

December 2017

NY NATP E-News



2017 NY Chapter Board
Edward Arcara, CPA
Chapter President

George Powers, EA
Chapter Vice President

Christina Parisi
Chapter Secretary

Christopher Bertuglia, EA
Chapter Treasurer

**Newsletter
Committee:**

Kathryn M. Keane, EA
Christina Parisi &
Tricia Santana

Contributors:

Dan Paoletti, EA
Christina Parisi
Ragini Subramanian

The New York Chapter has a new mailing address!

Please add our new address to your address books/lists. All correspondence should be sent to this new address.

New York State Chapter of NATP
PO Box 3140
Binghamton, NY 13902

Purchasing a Quickfinder?

Will you be buying a Quickfinder for the coming season? We all use these guides and the New York Chapter receives a donation for each book ordered when you use the **Association Code** below, **mention NATP** or use the **Special Order Form** provided at:

<http://newyorknatp.com/quickfinder-purchase/>

Quickfinder Association Code Q680

You also receive a discount when you mention our codes!

The more you buy, the bigger your discount!

The NY Chapter THANKS YOU FOR YOUR SUPPORT!!

The NYS Small Business Modification Adjustment: A freebie from New York State?

By Dan Paoletti, EA

Are you aware of the S-201 Small Business Modification adjustment? This tax provision is not new; it became effective for tax year 2014. I have been amazed at how so few tax professionals are catching this tax break for their clients, let alone the number of people I encounter who have never heard about it!

The application of this tax provision is very simple. **First**, the business can be any type of sole-proprietor operation, or a farm operating as a sole-proprietor, partnership, S-Corp or qualified joint venture. **Second**, the business must have employed one or more persons during the tax year. The definition of employee is general: "a worker who performs services for a business." This could mean any short term or part-time employment situation. **Third**, the business must have a net income of less than \$250,000 during the year. If the business meets all the above qualifications, then an adjustment of 5% of business net income is taken as a NY S-201 Subtraction entered on form IT-225, Schedule B. *That's it!* Does your tax software figure this automatically? Probably only the big buck ones do! That is why I think this tax benefit is so underutilized. Oh, sorry - I insinuated that maybe we rely on our tax software too much. But it really is very easy to calculate, and to make a direct entry into your software!

There are some caveats to consider, such as a net loss from one business cannot be used to offset the net income from another business for purposes of meeting the net income limitation. Also, a business must be a bonafide employer, meaning that they are registered with NYS and comply with all employer filing requirements. For Farm businesses reporting to owners on Form K1, all items of gain, loss or deduction (think separately stated items) must be considered together for total net income and the \$250,000 net income limitation.

At first glance, it looks like the tax savings is 5% of business net income, when it is actually the clients' applicable NYS tax rate times the modification adjustment. It may not be a very big savings for the smaller business client, but could be sizable for a larger one! Additionally, it is an extra form you can charge for, and will make you look really smart!

It is really that easy! Be sure to look out for this one when filing your clients' returns this coming tax season. It's almost a freebie!

For the further details on the **Small Business S-201 Modification** see TSB-M-14(5)I and Part Y of Chapter 59 of the Laws of 2013.

Upcoming January Series Basic 1040 & 201

This hands-on seminar will provide basic 1040 and New York State tax preparation training to beginning tax preparers, assistants, inputters, office managers and clerical support teams. The seminar will give attendees a better understanding of the inputting process for basic 1040 and NYS tax returns.

Level: Basic **Register Early—Space is limited!!!**

- Determine if a tax return is required
- Determine the correct filing status
- Determine when an individual can be claimed as a dependent
- Properly handle W2 income
- Properly report interest, dividends and capital gain distributions
- Calculate taxable social security
- Properly handle retirement income
- Prepare a basic Schedule A with common itemized deductions

This class qualifies for eight (8) CE for NYS CPAs **Sponsor #592. No Federal CE**

Pricing for Basic 1040 & 201 Tax Prep Class:

- **\$195** if register by 12/31/17, **\$210** if register after 1/1/18
- Printed texts are an additional \$20 each

