (buyer) of the option must deduct and withhold the correct percentage of the amount realized by the transferor (seller) upon the disposition. See paragraph four above for the correct percentages. The transferee (buyer) must remit the withholding tax to the IRS 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, or Form 8288-C, Statement of Withholding Under Section 1446(f) (for Withholding on Dispositions by Foreign Persons of Partnerships Interests) . Alternatively, the transferee (buyer) or transferor (seller) may request a withholding certificate on Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, in instances where reduced withholding is correct . See Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities for more details.
- (9) Treasury Decision 9082 requires all foreign transferors (sellers) of USRPI's provide their Taxpayer Identifying Number (TIN) on withholding tax returns, applications for withholding certificates, and other notices or elections under IRC 897 and IRC 1445. TINs are required so the IRS can identify foreign taxpayers and more easily match applications, withholding tax returns, notices, and elections with the foreign transferor's (seller's) income tax returns.



- (10) The IRS is also aware of transactions where a foreign corporation arranges a sale of its USRPI to a transferee (buyer) and quitclaims the USRPI to its foreign individual shareholder, so the individual (instead of the corporation) sells the USRPI to the transferee (buyer) at a reduced capital gain rate (a 20 percent maximum rate). If the foreign corporation had directly sold the USRPI itself, it could be subject to a capital gain rate as high as 21 percent (35 percent for transactions that close before January 1, 2018). The foreign corporation (and not the individual) is the taxable party in this transaction and must send Form 8288 and Form 8288-A, or Form 8288-C to the IRS with a withholding tax equal to 21 percent (35 percent for transactions that close before January 1, 2018) of the gain in the USRPI, unless it qualifies for reduced withholding and submits Form 8288-B to the IRS. See Publication 515 for more information. It is important that all U.S. realtors, tax practitioners, attorneys, and real estate and title companies be alerted to this tax avoidance scheme.

**Caution:** Forward all quitclaim 8288-B applications with this tax avoidance scheme criteria to:  
Internal Revenue Service  
Attn: Classification M/S 4160  
1973 Rulon White Boulevard  
Ogden, UT 84404

- (11) **Purpose of Withholding Certificates:** A withholding certificate, obtained prior to a transfer, notifies the transferee (buyer) and the withholding agent that either no withholding is required or the tax can be withheld at a reduced rate.
- A withholding certificate obtained **after** the transfer of the property may authorize either an early refund, or a normal refund.
  - A withholding certificate authorizing a reduction to, or an exemption from, withholding may be issued when the general rate exceeds the transferor's (seller's) maximum tax liability; or withholding of a reduced amount does not jeopardize collection of the tax; or
  - The transferor (seller) is exempt from U.S. tax on all gain realized on the transaction; or
  - **Notice of Non-Recognition** the transferor (seller) notifies the transferee (buyer) in writing that the correct percentage of withholding is not required by the transferee (buyer) on the USRPI because the **transferor (seller) is not recognizing** any gain or loss with respect to the transfer. See paragraphs three and four above for the correct percentage of withholding.
  - An agreement with the IRS that provides security for the payment of the tax liability is executed by either the transferee (buyer) or the transferor (seller).
  - A withholding certificate can be requested for an Installment Sale. See IRM 21.8.5.4.5 (7), Processing the Withholding Certificate Application.
- (12) Agents (lawyers, real estate agents, etc.) of either the transferor (seller) or transferee (buyer) may sign the application for the exemption certificate under a power of attorney and must certify under penalty of perjury that all representations are true and correct to the best of that person's knowledge and belief.
- (13) Agents are not generally liable for the withholding tax.

**Note:** Under Treasury Regulation 1.1445-4(e), an agent who does not notify a transferee (buyer) of a false certification or statement received from the transferor (seller) is held liable for the tax the recipient of the notice would have been required to withhold. However, the agent's liability is limited to the amount of compensation the agent receives from the transaction.

21.8.5.4.1  
(10-01-2020)

**Submitting the Request  
for a Withholding  
Certificate**

- (1) In order for a Withholding Agent to withhold at a reduced rate at the date of transfer, a request for a withholding certificate **must**:
- Be submitted to the IRS prior to the Date of Transfer (DOT) of the United States real property interest (USRPI), or
  - Be mailed to the IRS (postmarked) no later than the day of the transfer, and
  - Contain the complete name, address, and U.S. TIN number of both the transferor (seller) and the transferee (buyer) involved in the transaction.

**Exception:** Immediately forward the Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, received with an original Form W-7, Application for IRS Individual Taxpayer Identification Number, or Form W-7 (SP), Application for IRS Individual Taxpayer Identification Number (Spanish Version) and supporting documentation to the Austin Submission Processing Campus (AUSPC) Individual Taxpayer Identification Number (ITIN) unit. The ITIN unit has 10 days to process the ITIN request. Upon completion of ITIN processing, the Form 8288-B (reflecting the assigned ITIN number) is transshipped to the Ogden Accounts Management Campus (OAMC) for processing. OAMC controls the case file and begins its processing.

**Note:** If more than one person is listed as the transferor (seller), ensure an additional sheet is attached to Form 8288-B listing the name, address and TIN of any additional transferors (sellers). If not present, reject the Form 8288-B.

- (2) If the request for a withholding certificate is submitted on or before the date of the transfer, the amount withheld or a lesser amount as determined by the Service, is reported and paid over to the Service by the 20th day following the issuance of the withholding certificate.
- (3) If the request for a withholding certificate was **NOT** submitted on or prior to the date of transfer of the USRPI the withholding agent is required to withhold and remit the determined amount with the Form 8288 and Form 8288-A to the Ogden Submission Processing Center by the 20th day after the transfer date of the USRPI.

**Exception:** Process a request for a withholding certificate submitted after the date of transfer when the request is complete and has all required accompanying documentation that shows no tax is due or owed based on the transaction. An application is considered incomplete if necessary documentation is not provided that shows no tax due, or a loss has occurred. This exception exists to ease taxpayer burden while assuring we collect the correct amount of tax.

21.8.5.4.2  
(10-01-2021)  
**Initial Review Form  
8288-B or Formal Letter  
Application**

- (4) When the taxpayer receives a withholding certificate which reduces or eliminates the required withholding amount, and a higher amount is already paid, the taxpayer may submit a written request for early refund under IRC 1445.

- (1) The request for a withholding certificate can be submitted to the IRS in two formats:
- A Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests or
  - A formal letter

- (2) **All applicants must complete** or have the following information before the withholding certificate can be issued.

- **Transferor** (seller) information - Contains the Taxpayer Identification Numbers (TIN), names and addresses of all transferors (sellers).
  - **Transferee** (buyer) information - Contains the TIN, names and addresses of all transferees (buyers).
  - **Applicant** designation - Identifies who filed the application.
  - **Withholding Agent** - Contains the name and TIN of the withholding agent or other entity filing the application.
- Note:** The withholding agent and transferee (buyer) are generally the same person.
- **Withholding Certificate mailing address** - Contains the complete address of where the withholding certificate is to be mailed.
  - **Description of transaction (type of interest)** - Includes the date of transfer (DOT), contract price, type of interest transferred real property, associated personal property, and domestic U.S. real property holding corporation. Additionally, includes the use of property at time of sale (rental/commercial, personal, or other) and the adjusted basis.
  - **Location and Description of Property Address** - Contains the address of the property being sold.
  - **Three Preceding Tax Years - Checkboxes** - Where tax return was filed **and** were income taxes paid and amount.
  - **Checkbox A** - Exemption from U.S. tax or nonrecognition or **Checkbox B** - Maximum tax liability is less than tax required to be withheld, and **Checkbox C**- Installment sales rules.
  - **Unsatisfied withholding liability under Section 1445** - Checkbox.
  - **Application for withholding certificate under Section 1445(e)** - Checkbox. If yes, Line 9a and 9b must be checked.

- (3) **An application/letter must have the “Penalty of Perjury” statement signed by one of the responsible parties listed below:**

- Individual
- Responsible officer, if a corporation
- General partner, if a partnership
- Trustee, executor, or equivalent, if a trust of estate
- Agent authorized by a general or specific power of attorney.

- (4) Incomplete Form 8288-B: If, after review of Form 8288-B, it is determined more information is required from the applicant, issue database Letter 3319 Withholding Certificate - Request FMI, for the information. Prepare a Form

10022, Case History/Telephone Sheet or other history sheet designated by local management and suspend case for 30 days (45 days if there is a foreign address).

