

U.S. WITHHOLDING TAX ON SALE OF U.S. REAL ESTATE FOR A NON-RESIDENT, NON-CITIZEN SELLER

As a general rule, when a non-resident, non-citizen such as yourself, sells U.S. real estate, the U.S. government requires that 10% of the gross sales price be withheld at closing and paid to the U.S. tax authorities as an estimated tax payment on behalf of the seller.

The U.S. tax authorities issue a receipt to the non-resident seller once they receive the 10%. The non-resident seller can then file an income tax return, compute the actual tax liability and claim a refund for the difference, if any. The problem with this procedure is that it can frequently take an unreasonably long period of time to obtain a refund for the overpayment of tax on the sale.

There is an exception to this general rule whereby the non-resident, non-citizen seller, can apply for relief from the 10% withholding when the actual tax gain is less than 10% of the gross sales price. The earliest point in time, when this relief can be applied for, is when one has a signed sales contract. U.S. tax authorities will not accept a listing for purposes of granting relief from the 10% withholding even if the listing price is less than the purchase price. Application for relief must be filed by the date of the closing. If the application is filed after the date of the closing (even by one day) then the 10% must be remitted.

The gain is generally determined by calculating the difference between the gross sales price and the sum of the cost basis of the property and expenses of sale. The cost basis of the property must be reduced by depreciation for the part of the time, if any, the real estate is rented. The cost basis consists of the purchase price plus any real property improvements. Personal property is not allowed when applying for relief. However, the personal property can be used when filing the actual income tax return for the year of sale.

Under U.S. tax law, personal property consists of anything that you can pick up and take with you. A desk, refrigerator, stove and bed are examples of personal property. Real property improvements are basically defined as immovable objects that cannot be taken when the property is sold. Examples of real property include wallpaper, permanent lighting fixtures, carpeting, flooring and built-in mirrors.

It normally takes 75 to 90 days to receive a favorable determination from the Internal Revenue Service when relief is applied for by a foreign seller. It is common that there is usually insufficient time to obtain relief from the 10% withholding prior to the actual closing. In this situation, the title company or other independent third party escrows the 10% until the letter granting relief is received. The funds are disbursed accordingly when the letter granting relief is received.

It is advised that you contact your accountant or tax attorney when selling your U.S. real estate as a non-resident, non-citizen.