Tues January 9th, 2018
ALBANY

HAMPTON INN - Wolf Rd
10 Ulenski Dr, Albany, N.Y. 12205

Wed January 10th, 2018
SYRACUSE

HAMPTON INN-Syracuse/Carrier Cir
6377 Court St Rd, E Syracuse, N.Y. 13057

Wed January 10th, 2018
WHITE PLAINS/TARRYTOWN

HAMPTON INN – White Plains/Tarrytown
200 West Main St., Elmsford, N.Y. 10523

Thurs January 11th, 2018
Westbury

HAMPTON INN- Jericho-Westbury
120 Jericho Turnpike. Jericho, N.Y. 11753

Fri January 12th, 2018
Bayside

Adria Hotel & Conference Center Bayside
221-17 Northern Blvd., Bayside, NY 11361

Wed January 17th, 2018
BUFFALO

HAMPTON INN- Buffalo Airport
133 Buell Avenue, Cheektowaga, N.Y. 14225

New! Register Online: <http://newyorknatp.com/education/>

FIRPTA¹ – Compliance requirements on dispositions of U.S Real Property Interest by foreign individuals *by Ragini Subramanian*

Strong economies of many foreign jurisdictions contributed to the rise in the purchase of real property interest, by many foreign investors, in the United States. Unlike a US individual, a foreign person is taxed only on certain items of income and not taxed on most capital gains items. A complex set of rules to tax the sale proceeds associated with the sale of US real property interest by a foreign person was put in place under IRC Code Section 1445 upon enactment of FIRPTA. The foreign individuals who owned the US real property interest directly, and distributions by certain domestic partnerships, corporations, trusts, and estates to foreign persons became part of FIRPTA tax regime. This article discusses salient features of FIRPTA tax regime. For the sake of simplicity this article discusses the FIRPTA tax regime as it applies to a foreign individual² and his/her direct ownership of real estate located in the United States. The article does not dwell into the definition of who is considered a foreign person and what different types of interests may constitute a US real property interest. The article looks at FIRPTA compliance requirements from the lens of a client:

- (1) Who wishes to purchase a real estate located in the US (U.S. real property interest) which is owned by a foreign individual, or
- (2) Who is a foreign individual wanting to sell his/her direct ownership of a real estate located in the US (U.S. real property interest).

In general, the FIRPTA regulations require that the transferee/buyer must withhold, report and pay over, by the 20th day of the transfer³, 15% of the amount realized (10% before February 17, 2016) on the disposition of the US real property interest⁴. The 15% rate is reduced to 10% if the US real property interest acquired by the transferee, from the foreign transferor, is for use by the transferee as a residence, the amount realized for the property is not less than \$300,000, nor does the amount realized exceeds \$1,000,000⁵. For this purpose, the amount realized is the sum of (1) the cash paid, or to be paid, (2) the fair market value of other property transferred, or to be transferred, and (3) 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 transfer⁶. Simply put, 15% of the sale proceeds should be withheld. The amount to be withheld is not affected by the amount of cash to be paid by the transferee⁷. Note however that if the US real property interest is transferred as a gift (i.e., the recipient does not assume any liabilities or furnish any other consideration to the transferor) no withholding is required⁸.

¹ Foreign Investment in Real Property Tax Act of 1980

² IRC Section 1445(f)(3) Foreign person means any person other than (A) United States person, and (B) except as otherwise provided by the Secretary, an entity with respect to which section 897 does not apply by reason of subsection (l) thereof

³ IRC Reg. Sec. 1.1445-1(c)

⁴ IRC Reg. Sec. 1.1445-1(a); Also note that special rules apply to transferor who is a corporation, partnership, trust, or an estate, which are not part of this article.

⁵ IRC Reg. Sec. 1.1445-1(b)(2)

⁶ IRC Reg. Sec. 1.1445-1(g)(5)

⁷ IRC Reg. Sec. 1.1445-1(a)

⁸ IRC Reg. Sec. 1.1445-1(b)