If...	Then...
Response is received	Continue to process application (90-day processing window begins).
No response is received by the end of 30 days	Reject the 8288-B application and document on the case history sheet <b>"NO REPLY"</b> , then: <b>1.</b> Issue database Letter 3313 Withholding Certificate - Para. A Rejected, to the transferor (seller), and <b>2.</b> Issue database Letter 3316 Withholding Certificate - Para. B Buyer Reject, to the transferee (buyer).

21.8.5.4.3  
(10-01-2023)

#### Categories for Withholding Certificate

- (1) Applicants for withholding certificates must include the category or the reason the request is being submitted.
- a. **Category 1:** Applications for withholding certificates based on a claim the transferor (seller) is entitled to nonrecognition treatment or is exempt from tax. Additional requirements included in this category follow:  
a brief description of the transfer  
a brief summary of the law and facts supporting the claim of nonrecognition or exemption  
evidence the transferor (seller) has no unsatisfied withholding liability the Fair Market Value (FMV) or other "good faith" estimate of the property. No supporting evidence concerning the value of the property is required in the application.
  - b. **Category 2:** Applications for withholding certificates based solely on a calculation of the transferor's (seller's) maximum tax liability. The following additional requirements must be included. The applicant must include a calculation of the maximum tax (MTAX) that may be imposed on the disposition, including the following information.

#### Additional Requirements for MTAX Calculation

1. The amount realized by the transferor (seller) with evidence confirming this amount (such as a copy of the signed contract).

2. The adjusted basis of the property with evidence confirming the basis claimed.

**Example:** Schedules of depreciation allowed for tax purposes during the period the property was held and/or settlement sheet when purchased.

3. Amounts recaptured with respect to accelerated depreciation, investment tax credit, or other items subject to recapture.

## Additional Requirements for MTAX Calculation

4. The maximum long-term capital gain tax rate for individuals for gains realized on or after January 1, 2013 is 20 percent. The corporate maximum capital gain tax rate is 21 percent. However, the transferor (seller) may also submit a draft copy (**DO NOT PROCESS the DRAFT COPY**) of their income tax return showing the ESTIMATED MAXIMUM TAX LIABILITY (EMTAXL). The estimated taxes may differ from the above- mentioned maximum tax rates. If so, allow the taxpayer's Maximum Tax Liability (MTAXL). **See Treasury Regulation 1.1445-6(c).**

5. Tentative tax owed.

6. Amount of any increase or decrease of tax to which the transferor (seller) is subject, including any reduction to which the transferor (seller) is entitled, under a provision of a U.S. income tax treaty, as well as evidence supporting the adjustment claimed.

- c. **Category 3:** Applications for withholding certificates under the special installment sales rules. Generally, the transferee (buyer) is required to fully satisfy the withholding obligations based on the amount realized. However, when the applicant supplies the computation, as described under Category 2, the gain under the installment method can result in reduced withholding. Additional requirements included in this category follow:

## Additional Requirements for Installment Sales

1. An agreement signed by the Transferee (Buyer) "under penalties of perjury" to withhold and pay the required tax.
2. Withhold and pay the correct percent of tax or such lesser amount, as determined by IRS, of any down payment, including any liabilities of the transferor (seller) assumed by the transferee (buyer).
3. Withhold the correct percent or such lesser amount of each subsequent payment.
4. Notify IRS prior to the disposition or encumbrance of the subject property and pay over, using Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests, and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests to the Service the remaining amounts withheld.

**Note:** See IRM 21.8.5.4, Form 8288-B, Withholding Certificate: Background, for the correct percent of tax.

- d. **CATEGORIES 4, 5 OR 6** are not identified on Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests. Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, instructs the taxpayer to include a statement containing the information pertinent to the specific category for which they qualify.

- e. **Category 4:** Application for withholding based on an agreement for the payment of tax. Include the following information to establish the transferor's (seller's) maximum tax liability, or the amount otherwise required to be withheld, a signed copy of the agreement proposed by the applicant, and a copy of the security instrument proposed by the applicant.
- f. **Category 5:** Applications for blanket withholding certificates. A statement indicating a blanket withholding certificate is in affect which excuses withholding with respect to multiple disposition of property interest by the transferor (seller) during a period of no more than 12 months.
- g. **Category 6:** Applications for withholding certificates based on any other basis. Information stated above for Category 4 must be included, along with a description of the nonconforming security, and a memorandum of law and facts establishing the proposed security is valid and enforceable and adequately protects the government's interest.

**Note:** If the criteria for Category 4, 5 or 6 are identified, forward the document to the Ogden Campus, using Form 3210, Document Transmittal to:

Internal Revenue Service  
Attn: Classification M/S 4160  
1973 N. Rulon White Boulevard  
Ogden, UT 84404

21.8.5.4.4  
(10-01-2023)  
**Clerical Function**

- (1) The applications are mailed to:

Director, OSPC  
Accounts Management Branch  
PO Box 409101  
Ogden, UT 84409

- (2) The clerk must take the following actions:

- a. Extract the applications from the envelopes and staple the envelope to the back of the application.
- b. Stamp the received date on the application.

**Note:** If Form 8288-B, Withholding Certificate Application is accompanied with an original Form W-7/Form W-7SP application with supporting documentation, transship the original Form W-7/Form W-7SP and supporting documentation to AUSPC ITIN unit for processing. Retain the copies of the Form 8288-B and supporting information necessary to process the Form 8288-B. Take no further action until notified by the ITIN unit that an ITIN is issued.

- c. Determine if the forms are true processable applications or another type of inquiry.
- d. Review Form 8288-B, and determine if the case is filed as a Category 4, 5, or 6. If so, then transship the application (see paragraph 3 below for complete instructions).
- e. Control all Form 8288-B Certificates on the withholding certificate database to assign a control number and place in a file folder.

**Reminder:** If multiple transferors (sellers) or transferees (buyers) are listed on the Form 8288-B, then input all other TINs in the remarks section.



- (3) If the case is forwarded to the Ogden Examination Branch, process as follows:
  - a. Forward the case to the Examination Branch Attn: Classification M/S 4160, using Form 3210, Document Transmittal, noting the reason for the referral.
  - b. Control, monitor and keep all copies of Forms 3210 submitted and acknowledged by the Examination Branch.
- (4) If the application is a Category 1, 2, or 3, then the case is worked in the Ogden Accounts Management (AM) Technical Team, Mail Stop 6731/6732. Begin assembling the Form 8288-B application case to include:
  - Application
  - Form 10022, Case History Sheet, (or other history sheet designated by local management).
  - Copies of Form 8288-B and Form 8288-A, or Form 8288-C(if applicable).
  - Control Number consists of the calendar year and a 5- digit sequential number (i.e., the first application received in 2023 will have a Foreign Investment Real Property Tax Act (FIRPTA) Control Number of “202300001”).
  - Enter the applicant’s name, as it is stated on the application, on the left side of the case jacket.
  - Document the FIRPTA Control Number on the application.
  - Maintain the case file in numerical order within the unit.
- (5) **INTLWebApps Database** - You must establish the case in the withholding certificate database using the following steps:
  - a. Log in and select “FIRPTA”.
  - b. Select Form 8288-B.
  - c. Select search and enter the search criteria. Look for any duplicate cases. If a case is found, notate the file number, and provide the case to the assigned case worker. If no case is found continue creating a new case by following the remaining steps.
  - d. Select Form 8288-B.
  - e. Select “New” Form 8288-B.
  - f. On the “W/A” tab enter the input date, date of transfer, received date, withholding agent or fiduciary name and TIN. Click next.
  - g. On the “Transferor” tab (seller), enter the transferor information including name, TIN address, city, state, zip code, and the transferor’s country if available. This information is found on lines 4 and 5 of Form 8288-B . Click next.
  - h. On the “Transferee” tab (buyer), enter the transferee information including name, TIN address, city, state, zip code and transferee’s country if applicable. Click next.
  - i. On the “W/H Certificate” tab, enter the Real Property transaction description including location or property description, contract price, amount withheld or to be withheld on the sale. Check the required boxes indicating if taxes were paid or returns were filed.
  - j. Input the contact person’s IDRS number, name, telephone number and tour of duty(TOD). Click next

**Note:** The TOD must be input in a 4- digit military time code, ex. 0600 for 6:00 am or 1630 for 4:30 pm. If the time is not input in a 4- digit number, it will print out incorrectly on the letters.

- k. Click Save and enter the control number the system generates on the case file.

(6) If an application is received with a Form 8288 / Form 8288-A, or Form 8288-C and payment, take the following actions:

1. Prepare Form 4287, Record of Discovered Remittances, for the payment and hand carry the return and payment to the Deposit activity function.
2. Enter action taken into the withholding certificate database.

21.8.5.4.5  
(10-01-2023)

**Processing the  
Withholding Certificate  
Application**

- (1) Review the application for completeness. If the application is complete, take these additional steps to perfect the application before entering the information in the database and issuing the withholding certificate.

