

FIRPTA QUESTIONNAIRE

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1 **1 Introduction**

2 This document is intended to be submitted by Sellers of real property to escrow companies who are handling the escrow on
3 the property. It:

- 4 1. Establishes with evidence the legal constraints imposed upon the escrow company in the context of income tax
5 withholding and reporting.
- 6 2. Helps pinpoint where disputes lie in complying with the tax withholding and reporting requirements.
- 7 3. Establishes facts in the event that the receiving escrow company fails to deny the evidence. The default answer of admit
8 is conclusively established if the recipient fails to rebut or answer.
- 9 4. Places the escrow company in a default, estoppel, and laches if the fail to respond in order to faciliate suing them in civil
10 court later for failure to comply with the tax withholding and reporting requirements documented herein.

11 If you are an escrow company and find yourself in receipt of this pamphlet, you are demanded to rebut the evidence provided
12 by answering the questions you disagree with within 10 days. Pursuant to [Federal Rule of Civil Procedure 8\(d\)](#), failure to
13 deny within 10 days constitutes an admission to each admission not answered and thereby rebutted. Pursuant to [26 U.S.C.](#)
14 [§6065](#), all of your answers must be signed under penalty of perjury. We are not interested in agency policy, but only sources
15 of reasonable belief identified in the pamphlet below:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

16 Your answers will become evidence in future litigation, should that be necessary in order to protect the rights of the person
17 against whom you are attempting to unlawfully enforce federal or state revenue laws.

18 **2 Burden of Proof Imposed upon Recipient**

19 You are the moving party in this action, because it is the one asserting a liability for tax. Since you are acting in the capacity
20 of a Withholding Agent pursuant to 26 U.S.C. §7701(a)(16), you are also an agent or officer of the government and therefore
21 must satisfy the same burden of proof in that capacity as anyone directly from the government. You as the moving party in
22 this case has the burden of proving the existence of jurisdiction and liability PRIOR to attempting any enforcement or
23 collection actions against the submitter:

[TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES](#)
[PART I - THE AGENCIES GENERALLY](#)
[CHAPTER 5 - ADMINISTRATIVE PROCEDURE](#)
[SUBCHAPTER II - ADMINISTRATIVE PROCEDURE](#)
[Sec. 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision](#)

30 (d) **Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.**

31 *Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the*
32 *exclusion of irrelevant, immaterial, or unduly repetitious evidence. **A sanction may not be imposed or rule or***
33 ***order issued except on consideration of the whole record or those parts thereof cited by a party and supported***
34 ***by and in accordance with the reliable, probative, and substantial evidence.** The agency may, to the extent*
35 *consistent with the interests of justice and the policy of the underlying statutes administered by the agency,*
36 *consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has*
37 *knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present*
38 *his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-*
39 *examination as may be required for a full and true disclosure of the facts. In rule making or determining claims*
40 *for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced*
41 *thereby, adopt procedures for the submission of all or part of the evidence in written form.*

42 For further details on the following subsections, see and rebut the following within 30 days or be found to agree:

Government Burden of Proof, Form #05.025
<http://sedm.org/Forms/FormIndex.htm>

1 **2.1 Benefit of the doubt belongs with the accused**

2 In the absence of proof of jurisdiction and enforcement authority, the benefit of the doubt rests squarely with the accused.

3 *"Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by*
4 *clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be*
5 *resolved in favor of those upon whom the tax is sought to be laid."*
6 [*Spreckels Sugar Refining Co. v. McClain, 192 U.S. 297 (1904)*]

7 *"In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of*
8 *clear expression to the contrary, to operate prospectively; that, if doubt exists as to the construction of a taxing*
9 *statute, the doubt should be resolved in favor of the taxpayer..."*
10 [*Hassett v. Welch., 303 U.S. 303, pp. 314 - 315, 82 L Ed 858. (1938)*]

11 **2.2 Affect of silence in rebutting or producing evidence justifying your determination**

12 As the moving party, silence in response to any every fact stated by the accused and not rebutted by the government shall
13 constitute an admission to the truthfulness of said fact or statement pursuant to the following:

14 1. Federal Rule of Civil Procedure 8(d).

15 [III. PLEADINGS AND MOTIONS](#) > Rule 8.
16 [Rule 8. General Rules of Pleading](#)

17 (d) Effect of Failure To Deny.

18 *Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage,*
19 *are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive*
20 *pleading is required or permitted shall be taken as denied or avoided.*

21 2. Wehling v. Columbia Broadcasting System, 608 F.2d 1084 (5th Cir. 12/28/1979)

22 *"The plaintiff who retreats under the cloak of the Fifth Amendment cannot hope to gain an unequal advantage*
23 *against the party he has chosen to sue. To hold otherwise would, in terms of the customary metaphor, enable*
24 *plaintiff to use his Fifth Amendment shield as a sword. This he cannot do. See, e. g., Lyons v. Johnson, 415*
25 *F.2d 540 (9th Cir. 1969); Kisting v. Westchester Fire Ins. Co., 290 F. Supp. 141 (W.D.Wis.1968)"*
26 [*Wehling v. Columbia Broadcasting System, 608 F.2d 1084 (5th Cir. 12/28/1979)*]

27 For further details on why silence implies agreement, see and rebut the following within 30 days or be found to agree:

[Silence as a Weapon and a Defense in Legal Discovery, Form #05.021](#)
<http://sedm.org/Forms/FormIndex.htm>

28 **2.3 Presumptions prohibited**

29 In establishing facts, the government as moving party may not rely on ANY presumptions because:

30 1. Presumptions are not evidence and may not be used as a substitute for evidence.