Forms 8288 and 8288-A are used for this purpose, and are filed by the transferee at the IRS location named in the instructions to these forms. The timely mailing of these forms is treated as their timely filing. The IRS acknowledges receipt of this form by returning the stamped copy of Form 8288-A to the transferor of the US real property interest (at the address provided on the forms). Note that while it is the transferee who files these forms, the acknowledgement by the IRS of the receipt of the forms is returned to the transferor. This is because the transferor uses Form 8288-A to claim credit or refund of tax based on this form. Generally, the transferor can claim this credit or refund of tax only if both Forms 8288 and 8288-A are completely filled, the forms include the identifying number of the transferor⁹, and the stamped copy of Form 8288-A is attached to a federal tax return (Form 1040NR, 1041, 1120F, as appropriate)¹⁰. The withholding of tax under IRC section 1445(a) does not excuse the transferor from filing a US tax return with respect to the income arising from the US real property interest¹¹. And if the amount withheld under IRC Section 1445(a) is less than the transferor's federal tax liability, the transferor is required to pay estimated tax prior to the filing of the income tax return for that year¹². The transferee who fails to fulfill his/her obligation to withhold, report and pay over the 15% tax, is personally liable for such tax and interest and may also be subject to civil and criminal penalties (unless the transferor satisfies this liability)¹³.

There are exceptions to this withholding requirement.

1. Under IRC Reg. Sec. 1.1445-2(b) no withholding is required if prior to or at the time of the transfer the transferor provides a certification under penalties of perjury to the transferee that withholding is not required because the transferor is a foreign person. The owner of a disregarded entity and not the disregarded entity is required to provide this certification¹⁴. The transferee must retain this certificate for five years. A sample certification can be found in IRC Reg. Sec. 1.1445-2(b)(2)(iv).
2. Under IRC Reg. Sec. 1.1445-2(c) no withholding is required if the transferee acquired property that is not a U.S. real property interest. Rules of IRC Section 897(c) and 1.897-1(c) are followed in this regards.
3. Under IRC Reg. Sec. 1.1445-2(d)(1): No withholding is required if the sale proceeds from the purchase is not more than \$300,000, and the transferee/purchaser acquires the US real property interest with a definite plan to use it as a residence by her (or her family members as defined in section 267(c)(4)) for at least 50% of the number of days that the property is used by any person during each of the first two 12-month periods following the date of transfer¹⁵. The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person. No form or other document is required to be filed with the Internal Revenue Service to support residency. The transferee who fails to reside in the property, shall be liable for the failure to withhold, provided the transferor also did not pay the full US tax due on any gain recognized upon the transfer, or the transferee established that the failure to reside the minimum number of days was caused by unanticipated circumstances.

⁹ IRC Reg. Sec. 1.1445-1(f)(1) and (2); If a stamped copy is not provided to the transferor by the Service, the transferor may establish the amount of tax withheld by the transferee by attaching to its return substantial evidence (e.g. closing documents) of such amount.

¹⁰ IRC Reg. Sec. 1.1445-1(f)(2)

¹¹ IRC Reg. Sec. 1.1445-1(f)(1)

¹² IRC Reg. Sec. 1.1445-1(f)(2)

¹³ IRC Reg. Sec. 1.1445-1(e) and (f)

¹⁴ IRC Reg. Sec. 1.1445-2(b)(2)(iii)

¹⁵ IRC Reg. Sec. 1.1445-2

4. Under IRC Reg. Sec. 1.1445-2(d)(2) the transferor gives transferee a written notice and meets other conditions set out thereunder that no recognition of any gain or loss on the transfer is required because of a non-recognition provision in the Internal Revenue Code, or a provision in a U.S. tax treaty. This notice must be filed by the transferee, with the IRS, within 20 days of the date of transfer.
5. Under IRC Reg. Sec. 1.1445-2(d)(7) and (8) the transferee or the transferor may apply and receive a withholding certificate from the Internal Revenue Service pursuant to the provisions of IRC Reg. Sec. 1.1445-3, that eliminates or reduces withholding. And in that case the transferee need not report and pay over to the Internal Revenue Service (“Service”) the withheld amount until the 20th day following the Service’s final determination with respect to the application for a withholding certificate. There are three circumstances under which a withholding certificate can be requested: (a) a claim that the transferor is entitled to non-recognition treatment or is exempt from tax. (b) A claim solely on a calculation that shows the transferor’s maximum tax liability is less than the tax otherwise required to be withheld, or (c) a claim that the special installment sales rules described in section 7 of Rev. Proc. 2000-35 allowed reduced withholding. The 1.1445-3 exception is one of the most used exceptions to withholding. The application for withholding certificate can be filed by the transferor or the transferee. Form 8288-B is used for this purpose. Once applied the Internal Revenue Service is generally required to act on this application within 90 days after a completed application is received. A withholding certificate that is obtained prior to a transfer notifies the transferee that no withholding or reduced withholding is required. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to IRC Reg. Sec 1.1445-3(g). The Form 8288-B must be filled out completely and clearly set out the calculations that support the reasons to seek reduced or zero withholding. For example, (i) if the transferor claims section 121 principal residence exclusion, the application must clearly include facts, circumstances, and calculations that support this claim, or (ii) if the transferor claims that the 15% withholding is greater than the actual tax liability the transferor will have upon sale, the Form 8288-B must be accompanied by all calculations including cost basis, sale price, any ordinary gain that may be recognized, etc. that support such a claim. The Form 8288-B must include taxpayer identification number (TIN) for all parties – transferor and transferee – to the transaction. If the applicant is a non-US person who is not eligible to obtain an SSN, Form 8288-B should be accompanied by a Form W-7 – Application for IRS Individual Taxpayer Identification Number.