**Note:** Correspond with the transferee (Buyer) for Form 8288/ Form 8288-A, or Form 8288-C when a payment is received with Form 8288-B.

- (2) Review all supporting documentation for the application to determine the category on which the application is based.,



If	Then
The application is for Category 1, 2 or 3, and the package is complete	<p>Use Form 10022 , or other history sheet designated by local management to enter the following:</p> <ul style="list-style-type: none"> <li>a. The transferor (seller) name control, TIN, Form Number, and Tax Period.</li> <li>b. IRS received date. Take particular care to enter the earliest IRS received date into the database. For further information see IRM 21.5.1.4.2.4, Received Date-Determination. For applications missing the postmarked envelope refer to IRM 3.11.6.4.4.1, Determining Timeliness</li> </ul> <p><b>Exception:</b> If the postmark shows the application was mailed on or before the date of transfer and the IRS received date is after the date of transfer, use the postmark date as the received date.</p> <ul style="list-style-type: none"> <li>c. The TE must determine allowable deductions using the settlement sheet, statements containing major improvements, copies of canceled checks or receipts, etc.</li> <li>d. The sale price of the property minus the original purchase price minus the allowable deductions give us the taxable gain taxed on the sale (transfer).</li> </ul> <p><b>Note:</b> The computation of gain may not be applicable if the transaction is governed by IRC 1031 (like-kind-exchanges), IRC 1033 ( involuntary conversions), or former IRC 1034 (former rollover rule).</p> <ul style="list-style-type: none"> <li>e. Do not allow taxes and interest in the calculation of adjusted basis for determining gain on U.S. real property interest.</li> <li>f. The result as stated in (f) above is then multiplied by 20 percent for net long term capital gains for individuals and 21 percent for partnerships, corporations, estates, and trusts , which gives you the minimum tax required. <b>See Treasury Regulation 1.1445-6(c).</b></li> <li>g. Either an adding machine tape, or the calculation work sheet is needed to support the computation for the net income and tax required. It is imperative the tape, or calculation work sheet is attached to the application. This is the only way to identify how the IRS determined the tax.</li> <li>h. After the database case file information is entered, the case is ready for closing.</li> </ul>
The application is category 4, 5, or 6	Send the application to the Ogden Examination Function

(3) Use the following table if the application is incomplete

If	Then
The application is NOT COMPLETE	<ul style="list-style-type: none"> <li>• Enter on the case history sheet - the transferor's (seller's) name control, TIN, form and tax.</li> <li>• Determine if the issue can be resolved by phone. If a number is available, initiate a telephone contact.</li> <li>• If the issue is not resolved by telephone or if no number is available, notate what information is missing on the history sheets.</li> <li>• Send the 3319, RFMI letter, using the database. Refer to paragraph four of IRM 21.8.5.4.2 for suspense period.</li> </ul>

- (4) **Net Operating Loss (NOL) Calculation:** Special attention must be paid to cases where a NOL is claimed. For purposes of calculating the maximum tax imposed upon a disposition, only take NOLs into account if:
- The transferor (seller) claiming the NOL was engaged in a trade or business in the U.S. during the three preceding tax years, and has timely filed an income tax return for each of those three years. For example a NOL claimed in 2023 the three preceding tax years are 2019 through 2023. Copies of these income tax returns should be included in the application. However, if the applicant does not include tax returns with the application, you can process the application when the necessary information is verified using IDRS. The tax examiner **MUST** research IDRS to verify the required tax returns were filed. You must verify the NOL with either the return or IDRS to consider it. The American Recovery and Reinvestment Act of 2009 provides an extended carryback period for "eligible small businesses" sustaining a NOL in tax year 2008. .
- Exception:** If a business is less than three years old, the NOL can be taken into account, but the business must have timely filed an income tax return for those years it was in existence.
- The NOL is reflected on previously filed returns.
- Note:** Do not consider an anticipated loss to current year operations.
- The claimed NOL is not currently the subject of an examination by or dispute with the Service (AMDIS status greater than 08).
  - The transferor (seller) agrees that, if the amount of gain claimed and offset by the NOL on the application EXCEEDS the amount of the gain actually recognized and offset by a NOL when the tax return is filed for the current year, interest is due and payable on the amount subject to withholding (the difference between the amount actually withheld and the total actually due).

- e. The claimed NOL was not previously used to reduce withholding upon other dispositions of USRPI's or to reduce the amount of any other obligation or liability under the U.S. Internal Revenue laws.
- f. The transferor (seller) states in the application: At least 80 percent of its gross income subject to U.S. taxation in the year of disposition is derived from USRPI's.

**Note:** Process Passive Activity Losses in a similar manner as Net Operating Losses.

(5) **Transferor's (seller's) unsatisfied withholding liability;** Analyze the application to determine if there is an unsatisfied liability.

- a. The applicant must provide a calculation of the transferor's (seller's) unsatisfied withholding liability or evidence it does not exist. That liability is the amount of any tax the transferor (seller) was required to withhold, but did not withhold, under FIRPTA, the subject USRPI or a prior interest.
- b. The transferor's (seller's) unsatisfied withholding liability is included in the calculation of maximum tax liability, so the prior withholding liability may be satisfied by the transferee's (buyer's) withholding upon the current transfer. Evidence may include one or more of the following:

## Examples of Evidence — See Rev. Proc. 2000-35

- The transferor (seller) acquired the subject or prior real property interest before January 1, 1985
- A copy of Form 8288 with proof of payment of the amount shown
- A copy of a withholding certificate for the subject or prior real property, and a copy of Form 8288 with proof of payment
- A copy of the non-foreign certificate furnished by the person from whom the subject or prior USRPI was acquired, executed at the time of acquisition
- Evidence the transferor (seller) purchased the subject or prior real property interest for \$300,000 or less AND a statement signed by the transferor (seller) indicating they purchased the property for use as a residence
- Evidence the person, from whom the transferor (seller) acquired the subject or prior USRPI, FULLY paid any tax imposed
- A copy of notice of nonrecognition treatment provided to the transferor (seller) by the person from whom the transferor (seller) acquired the subject or prior USRPI, or
- A statement signed by the transferor (seller) under penalties of perjury, giving the facts and circumstances to support the transferor's (seller's) claim no withholding was required under FIRPTA with respect to the transferor's (seller's) acquisition of the subject or prior real property.

- (6) Refer to the following chart about Form 8288-B line 8 processing:

If ...	And ...	Then ...
Line 8 is marked yes	The applicant does not provide the unsatisfied withholding liability calculation	Call or correspond with the applicant to request the calculation
The applicant responds within the given time frame	The applicant provides the calculation	Continue processing the application
The applicant cannot provide the calculation, or does not respond within the given time frame		Reject the application as incomplete
Line 8 is marked no	The applicant does not provide the required evidence of no withholding liability	Call or correspond with the applicant to request the evidence required under Section 1445
The applicant responds within the given time frame	The applicant provides the required evidence	Continue processing the application
The applicant cannot provide the required evidence, or does not respond within the given time frame		Reject the application as incomplete.

- (7) **Installment sales:** When the application identifies Installment Sales (CAT 3), take the following steps.
1. Follow the instructions in (3) above.
  2. Ensure the installment Payment amount is in accordance with the installments approved on Form 8288-B.
- (8) The 1997 Taxpayer Relief Act replaced Section 121 one- time exclusion and Section 1034 roll-over provision with amended Section 121, that generally allows a taxpayer (including Nonresident Aliens) to exclude up to \$250,000 (\$500,000 for certain joint returns) of gain on the sale of property if the property was owned and used as the taxpayer's principal residence for at least two of the last five years before the sale or exchange. The exclusion can be used on a continuing basis, but not more frequently than once every two years. This became effective on sales after May 6, 1997.

**Exception:** The exclusion is not available to Expatriate Nonresident Alien Individuals subject to IRC 877(a)(1) because they gave up their U.S. residency for the principal purpose of tax avoidance.

21.8.5.4.6  
(11-13-2008)  
**Transactions Affecting  
the FIRPTA Tax  
Calculation**

- (1) Many transactions affect the FIRPTA tax calculation in addition to NOLs. This subsection describes some of the transactions taken into account.