31 *"A presumption is not evidence."*
32 [*Black's Law Dictionary, Sixth Edition, p. 1185*]

33 2. Presumptions directed against a person protected by the United States Constitution constitute a tort.

34 (1) [8:4993] **Conclusive presumptions affecting protected interests:** *A conclusive presumption may be defeated*
35 *where its application would impair a party's constitutionally-protected liberty or property interests. In such*
36 *cases, conclusive presumptions have been held to violate a party's due process and equal protection*
37 *rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bed. of Ed. v. LaFleur (1974)*
38 *414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit*
39 *violates process]*
40 [*Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, p. 8K-34*]

- 1 3. Presumptions violate the First Amendment by allowing the government to establish a religion, which we define here as
2 any system of beliefs not supportable by admissible evidence. The abuse of presumption causes a religion to be
3 established wherein “faith” is replaced with “presumption”, and the government instead of the living god then becomes
4 an object of pagan idol worship.
5 4. Federal Rule of Evidence 610 makes beliefs and opinions inadmissible as evidence in any legal proceeding.

6 For further details on why presumption is a violation of due process of law and a tort, see and rebut the following within 30
7 days or be found to agree:

[Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction](http://sedm.org/Forms/FormIndex.htm), Form #05.017
<http://sedm.org/Forms/FormIndex.htm>

8 **3 Questions**

- 9 1. Admit that every “broker”, for the purposes of 26 U.S.C. §6045 required to make a return is a governmental unit, and
10 not a PRIVATE firm or company.

11 [26 U.S. Code § 6045>Returns of brokers](#)

12 (c)DEFINITIONS

13 For purposes of this section—

14 (4)PERSON

15 The term “[person](#)” includes any governmental unit and any agency or instrumentality thereof.

16 [SOURCE: <https://www.law.cornell.edu/uscode/text/26/6045>]

17 YOUR ANSWER: ____ Admit ____ Deny

18 CLARIFICATION: _____

- 19
20
21 2. Admit that the recipient is not a “person” as legally defined in the previous question, and therefore, has no duty to
22 report the transaction to which this sale relates to as a “broker” per 26 U.S.C. §6045(a).

23 [26 U.S. Code § 6045>Returns of brokers](#)

24
25 (a) GENERAL RULE

26 *Every [person doing business as a broker shall](#), when required by the Secretary, make a return, in accordance
27 with such regulations as the Secretary may prescribe, showing the name and address of each [customer](#), with such
28 details regarding gross proceeds and such other information as the Secretary may by forms or regulations require
29 with respect to such business.*

30 YOUR ANSWER: ____ Admit ____ Deny

31 CLARIFICATION: _____

- 32
33
34 3. Admit that the term “United States” is defined within the Internal Revenue Code Subtitle A as follows:

35 [TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701. \[Internal Revenue Code\]](#)
36 [Sec. 7701. - Definitions](#)

37 (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent
38 thereof—

39 (9) United States

1 The term "United States" when used in a geographical sense includes only the [States](#) and the District of
2 Columbia.

3 (10) State

4 The term "State" shall be construed to include the District of Columbia, where such construction is necessary to
5 carry out provisions of this title.

6
7 YOUR ANSWER: ___Admit ___Deny

8
9 CLARIFICATION:_____

- 10 4. Admit that FIRPTA applies only to real property located in the "United States" as defined in the previous question.

11
12 YOUR ANSWER: ___Admit ___Deny

13
14 CLARIFICATION:_____

- 15 5. Admit that the rules of statutory construction forbid adding anything to the definition of "United States" found in 26
16 U.S.C. §7701(a)(9) and (a)(10) beyond what is expressly stated.

17 *"Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that **the expression of one***
18 ***thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles,*
19 *170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or***
20 ***things are specified in a law, contract, or will, an intention to exclude all others from its operation may be***
21 ***inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects*
22 *of a certain provision, other exceptions or effects are excluded."*
23 *[Black's Law Dictionary, Sixth Edition, p. 581]*

24 *"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's*
25 ***ordinary meaning.** Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition*
26 *of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a*
27 *rule, `a definition which declares what a term "means" . . . excludes any meaning that is not stated"); Western*
28 *Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96*
29 *(1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152,*
30 *and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S.*
31 *943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney*
32 *General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."*
33 *[Stenberg v. Carhart, 530 U.S. 914 (2000)]*

34
35 YOUR ANSWER: ___Admit ___Deny

36
37 CLARIFICATION:_____

- 38 6. Admit that a "transferor" is defined in 26 U.S.C. §1445(f)(1) as follows.

39 [TITLE 26 > Subtitle A > CHAPTER 3 > Subchapter A > § 1445](#)
40 [§ 1445. Withholding of tax on dispositions of United States real property interests](#)

41 (f) Definitions

42 For purposes of this section—

43 (1) Transferor

44 The term "transferor" means the person disposing of the United States real property interest.

45
46 YOUR ANSWER: ___Admit ___Deny

47
48 CLARIFICATION:_____

1 7. Admit that a seller who is selling a property that is not within the “United States” as legally defined is not a
2 “transferor” as defined above and would be committing perjury to sign any form identifying him/her/it as a
3 “transferor”.

4
5 YOUR ANSWER: ____Admit ____Deny

6
7 CLARIFICATION:_____

8 8. Admit that a “taxpayer” is a person subject to the Internal Revenue Code and a “nontaxpayer” is someone who is not.

