

**Attention: The Internal Revenue Code Requires Transferees (Buyers) to Withhold Tax on the Amount Realized From Sales or Other Dispositions By Foreign Persons of U.S. Real Property Interests**

By Ronald P. Rivelli, For Chief, Policies, Procedures and Guidance Branch  
Department Of The Treasury Internal Revenue Service, Washington, DC

The Internal Revenue Service would like to take this opportunity to bring your attention to Treasury Decision (TD) 9082, which promulgates final regulations on the use of taxpayer identifying numbers for submissions under sections 897 and 1445 of the Internal Revenue Code.

The Internal Revenue Code requires transferees (buyer) to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests, and to remit the withholding to the Internal Revenue Service on Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interest*, and Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*, or to request a withholding certificate on Form 8288-B, *Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests*.

Treasury Decision 9082 requires that all foreign transferors (seller) of U.S. real property interests provide their Taxpayer Identifying Number (TIN) on withholding tax returns, applications for a withholding certificate, and other notices or elections under sections 897 and 1445. TINs are required so that the IRS can identify foreign taxpayers, and more easily match applications, withholdings tax returns, notices, and elections with the foreign transferors' income tax return. **This TIN requirement is effective on November 4, 2003** which is 90 days from the issuance of TD 9082, to allow foreign transferors time to obtain TINs.

If an application for a withholding certificate, notice, or election is submitted to the IRS without a TIN, then it will be considered incomplete and generally not processed. The TIN of the transferee and foreign transferor must be provided to the IRS for the application or election to be considered complete. Because an application for a withholding certificate generally takes 90 days to process, these applications will not be rejected if a copy of an application for a TIN on Form SS-5 or Form W-7 is submitted with the withholding certificate application. However, other notices and elections must contain the taxpayer's TIN.

Amounts withheld under section 1445 must still be timely filed and paid to the IRS on Forms 8288 and 8288-A, even if the appropriate TINs are not provided. However, even though the tax has been paid, the IRS will not date stamp, nor mail out, the receipt (Form 8288-A) to the foreign transferor, because such a Form 8288-A cannot be used by the foreign transferor on its U.S. tax return to establish the available credit amount.

It is important to disseminate to all real estate licensees the importance of obtaining their client's residency status and TIN as early in the process as possible. If during this process you discover that the foreign transferor or even the transferee does not have a TIN number, then instruct them to begin the process of obtaining a TIN as soon as possible, so that they can have it prior to settlement day. Remember, the foreign transferor must have a TIN in order to file their U.S. income tax return for the year of the disposition of the U.S. real property interest to obtain a refund, if any is due to them.

For U.S. individuals, the TIN is a social security number (SSN). For all other entities, it is an employer identification number (EIN). If you are a nonresident alien individual who is not eligible to obtain an SSN, you must apply for an IRS individual taxpayer identification number (ITIN).

Individuals can obtain a SSN by filing Form SS-5 with the Social Security Administration or an ITIN by filing Form W-7 or W-7SP with the IRS. To request an EIN, call the Tele-TIN Unit at 215.516.6999 (not toll free), between the hours of 9:00 a.m. and 5:30 p.m. Eastern Standard Time.

**If you have any questions regarding this matter, you can contact Juan Santiago, Monday through Friday from 7:00 a.m.–3:30 p.m. EST, at 215.516.7648. This is not a toll free number.**

Received August 28, 2003