21.8.5.4.6.1  
(10-01-2018)  
**Section 1031 Like-Kind  
Exchanges**

- (1) **For like-kind exchanges started on or before December 31, 2017:** Under IRC 1031 (like-kind exchanges), no gain or loss is recognized if property which is held for productive use in a trade or business or for investment is exchanged for property of like-kind held for use in a trade or business or for investment. The words **like-kind** reference the nature and character of the property and not to its grade or quality. For example: A city duplex for farmland, improved land for unimproved land, city real estate for a farm or ranch, or investment property and investment property of like-kind). Listed below are some types of property that do not qualify for like-kind exchange:

- Stock in trade or other property held primarily for sale
- Stock, bonds or notes
- Other securities or evidence of indebtedness or interest
- Interest in a partnership
- Certificates of trust or beneficial interest
- Choses in action (A right to property rather than actual possession).

**Note:** For other qualifications see IRC 1031 and related regulations.

- (2) **For like-kind exchanges started on or after January 1, 2018:** under IRC 1031, (like-kind exchanges), no gain or loss is recognized if real property which is held for productive use in a trade or business or for investment is exchanged for real property of like-kind used in a trade or business or for investment. The words "like-kind" reference the nature and character of the property and not to its grade or quality. (For example: A city duplex for farmland, improved land for unimproved land, city real estate for a farm or ranch, or investment real property and investment real property). Real property located in the United States is not of like-kind to real property located outside the United States. The following types of property do not qualify for like-kind exchange treatment:

- Property that is not real property
- Real property held primarily for sale
- Real property held for personal purposes such as a taxpayer's residence

- (3) The disposition of U.S. real property interest by a foreign person, including a disposition that is part of a transaction that qualifies for section IRC 1031 non-recognition treatment, is subject to FIRPTA withholding. To qualify for relief under FIRPTA, a transferor (seller) must meet all the requirements of IRC 1031 and related regulations. The transferor (seller) must also file a Notice of Nonrecognition with the IRS and with the transferee (buyer), but no Notice is allowed (accepted) if the following exists:

- The transaction does not qualify for nonrecognition in its entirety.
- If the transaction is a non-simultaneous like-kind exchange where the transferee (buyer) (a) can't determine the exchange is completed and (b) can't determine all the conditions for nonrecognition have been met

at the time for paying the withholding tax and filing the Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.

**Note:** In this case, withholding is only excused if a withholding certificate is obtained. See Treasury Regulation 1.1445-2(d)(2)(ii), (iii) and (iv).

21.8.5.4.6.1.1  
(10-01-2016)

**Requests for  
Withholding Certificates  
for Section 1031  
Transactions**

- (1) A taxpayer (transferor or transferee) may request a withholding certificate (in lieu of a notice described above, if applicable) with respect to a like-kind exchange under IRC 1031 as a transaction subject to a nonrecognition provision. See Treasury Regulation 1.1445-3(b)(6).
- (2) An application for a withholding certificate submitted by a taxpayer is especially helpful in determining if the requirements of IRC 1031 are met because the applicant must include information substantiating the requirements. Also, if the application is properly submitted, the withholding on deferred like-kind exchanges is not required within 20 days of the date of transfer.

21.8.5.4.6.2  
(10-01-2016)

**Distributions from Real  
Estate Investment Trusts  
(REITS)**

- (1) REITS include business trusts or corporations with substantial passive real estate investments. They are classified as publicly traded or privately held, as well as domestically controlled or foreign controlled. A REIT normally qualifies as a U.S. Real Property Holding Corporation (USRPHC), which means any interest in that corporation qualifies as a U.S. Real Property Interest (USRPI). However, the PATH Act excludes certain REIT interests held by qualified shareholders from the definition of USRPI for dispositions and distributions by REITs on or after December 18, 2015. See IRC 897(k)(2) for more information. In addition, if a REIT is domestically controlled, an interest in that REIT is not a USRPI. Accordingly, gain on the sale of the stock in a domestically controlled REIT is generally not subject to tax under IRC 897(a). Distributions from a domestically controlled REIT attributable to sales or exchanges of USRPis are generally subject to tax under IRC 897(a) pursuant to IRC 897(h)(1).
- (2) A domestically controlled REIT has less than 50 percent of the Fair Market Value (FMV) of its outstanding stock directly or indirectly held by foreign persons during the five-year period ending on the applicable determination date.
- (3) A foreign controlled REIT has 50 percent or more of the FMV of the outstanding stock owned by foreign persons. An interest in the foreign controlled REIT constitutes a USRPI. See IRC 897(h).
- (4) For the purpose of determining whether a Qualified Investment Entity (QIE) is domestically controlled, the PATH Act provides the following rules will apply beginning on December 18, 2015
  - A person holding less than 5 percent of any class of stock of a QIE which is regularly traded on an established securities market in the United States at all times during the testing period is treated as a U.S. person unless the QIE has actual knowledge such person is not a U.S. person.
  - Any stock in a QIE held by another QIE is treated as held by a foreign person if Any class of stock of such other QIE is regularly traded on an established securities market, or



Such other QIE is a RIC that issues certain redeemable securities. Notwithstanding the above, the stock of the QIE is treated as held by a U.S. person if such other QIE is domestically controlled.

- Stock in a QIE held by any other QIE not described above is treated as held by a U.S. person in proportion to the stock ownership of such other QIE which is (or is treated as) held by a U.S. person.

21.8.5.4.6.2.1  
(10-01-2019)

## Calculating the Gain on a REIT

- (1) If a REIT makes a distribution to foreign persons and the distribution is attributable to gain realized by the REIT from the sale or exchange of a USRPI, the foreign person is taxed on that gain under IRC 897(h)(1).
- (2) The distribution is treated as an IRC 897 gain to the extent the distribution is attributable to gain realized by the REIT from the sale or exchange of a USRPI.
- (3) The REIT is required to withhold at 21 percent on any distribution treated under IRC 897(h)(1) as a gain realized by a nonresident alien individual or foreign corporate shareholder from the sale or exchange of a USRPI. See IRC 1445(e)(6).
- (4) The amount subject to withholding under IRC 1445 is the amount of the distribution determined with respect to each share, or certificate of beneficial interest, designated by the REIT as a capital gain dividend multiplied by the number of shares or certificates of beneficial interest owed by the foreign person. See Treasury Regulation 1.1445-8(c)(2)(ii)(A).

21.8.5.4.6.2.2  
(10-01-2021)

## Reporting and Paying Over Withheld Amounts

- (1) The withholding agent responsible for withholding and reporting is the REIT or nominee on behalf of another domestic or foreign person. For purposes of IRC 1445, a nominee is a domestic person who holds an interest in a partnership, trust, or REIT (See Treasury Regulation 1.1445-8(d)). A REIT's nominee status is determined in accordance with Treasury Regulation 1.1445-8(b)(3).
- (2) Withholding and reporting for REITS is not done on Form 8288 and Form 8288-A.
- (3) Withholding and reporting is done on Form 1042 Annual Withholding Tax Return for U.S. Source Income of Foreign Persons and Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding. See Reg. 1.1445-8(g).

#

notify the withholding agent of the correct withholding and reporting procedures for future filings. The withholding agent should not file for the same transaction again using Form 1042 and Form 1042-S which might result in "double withholding". See Reg. 1.1445-5(b)(1).

21.8.5.4.6.3  
(10-01-2011)

## Estates and Stepped-up Basis

- (1) In general, the basis a taxpayer uses for property received from a decedent, by bequest or inheritance, is the fair market value of the property at the date of the decedent's death. This is known as the stepped-up basis.

**Example:** A decedent owns a home originally purchased 20 years ago for \$100,000. On the day the decedent dies, the fair market value of the home is \$320,000 and the decedent bequeaths the home to the

taxpayer. The taxpayer is generally allowed to use the stepped-up basis of \$320,000 per IRC 1014(a) resulting in an increased basis to the home.

- (2) A foreign person making a disposition of the property in the U.S. must verify the stepped-up basis.
- (3) Verify the stepped-up basis following the same procedures used in verifying the basis for a Category 2 (Maximum Tax) application. See IRM 21.8.5.4.3.

**Note:** This rule does not apply for decedents who died in 2010 and whose executors make an election under IRC 1022. See IRM 21.8.5.4.6.3(4).

- (4) The executors of the estates of decedents who died during 2010 may elect out of the estate tax system and may instead apply the provisions of IRC 1022. If this election is made, there is no stepped-up basis. The taxpayer acquiring property from the decedent receives a basis equal to the lesser of the adjusted basis of the property when in the hands of the decedent, or the fair market value of the property on the date of the decedent's death.