9 [TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.](#)
10 [Sec. 7701. - Definitions](#)

11 (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent
12 thereof—

13 (14) Taxpayer

14 The term “taxpayer” means any person subject to any internal revenue tax.

15 _____
16 “Revenue Laws relate to taxpayers [instrumentalities, officers, employees, and elected officials of the Federal
17 Government] and not to non-taxpayers [American Citizens/American Nationals not subject to the exclusive
18 jurisdiction of the Federal Government]. The latter are without their scope. No procedures are prescribed for
19 non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law. With
20 them[non-taxpayers] Congress does not assume to deal and they are neither of the subject nor of the object of
21 federal revenue laws.”
22 [Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)]

23
24 See also:

<p>25 Why Your Government is Either a Thief or You are a “Public Officer” for Income Tax Purposes, Form #05.008 26 http://sedm.org/Forms/FormIndex.htm</p>
--

27 YOUR ANSWER: ____Admit ____Deny

28 CLARIFICATION:_____

29 9. Admit that the IRS does not make any “nontaxpayer” forms or help “nontaxpayers”. Note that their mission statement
30 doesn’t even mention or recognize that there is such a thing as a “nontaxpayer”.

31 *Internal Revenue Manual (I.R.M.), Section [1.1.1.1 \(02-26-1999\)](#)*
32 *IRS Mission and Basic Organization*

33 *The IRS Mission: **Provide America’s taxpayers top quality service** by helping them understand and meet their*
34 *tax responsibilities and by applying the tax law with integrity and fairness to all.*

35
36 YOUR ANSWER: ____Admit ____Deny

37
38 CLARIFICATION:_____

39 10. Admit that the “Seller’s Affidavit of Non-Foreign Status”, Exhibit (1), is a “taxpayer” form, that there is no option on
40 the form that would allow a “nontaxpayer” to accurately reflect the fact that he is not “exempt” but at the same time,
41 not subject to the I.R.C. and not required, to complete or submit the form.

42 See Exhibit (1) at the end of this document for a sample “Seller’s Affidavit of Non-Foreign Status”

43
44 YOUR ANSWER: ____Admit ____Deny

45
46
47 CLARIFICATION:_____

1 11. Admit that a seller who is a “nontaxpayer”, if he or she completes and signs the “Seller’s Affidavit of Non-Foreign
2 Status” form under penalty of perjury, would commit perjury under penalty of perjury by misrepresenting their status
3 as being subject to FIRPTA and being a “taxpayer”.

4
5 YOUR ANSWER: ___Admit ___Deny

6
7 CLARIFICATION:_____

8 12. Admit that because the “Seller’s Affidavit of Non-Foreign Status”, Exhibit (1), is a “taxpayer” form, then the only
9 option available to a “nontaxpayer” for describing their status as “not subject” but not “exempt” from FIRPTA is to
10 make their own form or affidavit and write “not applicable” on any form provided by the escrow company or the real
11 estate agent.

12
13 YOUR ANSWER: ___Admit ___Deny

14
15 CLARIFICATION:_____

16 13. Admit that FIRPTA applies only to “nonresident alien individuals” and foreign corporations.

17 [TITLE 26](#) > [Subtitle A](#) > [CHAPTER 1](#) > [Subchapter N](#) > [PART II](#) > [Subpart D](#) > § 897
18 [§ 897. Disposition of investment in United States real property](#)

19 (a) General rule

20 (1) Treatment as effectively connected with United States trade or business

21 For purposes of this title, gain or loss of a **nonresident alien individual** or a **foreign corporation** from the
22 disposition of a United States real property interest shall be taken into account—

23 (A) in the case of a nonresident alien individual, under section [871 \(B\)\(1\)](#), or

24 (B) in the case of a foreign corporation, under section [882 \(a\)\(1\)](#), as if the taxpayer were engaged in a
25 trade or business within the United States during the taxable year and as if such gain or loss were
26 effectively connected with such trade or business.

27 (2) Minimum tax on nonresident alien individuals

28 (A) In general

29 In the case of any **nonresident alien individual**, the taxable excess for purposes of section [55 \(b\)\(1\)\(A\)](#)
30 shall not be less than the lesser of—

31 (i) the individual’s alternative minimum taxable income (as defined in section [55 \(b\)\(2\)](#)) for the
32 taxable year, or

33 (ii) the individual’s net United States real property gain for the taxable year.

34 (B) Net United States real property gain

35 For purposes of subparagraph (A), the term “net United States real property gain” means the excess
36 of—

37 (i) the aggregate of the gains for the taxable year from dispositions of United States real property
38 interests, over

39 (ii) the aggregate of the losses for the taxable year from dispositions of such interests.

40
41 YOUR ANSWER: ___Admit ___Deny

42
43 CLARIFICATION:_____

1 14. Admit that someone who is neither a “nonresident alien individual” nor a “foreign corporation” indicated in 26 U.S.C.
2 §897(a)(1) is not subject to FIRPTA and therefore not subject to FIRPTA withholding or reporting:

3
4 YOUR ANSWER: ___ Admit ___ Deny

5
6 CLARIFICATION: _____

7 15. Admit that the term “nonresident alien” is defined as follows:

8 [26 U.S.C. §7701\(b\)\(1\)\(B\) Nonresident alien](#)

9 *An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of*
10 *the United States (within the meaning of subparagraph (A)).*

11
12 YOUR ANSWER: ___ Admit ___ Deny

13
14 CLARIFICATION: _____

15 16. Admit that the term “individual”, “alien individual”, and “nonresident alien individual” is defined as follows:

16 [26 C.F.R. 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.](#)

17 (c) Definitions

18 (3) Individual.