In summary, transfer of US real property interest by a foreign individual is subject to withholding rules of IRC Code section 1445. A limited relief from this withholding obligation is available either by way of obtaining a certification from the transferee, or because the sale price of the US real property interest is below the threshold amount, or by applying to the IRS under certain specific circumstances. While neither of these exceptions are unsurmountable nor is the application to the IRS a difficult process, a purchaser of the US real property interest from a transferee who is a foreign person must ensure full compliance to avoid being subject to tax, penalties and interest.

Ragini Subramanian is a NY attorney with LL.M. in Taxation from Boston University. She is a Manager at a major accounting firm in the tri-state area. She specializes in tax planning and strategy for high net worth individuals and their associated entities including foreign information reporting obligations, IRS and State audits including OVDP representation. Ragini is a frequent contributor to NATP’s TaxPro Journal.

Tax Relief in Disaster Situations *UPDATE*

Hurricane Irma: On 11/2/17 the IRS expanded the Hurricane Irma tax relief to certain counties in South Carolina. This includes Individuals who reside or have a business in Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Edgefield, Georgetown, Hampton, Jasper, McCormick, Newberry, Oconee, Pickens and Saluda Counties.

Relief is available for taxpayers in U.S. Virgin Islands, Puerto Rico, Florida, Georgia.

Hurricane Harvey: The IRS announced today that affected taxpayers in Louisiana will receive tax relief. This includes Individuals who reside or have a business in Acadia, Allen, Assumption, Beauregard, Calcasieu, Cameron, DeSoto, Iberia, Jefferson Davis, Lafayette, Lafourche, Natchitoches, Plaquemines, Rapides, Red River, Sabine, St. Charles, St. Mary, Vermilion and Vernon Parishes.

California Wildfires: Taxpayers in Butte, Lake, Mendocino, Napa, Nevada, Orange, Solano, Sonoma, and Yuba Counties may qualify for tax relief.

Hurricane Maria:

- **U.S. Virgin Islands:** The islands of St. Croix, St. John, and St. Thomas.
- **Puerto Rico:** This represents all 78 municipalities of Puerto Rico.

<https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>

Not an NATP Member Yet? Join Today, Save \$28

NATP is the leading organization dedicated to tax professionals and the clients they serve.

We encourage you to become part of the NATP family! Not only is Chapter membership included with your general membership, but you'll also receive access to our expert education, publications and updates, research services, business tools and a community of equally dedicated professionals.

[Become a member](#) today and receive \$28 off the regular price of membership.

Use code **CHAPTER2017** to receive the discount.

When joining, be sure to include the state Chapter that recruited you in the field that asks, "Who recommended you to NATP?"

If you have any questions, call Member Services at [800.558.3402](tel:800.558.3402), ext. 3, or email National at natp@natptax.com.

NY Chapter of NATP

New York State Chapter of NATP
PO Box 3140
Binghamton, NY 13902

E-Mail:
stateoffice@newyorknatp.com

**NY Chapter Founders
Award Past Winners**

Ralph Sommers
2013

Wendy C. Loomis
2014

Karl Herba
2015

Dwayne "Rocky"
Rhodes
2016

Kathryn M. Keane
2017

We're on FaceBook!
Search for NY NATP!



The NY Chapter is proud to
announce our new website:

NewYorkNATP.com

Visit our website to stay up to date on the
most recent developments from NYS DTF, to
learn more about our upcoming seminars,
catch the newest edition of this newsletter
and so much more!