21.8.5.4.7  
(10-01-2023)

#### The Application and the Database

- (1) After the forms are reviewed for completeness enter the information into the database to update the record and generate the correct letters to the transferor (seller) and transferee (buyer). When entering an application into the database take particular care to enter the earliest IRS received date into the database. For further information see IRM 21.5.1.4.2.4, Received Date-Determination. For applications missing the postmarked envelope refer to IRM 3.11.6.4.4.1, Determining Timeliness
- (2) Refer to your FIRPTA and Foreign Partnership Withholding Job Aid, Catalog Number 50568X, for instructions on the Withholding Certificate database.
- (3) **Take note once the Form 8288-B information is entered into the database and the record entry is saved, a control file number is automatically assigned by the computer. The control file number consists of the current year being processed and a five- digit number (i.e., yyyynnnn, 202300001 for the first file number entered).**

21.8.5.4.8  
(03-03-2020)

#### Follow-up on Rejected and Reduced Withholding Amount Forms 8288-B

- (1) When a Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests is rejected, or issued for a reduced withholding amount, the transferee (buyer) is instructed to file Form 8288 within 20 days of the date of the rejection, but only if the transfer took place. Otherwise, the transferee (buyer) or transferor (seller) should inform the IRS the transfer did not take place. This will ensure the filing of required returns, and if not, then a follow up system is in place.
- (2) Every Monday, the INTLWebApps Database system matches the Form 8288-B **Disposal Code 04 (Rejected) or 05 (Unprocessable-Late)** cases against the 8288 Database when the 8288-B follow-up list is being generated.
- (3) A Disposal Code 04 case enters the 8288-B Follow-up program 90 days after the initial contact rejection letter was issued. A Disposal Code 05 case enters the Form 8288-B Follow-up program 70 days after the initial contact unprocessable letter was issued.



- (4) Every Monday (weekly basis), the Unit Manager, or Lead Tax Examiner accesses the FIRPTA Database main menu screen. Once at the FIRPTA menu, select Menu Option "Form 8288 Audit". Now select "Audit Search".
- (5) This will bring up the **report menu** window where you will enter the "Monday date", in the "Follow Up Date field ". Select the Disposal Code(s) then select the "Search By Disposal Code" button. This updates the database status indicator to "S" for aged cases and generates the report.

**Reminder: This action initiates the database search between the 8288 files and the disposal code 04 and 05 8288-B files.**

- (6) Review the 8288-B report list and additional research performed against the 8288 Database before a second contact letter is issued.
- (7) There are a number of statuses used in processing Form 8288-B follow-up cases. The statuses become effective only after the initial (70 days or 90 days) pending days have expired. The following table identifies the status code and their meaning:

Status Code	Meaning
<b>S</b>	"Selected" - The computer compiles data comparison between the 8288-B DC 04 and 05 cases against the 8288 Database.
<b>F</b>	"Found" - The computer assigns this status to all cases for which a Form 8288 is located.
<b>W</b>	"Wait" - After the second contact letter is printed, the computer waits 90 days for a response or action taken in the account before automatically changing the status to " <b>R or N</b> ".
<b>N</b>	<p>"No Response" - The applicant did not respond to second contact letter. This status is computer-generated 90 days after the computer has performed a second search of the 8288 Database, which is after the second contact letter has expired. However, if the amount realized is</p> <p>computer will assign a "<b>T</b>" status, the application will appear on the weekly follow-up report for trans- shipping.</p>

#

Status Code	Meaning
<b>R</b>	“Responded Manually” - Input this status when a return is located by the tax examiner while working on the taxpayer’s correspondence response received from the transferee (buyer).
<b>T</b>	“Transship Manually” - This status automatically updates when all cases for which the 90- day pending time frame ( <b>W status</b> ) has expired and/or no response to the second contact letter was or wasn’t received. Manually input “T” status for correspondence received before the 90 day expiration resulting in tax due and no payment is received.

#

- (8) Use the following table to update the status

Form 8288-B Status Update Table
Select “Form 8288 Audit” from the FIRPTA menu, then select “Audit Search”
Query the record by inputting the Follow Up Date, then choose “Selected” from the drop- down menu. Press “Search by Follow up Status” to run the report. The selected case information will appear on screen and show a status of “S” for “SELECTED”
To change the status, select the case control number for editing. You must enter the correct status character found on the withholding certificate page as referenced in paragraph 7 above. Enter either “ <b>R</b> ” to indicate the transferee (buyer) has “responded” to the initial letter with an acceptable response, or “ <b>T</b> ” to indicate the transferee (buyer) has greater.
Depress the <b>SAVE</b> button to save the status update change.

#

- (9) In order to print the second contact Letter 3534, select “Print” from the Form 8288 Audit menu. Select “Generate Letter 3543” to print the letter.
- (10) **To check the status responses** on all cases where a 3543 letter was sent select “Form 8288 Audit” from the FIRPTA menu and search by Follow-up Status. The status is a “W”.

# Miscellaneous Foreign Investment in Real Property Tax Act (FIRPTA) Related Issues 21.8.5

page 23

21.8.5.4.9  
(10-01-2015)  
**Updating the database**

- (1) A “W” status automatically generates when the second contact letter is printed from the INTL NSA1 database system. This action alerts the computer to schedule a systemic follow-up 90 days from the date of the letter.
- (2) If a Form 8288 return is filed within 90 days from the initial letter, the computer will **not select** that “rejected / non-processable” case for the follow-up program.
- (3) If the follow-up program does not locate a Form 8288 filing within 90 days from the initial letter, it will **select** the “rejected / non-processable” case for the follow-up process.
- (4) If the transferee (buyer) corresponds to inform the IRS the sale did not go through, take the following action:
  1. Select Menu Option “**Form 8288 Audit**”.
  2. Depress the “Select Audit Search” button.
  3. Enter the follow up dates in the applicable field(s) and depress the “Search by Follow-up status” button.
  4. To change the status, select the case control number for editing. Enter the correct status character found on the withholding certificate page as referenced in paragraph 7 of IRM 21.8.5.4.8. Enter an **R** in the status field to indicate no further follow-up is required.
  5. In the remarks field, enter the reason for the status change and your employee profile number.
  6. Depress the **SAVE** button.
  7. Repeat the above steps to query another case.
- (5) If the status does not change within 90 days from the date of the second contact letter, the computer will perform a secondary search of the 8288 database to locate a return. If an 8288 return is not located by the computer

“T” status and case will appear on the weekly follow-up report for transshipping. Otherwise, the computer will assign an “N” status.

- The INTLWebApps database system will select cases with a “W” status, as well as new disposal code 04 and 05 cases to match them against the 8288 database.
- If an 8288 is found, the status will update to “F or R” and no further action is required.
- If no data is found in the 8288 database, the case will appear on the follow-up report.
- After a second contact letter (3543) is issued, suspend the case in the system for another 90 days. If after 90 days, no 8288 is found or the taxpayer does not respond, the status updates to a “T” indicating a potential transfer to Small Business Self Employed (SBSE) International Examination.

21.8.5.4.10  
(03-29-2013)  
**Referrals to SBSE International Examination**

- (1) When a rejected (disposal code 04) or unprocessable (disposal code 05) 8288-B reaches a “T” status and the case cannot be resolved in the FIRPTA Unit, refer the case to SBSE International Examination. Refer only those cases

#

#  
#

- (2) On a weekly basis, the designated employee selects "Option 4" from the 8288-B Follow-up on Rejected or Non-Processable Applications menu.
- (3) A listing generates showing cases still open and in "T" status.
- (4) Before transshipping the case to SBSE International Examination, verify the 8288 Batch work is current in processing to ensure if the taxpayer has filed within the last 90 days the return will have been processed. If not current, search the existing batch work within the unit. If more research is warranted, complete it before transferring the case.
- (5) If transfer to SBSE International Exam in Ogden is required, prepare a Form 3210, Document Transmittal and address it to:  
Internal Revenue Service  
Attn: Classification M/S 4160  
1973 Rulon White Boulevard  
Ogden, UT 84404.
- (6) All completed cases must show a status of **R**, **N**, or **T**.

21.8.5.4.11  
(10-01-2023)  
**Request for an Early  
FIRPTA Refund**

- (1) The transferor (a foreign person or entity seller) may request an early refund of the FIRPTA tax paid on Form 8288 prior to the date on which the transferor's tax return is due (without extensions) if they received an approved withholding certificate reducing or eliminating the FIRPTA tax withholding that was paid.
- (2) The transferor's (seller's) request for an early refund must be made in the form of a letter or a Form 843, Claim For Refund and Request for Abatement, and must:
  - Be signed by the transferor (seller)
  - Contain the transferor's (seller's Social Security Number (SSN), Individual Tax Identification Number (ITIN), or Employer Identification Number (EIN)
  - Have a copy of the withholding certificate attached (secure one from database if not attached)
  - Have a stamped copy of Form 8288-A, or Form 8288-C Copy B attached.

**Note:** At times, a request for an early refund is attached to the Form 8288-B application. If a reduced or zero withholding certificate is approved, process the request for an early refund.