19 (i) Alien individual.

20 *The term alien individual means an individual who is not a citizen or a national of the United States. See Sec.*
21 *1.1-1(c).*

22 (ii) Nonresident alien individual.

23 **The term nonresident alien individual means a person described in section 7701(b)(1)(B), an alien individual**
24 **who is a resident of a foreign country under the residence article of an income tax treaty and Sec. 301.7701(b)-**
25 **7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of**
26 **Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under Sec. 301.7701(b)-**
27 **1(d) of this chapter. An alien individual who has made an election under section 6013 (g) or (h) to be treated**
28 **as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of**
29 **withholding under chapter 3 of the Code and the regulations thereunder.**

30
31 YOUR ANSWER: ___ Admit ___ Deny

32
33 CLARIFICATION: _____

34 17. Admit that a human being domiciled in a state of the Union is not a “nonresident alien individual” as defined in 26
35 C.F.R. §1.1441-1(c)(3) above.

36
37 YOUR ANSWER: ___ Admit ___ Deny

38
39 CLARIFICATION: _____

40 18. Admit that 26 C.F.R. §1.1441-1(c)(3) is the only definition of “individual” found anywhere within the I.R.C. Subtitle
41 A or the Treasury Regulations under I.R.C. Subtitle A.

42
43 YOUR ANSWER: ___ Admit ___ Deny

44
45 CLARIFICATION: _____

1 19. Admit that a human can be a “non-resident non-personn” without being an “nonresident alien individual”, which we
2 define as a person who is neither a citizen or resident of the “United States” as defined in 26 U.S.C. §7701(a)(9) and
3 (a)(10).

4
5 YOUR ANSWER: ___Admit ___Deny

6
7 CLARIFICATION:_____

8 20. Admit that FIRPTA reporting on IRS Form 1099-S may only be effected for persons engaged in a “trade or business”.

9 [TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART III > Subpart B > § 6041](#)
10 [§ 6041. Information at source](#)

11 (a) Payments of \$600 or more

12 **All persons engaged in a trade or business and making payment in the course of such trade or business to**
13 **another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or**
14 **other fixed or determinable gains, profits, and income (other than payments to which section 6042 (a)(1), 6044**
15 **(a)(1), 6047 (e), 6049 (a), or 6050N (a) applies, and other than payments with respect to which a statement is**
16 **required under the authority of section 6042 (a)(2), 6044 (a)(2), or 6045), of \$600 or more in any taxable year,**
17 **or, in the case of such payments made by the United States, the officers or employees of the United States having**
18 **information as to such payments and required to make returns in regard thereto by the regulations hereinafter**
19 **provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form**
20 **and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains,**
21 **profits, and income, and the name and address of the recipient of such payment.**

22
23 YOUR ANSWER: ___Admit ___Deny

24
25 CLARIFICATION:_____

26 21. Admit that the term “trade or business” is defined in 26 U.S.C. §7701(a)(26).

27 [TITLE 26 > Subtitle F > CHAPTER 79 > § 7701](#)
28 [§ 7701. Definitions](#)

29 (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent
30 thereof—

31 (26) “The term ‘trade or business’ includes the performance of **the functions** [activities] of a **public office.**”

32
33 YOUR ANSWER: ___Admit ___Deny

34
35 CLARIFICATION:_____

36 22. Admit that the above is a “definition” of a “term” or “word of art” and not a “word” in the ordinary sense, and that the
37 purpose for defining a “term” is to describe all essential things or classes of things that are implied and to deliberately
38 exclude those things which are not included:

39 **definition.** A description of a thing by its properties; an explanation of the meaning of a word or term. **The**
40 **process of stating the exact meaning of a word by means of other words. Such a description of the thing**
41 **defined, including all essential elements and excluding all nonessential, as to distinguish it from all other things**
42 **and classes.”**
43 [Black’s Law Dictionary, Sixth Edition, p. 423]

44 **“TERM” - A word or phrase; an expression; particularly one which possesses a fixed or known meaning in some**
45 **science, art, or profession.**
46 [Black’s Law Dictionary, Fourth Edition, p. 1639]

47 **“WORDS OF ART” - The vocabulary or terminology of a particular art or science, and especially those**
48 **expressions which are idiomatic or peculiar to it. See Cargill v. Thompson, 57, Minn. 534, 59 N.W. 638.**
49 [Black’s Law Dictionary, Fourth Edition, p. 1779]

1 YOUR ANSWER: ___Admit ___Deny

2
3 CLARIFICATION:_____

4 23. Admit that there are no other definitions or references in I.R.C. Subtitle A relating to a “trade or business” which
5 would change or expand the definition of “trade or business” above to include things other than a “public office”.

6
7 YOUR ANSWER: ___Admit ___Deny

8
9 CLARIFICATION:_____

10 24. Admit that the purpose of providing a statutory definition is to supersede, not enlarge, the common or ordinary
11 dictionary definition of a word.