- (3) An Early FIRPTA refund is issued within the same year of withholding. Therefore, no interest is paid on the refund.

**Note:** If a telephone inquiry is received about an early FIRPTA, refund assistors will research IDRS to determine if the refund has posted. If the refund has not yet posted the assistor will explain the 90- day processing time frame to the caller. See IRM 21.8.5.4.2 for information about the 90- day time frame.

- (4) Use IDRS Letter 12C, Individual Return Incomplete for Processing: Forms 1040, 1040A or 1040EZ, Letter 3104C, FIRPTA and Foreign Partnership Withholding Tax Return Processing, Withholding Certificate Checklist Letter 3319 , or the telephone to request from the transferor (seller) a signature, Form 8288-A Copy B, or a Taxpayer Identification Number. Suspend case for 30 days (45 days if foreign address) before disallowing the claim.

**Note:** Do not request a copy of the Form 8288-A , or Form 8288C Copy B if the information to process the early refund is verified using the INTLWebApps database.

- (5) Upon receipt of all the required information, the FIRPTA early refund claim is complete.

**Note:** The Ogden FIRPTA team at OSPC, MS 6731 processes FIRPTA Early Refunds.

- (6) **Prior to processing the early refund request**, research the foreign person's TIN to look and see if the transferor (seller) has an existing balance due on Master File or Non-Master File, or a "V-" or "-V" freeze code.
- a. If a "V-" freeze is found, then a balance due account is present.  
**NMF Form 8288:** Transfer the funds via Form 2424, Account Adjustment Voucher (use the Claim Received Date as the credit date on Form 2424, and the date of payment as the debit date on Form 2424) to the Balance Due account. The remainder of the money (if any) is refunded to the foreign person.  
**BMF Form 8288:** Transfer the funds via IDRS Command Code ADD24 to the balance due account. The remainder of the money (if any) is refunded to the foreign person.
  - b. If a "-V" freeze is present, then the taxpayer is in Bankruptcy Status and you must contact the IRS "Insolvency Unit" located in the taxpayer's geographical area. Follow the instructions given to you by the Insolvency Unit.

21.8.5.4.11.1  
(10-01-2023)

## Processing a BMF Early FIRPTA Refund

- (1) **Complete Request (BMF):** If the request for an early refund is complete and the Form 8288-A, or Form 8288-C credit is verified via the database, take the following action to issue the early refund:
- a. Verify the TIN used by the claimant is valid. For example, if an ITIN is used verify the ITIN is not deactivated.
  - b. Access the Form 8288 account on Command Code TXMOD (if the TIN is an SSN or ITIN, use a definer "V" at the end of the TIN) with MFT 17.
  - c. Enter IDRS Command Code "REQ54."
  - d. Input a tax decrease using Transaction Code (TC) 291 (the decrease amount is the difference between the TC 150 tax amount and the amount shown as due on the withholding certificate).
  - e. Use FLC 60.
  - f. Use Blocking Series 15.
  - g. **Use Hold Code 4.**
  - h. Enter the W/H Cert File Number in the "Remarks."
  - i. Prepare IDRS Manual Refund, Form 5792, and use the correct Line Code 11 through 15. For line code information refer to IRM 2.4.20-12, Description of line item numbers.

**Note:** No credit interest is paid on Early FIRPTA Refunds.

- j. Enter a TC 971 with Action Code 037, and the SSN of the person receiving the refund.
- k. Once the IDRS Manual Refund is prepared, use IDRS Command Code RFUNDR to enter the refund online.

- (2) Access the transferor's (foreign person/entity selling the property) IDRS account, Form 1040-NR, U.S. Nonresident Alien Income Tax Return, Form 1120-F, U.S. Income Tax Return of a Foreign Corporation or Form 8804, Annual Return for Partnership Withholding Tax (Section 1446)) and input a REQ77 action. At the FRM77 screen, input TC 971 with Action Code 650 and the amount of the refund in the existing money field.

**Note:** When the transferor's (seller's) income tax return is filed the following tax year, and the FIRPTA credit is being claimed, a TC 570 .00 generates. This causes an accounts maintenance "**Prior Early Refund**" transcript to generate to the FIRPTA unit. This transcript generates to prevent the IRS from issuing an erroneous refund to the transferor (seller) on the same FIRPTA credit, previously refunded to the transferor (seller) from the Form 8288, MFT 17 account.

- (3) Monitor the manual refund until it posts to the module. See IRM 21.4.4.6.1, Monitoring Manual Refunds.

21.8.5.4.11.2  
(10-01-2023)

#### Working the "Prior Early Refund" Transcripts

- (1) Review the transcript to see if the taxpayer is claiming the same FIRPTA withholding credit on the income tax return.
- (2) If claimed, then reverse the duplicate FIRPTA credit in the account with a TC 290 .00, and a credit reference number 332 (with a minus), which will post as a TC 767. Send the taxpayer IDRS Letter 3104C, and explain the FIRPTA credit was previously refunded.
- (3) If the same FIRPTA credit is not being claimed, then input a TC 571 .00 to release the freeze and refund.
- (4) If the FIRPTA credit on the tax return is greater than the TC 971 Action Code 650 amount refunded to the transferor (seller) from the Form 8288 account, review the return for the Form 8288-A, or Form 8288-C to see if the credit is claimed again or in addition to another amount. If the FIRPTA credit is being claimed again, reduce the FIRPTA credit by the TC 971 AC 650 amount, via a REQ54 adjustment and make sure the other Form 8288-A, or Form 8288-C credit is verified on Form 13698.

**Note:** Send the taxpayer IDRS Letter 3104C and explain the reduction in refund was caused by the FIRPTA credit being previously refunded.

21.8.5.5  
(10-01-2021)

#### IRC 897(i) Elections

- (1) Under IRC 897(i), a foreign corporation may make an **897(i) election** if it meets **ALL four** of the following conditions. The foreign corporation **MUST**:
  - Hold a U.S. Real Property Interest (USRPI) at the time of the election
  - Be entitled to nondiscriminatory treatment with respect to its USRPI under any treaty to which the U.S. is a party
  - Make an 897(i) election by filing a document described in Treasury Regulations 1.897-3 and Treasury Decision 9082 and pay tax on prior dispositions
  - Be a U.S. real property holding corporation (Treasury Regulation 1.897-8T(b)).

**Note:** The revised regulations listed in Treasury Decision (TD) 9082 require the applicant provide the IRS with their EIN on the



election request. This mandatory requirement is effective November 4, 2003. If the 897(i) Election request does not have an EIN, deny the application.

- (2) The foreign corporation must supply a general statement indicating an election under section 897(i) is being made. **This statement must be signed by a responsible corporate officer (or duly authorized person) under penalty of perjury.** No particular format is required for this statement.
- (3) **A foreign corporation that makes an election under section 897(i) of the IRC is not treated as a domestic corporation for purposes of ANY OTHER provision of the Code or treasury regulations except that it is treated as a domestic corporation for purposes of IRC 1445.**
- (4) An election, once made, may be revoked only with the consent of the Secretary of the Treasury.

## 21.8.5.5.1 (10-01-2013) **FIRPTA Coordinator Responsibilities**

- (1) The Foreign Investment in Real Property Tax Act (FIRPTA) Coordinator is the Examination Revenue Agent (RA) located at Ogden Service Center (OSC). The RA serves as a resource for the FIRPTA tax examiner processing the election under IRC 897(i) and for handling Withholding Certificates under Category 4, 5 and 6.
- (2) The FIRPTA Coordinator assists the Ogden Technical Team by providing technical expertise about an 897(i) election.

## 21.8.5.5.2 (10-01-2009) **897(i) Election with No Payment**

- (1) Applications are made in the form of a letter or document under Treasury Regulation 1.897-3(c)(1). The letter or document must:
  - State "An election under section 897(i) is being made"
  - Contain the signature of a responsible corporate officer, verified under penalty of perjury that the statement and all other documents submitted are true to his/her knowledge and belief (1.897-3(c)(1))
  - Demonstrate the applicant is a USRPHC (Treasury Regulation 1.897-8(b))
  - Contain general information with regard to the foreign corporation (1.897-3(c)(1)(i)): Name, Address, Identifying number, and Place and Date of Incorporation
  - Identify the Tax Treaty and Article under which the foreign corporation is seeking nondiscriminatory treatment (1.897-3(c)(1)(ii))
  - Describe the USRPI (1.897-3(c)(1)(iii)), dates acquired, adjusted basis, fair market value on date of election, **or** book value if not a U.S. real property holding corporation under 1.897-2(b)(2).
- (2) In addition, the following statements must be attached to the election request:
  - **Waiver of Treaty Benefits (1.897-3(c)(2)):** A statement the electing foreign corporation is waiving treaty benefits with respect to any gain or loss from the disposition of a USRPI during the period in which the election is in effect.
  - **Consent to Taxation (1.897-3(c)(3)):** A binding agreement to treat as though it was a domestic corporation, any gain or loss recognized upon the disposition of any USRPI during the period in which the election is

in effect AND the disposition of any property acquired in exchange for a USRPI in a nonrecognition transaction.

- **Interest-holders' consent to election (1.897-3(c)(4)):** From each person holding an interest in the corporation, a signed consent to the making of the election and a waiver of U.S. treaty benefits (1.897-3(c)(4)(i)), and a list that describes and identifies each interest holder's interest. State type, amount and fair market value as of election date.
- **Corporation's retention of interest-holders' consent (1.897-3(c)(4)(i)) :** A corporation need not comply with 1.897(c)(4)(i) if it complies with the following requirements: 1. The corporation must place a legend on each outstanding certificate for shares of its stock that reads substantially as follows: "[Name of corporation} has made an election under section 897(i) of the United States Internal Revenue Code to be treated as a U.S. corporation for certain tax purposes, and any purchaser of this interest may therefore be required to withhold tax at the time of purchase." The corporation must certify the foregoing requirement is met. 2. The corporation must include with its election a statement the corporation has received both a signed consent to the making of the election and a waiver of U.S. treaty benefits with respect to gain or loss from the disposition of an interest in the corporation from each person who holds an interest in the corporation on the date the election is made. 3. The corporation must include with its election a list describing the interest in the corporation held by each interest-holder. The list need not identify the interest-holders by name, but must set forth the type, amount, and fair market value of the interests held by each. 4. The corporation must include with its election an agreement the corporation will keep all signed consents and waivers for a period of three years from the date of the election and supply the documents within 30 days of a request.
- **Statement regarding prior dispositions (1.897-3(c)(5)) stating:** No interest in the corporation was disposed of during the shortest of; the period from 6/19/1980 through the election date; **or**, the period from the date on which the corporation first holds a USRPI through the election date **OR** the five-year period ending on the date of election.

**Exception:** If a corporation is unable to state no such dispositions are made, it may make the 897(i) election **ONLY** if it says it has complied with the requirements of 1.897-(d)(2) (Election after disposition of stock).

21.8.5.5.3  
(10-01-2009)  
**897(i) Election with  
Payment**

- (1) An Election after Disposition of Stock IRC 1.897-3(d)(2) may be made after a disposition, if the requirements of either IRC 1.897-3(d)(2)(i) or IRC 1.897-3(d)(2)(ii) are met.
- **IRC 1.897-3(d)(2)(i) -** Payment of any tax which would have been imposed upon all persons who had disposed of interests. Such payment must be made by the later of the date the election is made, or the date on which payment of such taxes otherwise due. The taxpayer must also include any interest that would have accrued, had tax actually been due with respect to the disposition. When a payment is made by a present holder of an interest, the basis of the person's interest shall be increased to the extent of the amount paid.
  - **IRC 1.897-3(d)(2)(ii) -** Each person acquired an interest in the electing corporation took a basis in the interest equal to the basis of the interest



in the hands from which the interest was acquired, increased by the sum of any gain recognized by the transferor (seller) of the interest and any tax paid under chapter 1 by the person that acquired the interest, if such interest was acquired after 6/18/80.

- **Adequate proof of basis:** The corporation must establish the basis and amount gain realized by all persons.

(2) **Anti-Abuse rule IRC 1.897-3(e)** - A corporation otherwise eligible for an IRC 897(i) election, may do so only by complying with the requirements of Treasury Regulation 1.897-3(e)(2) during the period described in Treasury Regulation 1.897-5(c)(5):

- Prior to receipt of USRPI by electing corporation, the stock in such corporation (or in any corporation controlled by such corporation) was acquired in a transaction in which the transferee (buyer) of such stock, obtained an increase in basis in the stock over the adjusted basis of the stock of the transferor (seller); AND
- The full amount of gain realized by the transferor (seller) was not subject to U.S. tax; AND
- The electing corporation received the USRPI in a transaction to which IRC 897(d)(1)(B) or IRC 897(e)(1) applies providing for nonrecognition of gain.
- Recognition of gain. A corporation which is otherwise eligible to make an election under Section 897(i), may do so only by complying with the requirements set out in the Reg. 1.897-3(e)(1) (Anti-Abuse Rule). Such amount must be paid only if the stock of the electing corporation would have constituted a USRPI had it made the election before the acquisition. Such amount must be paid by the later of the date of the election OR the date on which such tax would otherwise be due. Also, must include any interest that would have accrued had tax actually been due with respect to the disposition.
- Definition of control. For purposes of the Anti-Abuse rule, a corporation controls a second corporation if it holds 80 percent or more of the total combined voting power of all classes of stock entitled to vote; AND holds 80 percent or more of the total number of shares of all other classes of stock of the second corporation.

(3) If the election was signed by someone other than an correct corporate officer, a valid Power of Attorney (POA) must be attached.

**Note:** Forward Form 2848, Power of Attorney and Declaration of Representative to the Centralized Authorization File (CAF) Unit for input to IDRS and/or assignment of a CAF number.

(4) The approved taxes and interests paid are **NON-REFUNDABLE**.

21.8.5.5.4  
(12-13-2011)  
**Direct Receipt  
Instructions**

(1) An application for an IRC 897(i) election is mailed to:  
Ogden IRS Campus  
Accounts Management  
PO Box 409101  
Ogden, UT 84409

- (2) These applications get hand carried to the FIRPTA Processing Unit within the Campus.
- (3) The case is assigned to a tax examiner who performs the duties of perfecting the application.
- (4) The tax examiner determines whether to request more information using the Checklist Letter 3495 , issue acceptance acknowledgment Letter 3496 , or reject the application using IDRS Letter 3064C, to the foreign corporation.

21.8.5.5.5  
(12-13-2011)  
**Reviewing for  
Completeness**

- (1) The IRS “must” either issue the acceptance acknowledgement Letter 3496 within 60 days of receipt of the IRC 897(i) Election application, correspond for more information using Checklist Letter 3495, or issue a rejection of the election using IDRS Letter 3064C.

**Note:** When more information is required to process the election request, the IRS must immediately contact the applicant, or duly authorized agent, in order to meet the 60- day response time frame.

- Completely review the application for all required information. If information is missing, correspond with the applicant, or duly authorized agent, by using checklist Letter 3495.
- The checklist is also provided to help you in reviewing the election application for completeness under IRC 897(i).
- After receiving the requested information, incorporate it with the original application.
- After final determination is made, issue acceptance acknowledgement Letter 3496 to inform the applicant, or their duly authorized agent of the approval.

**Reminder:** Due to the nature of the application, an Acceptance or Rejection letter must be issued **within** “60 days” from the initial receipt date. A copy of the letter is printed for the applicant and a copy retained with the IRS file.

- (2) Retain all IRC 897(i) Elections in record storage with a destruction date of 10 years from the date of record storage.

21.8.5.5.6  
(12-13-2011)  
**The 897(i) Elections  
Package**

- (1) Assemble the election application package to include the following in the order referenced:

- FIRPTA Input Document
- Information Checklist
- Application
- Any other documents enclosed, such as a Power of Attorney (POA), etc.

**Note:** Forward Form 2848, Power of Attorney and Declaration of Representative to the Centralized Authorization File (CAF) Unit, for input to IDRS and/or assignment of a CAF number.

## 21.8.5.6

(10-01-2008)

**Notices Transferor (Seller) is Not Subject to FIRPTA Withholding**

- (1) IRC 897 and IRC 1445 generally require the transferee (buyer) of a U.S. real property interest withhold the required percent of the amount realized by a foreign person. In some cases, withholding equal to 35 percent of the gain realized by the transferor (seller) is required. A U.S. real property interest is any interest in either:
  - Real property located in the U.S. or the U.S. Virgin Islands
  - A domestic corporation, unless it is shown the corporation was not a U.S. real property holding corporation (USRPHC) during the previous 5 years (or during the period in which the transferor (seller) held the interest, if shorter)
  - Certain personal property associated with the use of real property.