12 ***“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s***
13 ***ordinary meaning.*** Meese v. Keene, 481 U.S. 465, 484-485 (1987) (“It is axiomatic that the statutory definition
14 of the term excludes unstated meanings of that term”); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 (“As a
15 rule, ‘a definition which declares what a term “means” . . . excludes any meaning that is not stated(“); Western
16 Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96
17 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152,
18 and n. 10 (5th ed. 1992) (collecting cases). **That is to say, the statute, read “as a whole,” post at 998 [530 U.S.**
19 **943] (THOMAS, J., dissenting), leads the reader to a definition.** That definition does not include the Attorney
20 General’s restriction -- “the child up to the head.” Its words, “substantial portion,” indicate the contrary.”
21 [*Stenberg v. Carhart, 530 U.S. 914 (2000)*]

22
23 YOUR ANSWER: ___Admit ___Deny

24
25 CLARIFICATION:_____

26 25. Admit that a “trade or business” is an “activity”.

27 *“Trade or Business in the United States*

28 *Generally, you must be engaged in a trade or business during the tax year to be able to treat income received in*
29 *that year as effectively connected with that trade or business. **Whether you are engaged in a trade or business***
30 ***in the United States depends on the nature of your activities.** The discussions that follow will help you determine*
31 *whether you are engaged in a trade or business in the United States.”*
32 [*IRS Publication 519, Year 2000, p. 15, emphasis added*]

33
34 YOUR ANSWER: ___Admit ___Deny

35
36 CLARIFICATION:_____

37 26. Admit that all excise taxes are taxes on privileged or licensed “activities”.

38 *“Excise tax. A tax imposed on the **performance of an act**, the engaging in an occupation, or the enjoyment of a*
39 *privilege. Rapa v. Haines, Ohio Comm.Pl., 101 N.E.2d 733, 735. A tax on the manufacture, sale, or use of goods*
40 *or on the carrying on of an occupation or activity or tax on the transfer of property. “*
41 [*Black’s Law Dictionary, Sixth Edition, p. 563*]

42
43 YOUR ANSWER: ___Admit ___Deny

44
45 CLARIFICATION:_____

46 27. Admit that holding “public office” in the United States government is an privileged “activity”.

47 [26 U.S.C. §7701\(a\)\(26\)](#)

48 *“The term ‘trade or business’ includes the performance of **the functions** [activities] of a **public office.**”*

49 YOUR ANSWER: ___Admit ___Deny

1
2 CLARIFICATION: _____

3 28. Admit that the seller is not engaged in a public office within the U.S. government and therefore not engaged in a “trade
4 or business”.

5
6 YOUR ANSWER: ____Admit ____Deny

7
8 CLARIFICATION: _____

9 29. Admit that it would be fraudulent to file IRS Form 1099-S against a seller who is not engaged in a public office in the
10 U.S. government.

11
12 YOUR ANSWER: ____Admit ____Deny

13
14 CLARIFICATION: _____

15 30. Admit that those who file false IRS Form 1099-S information returns against a seller not engaged in a “public office”
16 within the U.S. government are committing the crime of impersonating a public officer of the U.S. government in
17 criminal violation of 18 U.S.C. §912.

18 [TITLE 18 > PART 1 > CHAPTER 43 > § 912](#)
19 [§ 912. Officer or employee of the United States](#)

20 *Whoever **falsely assumes or pretends to be an officer or employee acting under the authority of the United***
21 ***States** or any department, agency or officer thereof, and acts as such, or in such pretended character demands*
22 *or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more*
23 *than three years, or both.*

24
25 YOUR ANSWER: ____Admit ____Deny

26
27 CLARIFICATION: _____

28 31. Admit that those who file false IRS Form 1099-S information returns against a seller not engaged in a “public office”
29 within the U.S. government are committing the crime of filing false returns or statements in criminal violation of 26
30 U.S.C. §§7206 and 7207.

31 [TITLE 26 > Subtitle F > CHAPTER 75 > Subchapter A > PART 1 > § 7206](#)
32 [§ 7206. Fraud and false statements](#)

33 Any person who—

34 (1) Declaration under penalties of perjury

35 *Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written*
36 *declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as*
37 *to every material matter; or*

38 (2) Aid or assistance

39 *Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in*
40 *connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other*
41 *document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with*
42 *the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or*
43 *document; or*

44
45 [TITLE 26 > Subtitle F > CHAPTER 75 > Subchapter A > PART 1 > § 7207](#)
46 [§ 7207. Fraudulent returns, statements, or other documents](#)

47 *Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other*
48 *document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than*

\$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047 (b), section 6104(d), or subsection (i) or (j) of section 527 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION: _____

32. Admit that 26 C.F.R. §301.6109-1(b) is the only place in the I.R.C. or Treasury Regulations which imposes an affirmative duty to use or disclose a Taxpayer Identification Number.

26 C.F.R. §301.6109-1(b)

(b) Requirement to furnish one's own number—

(1) U.S. persons.

Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions.

(2) Foreign persons.

The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number shall apply to the following foreign persons--

(i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at any time during the taxable year;

(ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time during the taxable year;

(iii) A nonresident alien treated as a resident under section 6013(g) or (h);

(iv) A foreign person that makes a return of tax (including income, estate, and gift tax returns), an amended return, or a refund claim under this title **but excluding information returns, statements, or documents**;

(v) A foreign person that makes an election under Sec. 301.7701-3(c);

(vi) A foreign person that furnishes a withholding certificate described in Sec. 1.1441-1(e)(2) or (3) of this chapter or Sec. 1.1441-5(c)(2)(iv) or (3)(iii) of this chapter to the extent required under Sec. 1.1441-1(e)(4)(vii) of this chapter;

(vii) **A foreign person whose taxpayer identifying number is required to be furnished on any return, statement, or other document as required by the income tax regulations under section 897 or 1445.** This paragraph (b)(2)(vii) applies as of November 3, 2003; and

(viii) A foreign person that furnishes a withholding certificate described in Sec. 1.1446-1(c)(2) or (3) of this chapter or whose taxpayer identification number is required to be furnished on any return, statement, or other document as required by the income tax regulations under section 1446. This paragraph (b)(2)(viii) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under Sec. 1.1446-1 through 1.1446-5 of this chapter apply by reason of an election under Sec. 1.1446-7 of this chapter.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION: _____

33. Admit that in the context of FIRPTA, nonresident aliens who have not made an election to be treated as resident aliens pursuant to 26 U.S.C. §6013(g) and (h), who are not engaged in a "trade or business", and who are not "nonresident alien individuals" described in 26 U.S.C. §897(a)(1) do not need to provide a Taxpayer Identification Number.

26 C.F.R. §301.6109-1(b)

(b) Requirement to furnish one's own number—

(1) U.S. persons.

Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions.

1 (2) Foreign persons.

2 The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number shall apply to
3 the following foreign persons--

4
5 (i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at
6 any time during the taxable year;

7 (ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time
8 during the taxable year;

9 (iii) A nonresident alien treated as a resident under section 6013(g) or (h);

10 (iv) A foreign person that makes a return of tax (including income, estate, and gift tax returns), an amended
11 return, or a refund claim under this title but excluding information returns, statements, or documents;

12 (v) A foreign person that makes an election under Sec. 301.7701-3(c);

13 (vi) A foreign person that furnishes a withholding certificate described in Sec. 1.1441-1(e)(2) or (3) of this
14 chapter or Sec. 1.1441-5(c)(2)(iv) or (3)(iii) of this chapter to the extent required
15 under Sec. 1.1441-1(e)(4)(vii) of this chapter;

16 (vii) A foreign person whose taxpayer identifying number is required to be furnished on any return,
17 statement, or other document as required by the income tax regulations under section 897 or 1445. This
18 paragraph (b)(2)(vii) applies as of November 3, 2003; and

19 (viii) A foreign person that furnishes a withholding certificate described in Sec. 1.1446-1(c)(2) or (3) of this
20 chapter or whose taxpayer identification number is required to be furnished on any return, statement, or other
21 document as required by the income tax regulations under section 1446. This paragraph (b)(2)(viii) shall apply
22 to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under Sec.
23 Sec. 1.1446-1 through 1.1446-5 of this chapter apply by reason of an election under Sec. 1.1446-7 of this
24 chapter.

25
26 YOUR ANSWER: ___ Admit ___ Deny

27
28 CLARIFICATION: _____

29 34. Admit that a nonresident alien who is not an "individual" but who has made an election pursuant to 26 U.S.C.
30 §6013(g) and (h) to become a resident alien changes their status to a "nonresident alien individual".

31 26 C.F.R. 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

32 (c) Definitions

33 (3) Individual.

34 (ii) Nonresident alien individual.

35 The term nonresident alien individual means a person described in section 7701(b)(1)(B), an alien individual
36 who is a resident of a foreign country under the residence article of an income tax treaty and Sec. 301.7701(b)-
37 7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of
38 Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under Sec. 301.7701(b)-
39 1(d) of this chapter. An alien individual who has made an election under section 6013 (g) or (h) to be treated
40 as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of
41 withholding under chapter 3 of the Code and the regulations thereunder.

42
43 YOUR ANSWER: ___ Admit ___ Deny

44
45 CLARIFICATION: _____

46 35. Admit that 26 U.S.C. §1445(b)(2) says that FIRPTA withholding is not required in the case of a "transferor" who
47 provides a "nonforeign affidavit" and provides a Taxpayer Identification Number if he/she/it has one and that this
48 provision does not require them to obtain one.

49
50 YOUR ANSWER: ___ Admit ___ Deny

51
52 CLARIFICATION: _____

53
54
55 **Acknowledgment:**

1 I declare under penalty of perjury as required under [26 U.S.C. §6065](#) that the answers provided by me to the foregoing
2 questions are true, correct, and complete to the best of my knowledge and ability, so help me God. I also declare that these
3 answers are completely consistent with each other and with my understanding of both the Constitution of the United States,
4 Internal Revenue Code, Treasury Regulations, the Internal Revenue Manual, and the rulings of the Supreme Court but not
5 necessarily lower federal courts.

6 Name (print): _____

7 Signature: _____

8 Date: _____

9 Witness name (print): _____

10 Witness Signature: _____

11 Witness Date: _____

12 **4 Resources for Further Study and Rebuttal**

13 If you would like to study the subjects covered in this short pamphlet in further detail, may we recommend the following
14 authoritative sources, and also welcome you to rebut any part of this pamphlet after your have read it and studied the subject
15 carefully yourself just as we have:

- 16 1. *Income Taxation of Real Estate Sales*, Form #05.044
17 <http://sedm.org/Forms/FormIndex.htm>
- 18 2. *Non-Resident Non-Person Position*, Form #05.020-explains in detail the tax liabilities of nonresident aliens.
19 <http://sedm.org/Forms/FormIndex.htm>
- 20 3. *FIRPTA Disclosure Form*, Form #04.024-form that you can use to attach to your real property purchase agreement and
21 escrow documents. Includes instructions.
22 <http://sedm.org/Forms/FormIndex.htm>
- 23 4. Federal Investment in Real Property Transfer Act of 1980, 26 U.S.C. §897
24 http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000897---000-.html
- 25 5. IRS Website: FIRPTA Withholding
26 <http://www.irs.gov/businesses/small/international/article/0,,id=105000,00.html>
- 27 6. IRS Website: Taxes on Real Estate
28 <http://www.irs.gov/businesses/small/international/article/0,,id=129631,00.html>
- 29 7. FIRTA.com
30 <http://www.firpta.com/>
- 31 8. 26 U.S.C. §1445: Withholding of tax on dispositions of United States real property interests
32 http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00001445---000-.html
- 33 9. California Revenue and Taxation Code, Section 18662
34 <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=18001-19000&file=18661-18677>
- 35 10. *Income Tax Withholding and Reporting Course*, Form #12.004-simple description of how real estate transaction
36 withholding works
37 <http://sedm.org/Forms/FormIndex.htm>
- 38 11. *The "Trade or Business" Scam*, Form #05.001. Describes the heart of the IRS fraud.
39 <http://sedm.org/Forms/FormIndex.htm>
- 40 12. *The "Trade or Business" Scam*. HTML version of the above.
41 <http://famguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm>
- 42 13. *Tax Form Attachment*, Form #04.013. SEDM Member Agreement requires that all standard IRS Forms you submit to
43 the government must have this form attached.
- 44 14. *Federal and State Income Taxation of Individuals Course*, Form #12.003
45 <http://sedm.org/Forms/FormIndex.htm>

1 **5 Exhibits**

2 **5.1 Exhibit 1: Seller's Affidavit of Nonforeign Status**

3



**SELLER'S AFFIDAVIT OF NONFOREIGN STATUS
AND/OR CALIFORNIA WITHHOLDING EXEMPTION**
FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)
AND CALIFORNIA WITHHOLDING LAW
(Use a separate form for each Transferor)
(C.A.R. Form AS, Revised 11/06)

Internal Revenue Code ("IRC") Section 1445 provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a "foreign person." California Revenue and Taxation Code Section 18662 provides that a transferee of a California real property interest must withhold tax unless an exemption applies.

I understand that this affidavit may be disclosed to the Internal Revenue Service and to the California Franchise Tax Board by the transferee, and that any false statement I have made herein may result in a fine, imprisonment or both.

1. **PROPERTY ADDRESS** (property being transferred): _____ ("Property")

2. **TRANSFEROR'S INFORMATION:**
Full Name _____ ("Transferor")

Telephone Number _____

Address _____

(Use HOME address for individual transferors. Use OFFICE address for an "Entity" i.e.: corporations, partnerships, limited liability companies, trusts and estates.)

Social Security No., Federal Employer Identification No. or California Corporation No. _____

Note: In order to avoid withholding by providing this affidavit, IRC Section 1445 (b) (2) requires a Seller to provide the Buyer with the Seller's taxpayer identification number ("TIN").

3. **AUTHORITY TO SIGN:** If this document is signed on behalf of an Entity Transferor, THE UNDERSIGNED INDIVIDUAL DECLARES THAT HE/SHE HAS AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.

4. **FEDERAL LAW:** I, the undersigned, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the federal withholding law (FIRPTA):

- (For individual Transferors) I am not a nonresident alien for purposes of U.S. income taxation.
- (For corporation, partnership, limited liability company, trust and estate Transferors) The Transferor is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Income Tax Regulations.

5. **CALIFORNIA LAW:** I, the undersigned, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the California withholding law.

Certifications which fully exempt the sale from withholding:

- The total sales price for the Property is \$100,000 or less.
- The Property qualifies as my principal residence (or the decedent's, if being sold by the decedent's estate) within the meaning of IRC Section 121 (owned and occupied as such for two of the last five years).
- The Property was last used as my principal residence (or the decedent's, if being sold by the decedent's estate) within the meaning of IRC Section 121 without regard to the two-year time period.
- The transaction will result in a loss or zero gain for California income tax purposes. (Complete FTB Form 593-E.)
- The Property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and Transferor intends to acquire property similar or related in service or use to be eligible for non-recognition of gain for California income tax purposes under IRC Section 1033.
- Transferor is a corporation (or an LLC classified as a corporation) that is either qualified through the California Secretary of State or has a permanent place of business in California.
- Transferor is a partnership (or an LLC that is not a disregarded single member LLC, classified as a partnership) and recorded title to the Property is in the name of the partnership or LLC. If so, the partnership or LLC must withhold from nonresident partners or members as required.
- Transferor is exempt from tax under California or federal law.
- Transferor is an insurance company, qualified pension/profit sharing plan, IRA or charitable remainder trust.

Certifications which may partially or fully exempt the sale from withholding:

- The Property is being, or will be, exchanged for property of like kind within the meaning of IRC Section 1031.
- The Property is subject to an installment sale, that Transferor will report as such, and Buyer has agreed to withhold on each principal payment instead of withholding the full amount at the time of transfer.
- As a result of the sale of the Property, Seller's tax liability, calculated at the maximum tax rate regardless of Seller's actual rate, will be less than the 3 1/3% withholding otherwise required. Seller will be required to sign a certification, under penalty of perjury, specifying the amount to be withheld. **(Not to be used for sales closing prior to January 1, 2007)**

By _____ Date _____
(Transferor's Signature) (Indicate if you are signing as the grantor of a revocable/grantor trust.)