## 21.8.5.6.1

(05-20-2008)

**Exceptions to FIRPTA Withholding**

- (1) Withholding is not required if a U.S. real property interest is disposed of in a nonrecognition transaction. A nonrecognition transaction generally includes any transaction afforded nonrecognition treatment by the operation of a nonrecognition provision of the IRC, or if under the provisions of a tax treaty, the transferor (seller) is not required to recognize a gain.
- (2) Withholding is also not required if a foreign person disposes of an interest in a domestic corporation and that corporation establishes it is not a USRPHC under Treasury Regulation 1.897-2.
- (3) Withholding is not required if the property is not a U.S. real property interest. To determine whether an interest in real property or a domestic corporation constitutes a U.S. real property interest, see Treasury Regulation 1.897-1 and 1.897-2.
- (4) Withholding is not required if one or more individual transferees (buyers) acquire the U.S. real property interest for use as a residence and the amount realized on the transfer is \$300,000 or less. See Treasury Regulation 1.1445-2(d)(1).
- (5) A transferee is not required to withhold if, prior to or at the time of the transfer, the transferor provides a written notice to the transferee that:
  - States the transferor is not a foreign person;
  - Sets forth the transferor's name, identifying number, and home address; and
  - Contains a signature under penalties of perjury. See Treasury Regulation 1.1445-2(b).

## 21.8.5.6.1.1

(10-01-2016)

**Required Transferor (Seller) Actions**

- (1) The transferor (seller) must provide a notice to the transferee (buyer) that the transferor (seller) is not required to recognize a gain or loss with respect to nonrecognition transactions under IRC 1445(a). The transferee (buyer) must provide a copy of this notice to the IRS within 20 days of the transfer.
- (2) The entity required to withhold must provide notice to the IRS within 20 days of the transfer with respect to nonrecognition transfers under IRC 1445(e).
- (3) The transferor (seller) must obtain a statement from the domestic corporation it is not a USRPHC no later than the date, including extensions, on which the tax return for reporting the disposition is due with respect to transfers under IRC 1445(a) of interests in domestic corporations are not USRPHCs. The domestic

corporation must mail a statement to the IRS within 30 days after it provides the statement to the foreign transferor (seller).

- (4) The transferor (seller), or its fiduciary, must obtain a statement from the domestic corporation it is not a USRPHC. The domestic corporation must mail a notice of the statement to the IRS within 30 days after it provides the statement to the foreign transferor (seller) with respect to transfers under IRC 1445(e) of interests in domestic corporations not considered USRPHCs.

**Exception:** The PATH Act provides IRC 897 does not apply to USRPIs held directly (or indirectly through one or more partnerships) by a Qualified Foreign Pension Fund (QFPF). This also would apply to USRPIs held by any entity when a QFPF holds all of the interests. The exemption also applies to any distributions from a REIT received by a QFPF or its wholly owned entity. The PATH Act also excludes QFPF and entities wholly owned by a QFPF exempted by this new rule from the definition of a foreign person. Therefore, FIRPTA withholding would not apply to such QFPF and entities.

21.8.5.7  
(02-25-2010)  
**Requests for Relief from  
Late Filing Late Notices  
of Nonrecognition**

- (1) Rev. Proc. 2008-27 provides a simplified method to request relief if there was reasonable cause for the failure to timely file the statements and notices under the Required Transferor (Seller) Actions. See IRM 21.8.5.6.1.1, Exceptions to FIRPTA Withholding.

21.8.5.7.1  
(10-01-2014)  
**Form of Request**

- (1) The request for relief is a completed statement or notice containing a detailed explanation why the failure to timely file was due to reasonable cause. The documents will state Filed Pursuant to Rev. Proc. 2008-27. The documents are filed with the IRS at  
Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409
- (2) Required elements:
  - A notice or statement required under sections 1.897-2(g)(1)(ii)(A), 1.897-2(h), 1.1445-2(c)(3)(i), 1.1445-5(d)(2), 1.1445-5(b)(2), or 1.1445-5(b)(4) was not filed with the relevant person or the IRS.
  - With respect to a completed statement or notice required to be filed with the IRS under sections 1.897-2(h), 1.1445-2(d)(2), or 1.1445-5(b)(2) as applicable, the taxpayer must attach an explanation describing why the taxpayer's failure to timely file the statement or notice was due to reasonable cause. Additionally, within the explanation, the taxpayer must provide they obtained from an appropriate person the statements or notices required under sections 1.897-2(g)(1)(ii)(A), 1.1445-2(c)(3)(i), 1.1445-2(d)(2)(i)(A), or 1.1445-5(b)(4)(iii)(A), as applicable.

21.8.5.7.1.1  
(02-25-2010)  
**Processing Request for  
Relief**

- (1) Acknowledge receipt of the request for relief using Letter 96C, Acknowledgement for General Use/Inquiry. The reply date is 120 days from the date Letter 96C is input. If we do not notify the taxpayer again within 120 days, we deem the taxpayer established reasonable cause. If 120 days passes, follow the procedures for Reasonable Cause Established. See IRM 21.8.5.7.1.2, Reasonable Cause Established

- (2) Review the request using reasonable cause criteria discussed in IRM 20.1.1.3.2, Reasonable Cause. Situations that may constitute reasonable cause include:
- Miscommunication between the taxpayer's tax advisors
  - Circumstances beyond the taxpayer's control
  - Reasonable reliance on a paid professional who gave erroneous advice on the filing requirement, and
  - Unavoidable delay in obtaining a necessary signature.
- (3) Inform the taxpayer of our determination on the request for relief using Letter 3064C, IDRS Special Letter.

21.8.5.7.1.2  
(05-20-2008)  
**Reasonable Cause  
Established**

- (1) If the taxpayer established reasonable cause, use an open paragraph stating, "We reviewed your request for relief as described in Revenue Procedure 2008-27. We accepted your request for relief and determined there was reasonable cause for the delay in filing the notice with the IRS under either section 1.897-2(g)(1)(ii)(A), 1.897-2(h), 1.1445-2(c)(3)(i), 1.1445-2(d)(2), 1.1445-5(b)(2), or 1.1445-5(b)(4)."

21.8.5.7.1.3  
(05-20-2008)  
**Reasonable Cause Not  
Established**

- (1) If the taxpayer did not establish reasonable cause, use an open paragraph stating,
- "We reviewed your request for relief as described in Revenue Procedure 2008-27. You did not established reasonable cause for failing to timely file the required notice or notices under either section 1.897-2(g)(1)(ii)(A), 1.897-2(h), 1.1445-2(c)(3)(i), 1.1445-2(d)(2), 1.1445-5(b)(2), or 1.1445-5(b)(4). "
- "If you have more information, please resubmit your request with the new material and a copy of this letter to the address above. If you disagree with this determination, you can request relief by following the letter ruling procedures described under sections 301.9100-1 through 301.9100-3."

**This Page Intentionally Left Blank**

---

# Miscellaneous Foreign Investment in Real Property Tax Act (FIRPTA) Related Issues 21.8.5

page 35

**Exhibit 21.8.5-1 (03-10-2022)**

**8288-B Withholding Certificate / Letter Menu**

Transferor/Seller	Transferee/Buyer
3307 (Zero/Exempt - TIN for Refund)	3309 (Zero/Exempt - Generic)
3308 (Reduced MTAXL - TIN for Refund)	3310 (Reduced MTAXL - Generic)
3309 (Zero/Exempt - Generic)	3312 (Reduced Installments)
3310 (Reduced MTAXL - Generic)	3313 (Rejected - RFMI not Recd)
3311 (Reduced NOL)	3314 (Rejected - MTAXL >10 percent)
3312 (Reduced Installments)	3316 (Rejected - Generic)
3313 (Rejected - RFMI not Recd)	3318 (Filed 8288-B Late)
3314 (Rejected - MTAXL >15 percent)	3319 (RFMI)
3315 (Filed 8288-B Late)	3320 (Interim Letter)
3319 (RFMI)	3497 (Reduced - Generic)
3320 (Interim Letter)	3793 (No TIN 8288-B)
3793 (No TIN 8288-B)	

**Exhibit 21.8.5-2 (01-21-2009)****Glossary**

<b>Glossary</b>	
AUSPC	Austin Submission Processing Campus
DOT	Date of Transfer
EMTAX	Estimated Maximum Tax Liability
FMV	Fair Market Value
FIRPTA	Foreign Investment in Real Property Tax Act of 1980
IDRS	Integrated Data Retrieval System
INTLWebApps	International Web Applications
ITIN	Individual Taxpayer Identification Number
JGTRRA	Jobs and Growth Tax Relief Reconciliation Act of 2003
MTAX	Maximum Tax Liability
NOL	Net Operating Loss
OAMC	Ogden Accounts Management Campus
RFMI	Request for More Information
TAS	Taxpayer Advocate Service
TIN	Taxpayer Identification Number
TP	Taxpayer
Transferor	Seller
Transferee	Buyer
USRPHC	U.S. Real Property Holding Corporation
USRPI	U.S. Real Property Interest