Typed or printed name Title (If signed on behalf of Entity Transferor)

Buyer's unauthorized use or disclosure of Seller's TIN could result in civil or criminal liability.

Buyer _____ Date _____
(Buyer acknowledges receipt of a Copy of this Seller's Affidavit)

Buyer _____ Date _____
(Buyer acknowledges receipt of a Copy of this Seller's Affidavit)

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Reviewed by _____ Date _____



AS REVISED 11/06 (PAGE 1 OF 2)

SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION (AS PAGE 1 OF 2)

Agent: _____ Phone: _____ Fax: _____ Prepared using WINForms® software
Broker: _____

IMPORTANT NOTICE: An Affidavit should be signed by each individual or entity Transferor to whom or to which it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to you or to a particular transaction, or about the definition of any of the terms used, should be referred to an attorney, certified public accountant, or other professional tax advisor, the Internal Revenue Service, or the California Franchise Tax Board. For further information on federal guidelines, see C.A.R. Legal Q & A "Federal Withholding: The Foreign Investment in Real Property Tax Act," and/or IRS Publication 515 or 519. For further information on state guidelines, see C.A.R. Legal Q & A "California Nonresident Withholding," and/or California FTB Pub. 1016.

FEDERAL GUIDELINES

FOREIGN PERSONS DEFINED. The following general information is provided to assist sellers in determining whether they are "foreign persons" for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445. FIRPTA requires a buyer to withhold and send to the Internal Revenue Service 10% of the gross sales price of a United States (U.S.) real property interest if the seller is a foreign person. No withholding is required for a seller who is a U.S. person (that is, not a foreign person). In order for an individual to be a U.S. person, he/she must be either a U.S. citizen or a U.S. resident alien. The test must be applied separately to each seller in transactions involving more than one seller. Even if the seller is a foreign person, withholding will not be required in every circumstance.

NONRESIDENT ALIEN INDIVIDUAL. An individual whose residence is not within the U.S. and who is not a U.S. citizen is a nonresident alien. The term includes a nonresident alien fiduciary. An alien actually present in the U.S. who is not just staying temporarily (i.e., not a mere transient or sojourner), is a U.S. resident for income tax purposes. An alien is considered a U.S. resident and not subject to withholding under FIRPTA if the alien meets either the **green card test** or the **substantial presence test** for the calendar year.

GREEN CARD TEST. An alien is a U.S. resident if the individual was a lawful permanent resident of the U.S. at any time during the calendar year. This is known as the "green card test."

SUBSTANTIAL PRESENCE TEST. An alien is considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the U.S. on at least: (1) 31 days during the current calendar year; and (2) 183 days during the current year and the two preceding years, counting all the days of physical presence in the current year but only 1/3 the number of days present in the first preceding year, and 1/6 the number of days present in the second preceding year.

DAYS OF PRESENCE IN THE U.S. TEST. Generally, a person is treated as physically present in the country at any time during the day. However, if a person regularly commutes to work in the U.S. from a residence in Canada or Mexico, or is in transit between two points outside the U.S. and is physically present in the country for less than 24 hours, he/she is not treated as present in the U.S. on any day during the transit or commute. In addition, the individual is not treated as present in the U.S. on any day during which he/she is unable to leave the U.S. because of a medical condition which arose while in the U.S.

EXEMPT INDIVIDUAL. For the substantial presence test, do not count days for which a person is an exempt individual. An exempt individual is anyone in the following categories:

- (1) An individual temporarily present in the U.S. because of (a) full-time diplomatic or consular status, (b) full-time employment with an international organization or (c) an immediate family member of a person described in (a) or (b).
- (2) A teacher or trainee temporarily present in the U.S. under a "J" visa (other than as a student) who substantially complies with the requirements of the visa. An individual will not be exempt under this category for a calendar year if he/she was exempt as a teacher or trainee or as a student for any two calendar years during the preceding six calendar years.
- (3) A student temporarily present in the U.S. under an "F" or "J" visa who substantially complies with the requirements of the visa. Generally, a person will not be exempt as a student for any calendar year after the fifth calendar year for which he/she was exempt as a student, teacher or trainee. However, the individual may continue to be exempt as a student beyond the fifth year if he/she is in compliance with the terms of the student visa and does not intend to permanently reside in the U.S.

CLOSER CONNECTION TO A FOREIGN COUNTRY. Even if an individual would otherwise meet the substantial presence test, that person is not treated as meeting the test for the current calendar year if he/she:

- (1) Is present in the U.S. on fewer than 183 days during the current year, and
- (2) Has a tax home in a foreign country and has a closer connection to that country than to the U.S.

SPECIAL RULES. It is possible to be both a nonresident alien and a resident alien during the same tax year. Usually this occurs for the year a person arrives in or departs from the U.S. Other special provisions apply to individuals who were U.S. residents for at least three years, cease to be U.S. residents, and then become U.S. residents again.

NONRESIDENT ALIEN INDIVIDUALS MARRIED TO U.S. CITIZENS OR RESIDENT ALIENS may choose to be treated as resident aliens for most income tax purposes. However, these individuals are considered **nonresidents** for purposes of withholding taxes.

A FOREIGN PERSON OR PARTNERSHIP is one that does not fit the definition of a domestic corporation or partnership. A domestic corporation or partnership is one that was created or organized in the U.S., or under the laws of the U.S., or of any U.S. state or territory.

GUAM AND U.S. VIRGIN ISLANDS CORPORATIONS. A corporation created or organized in or under the laws of Guam or the U.S. Virgin Islands is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- (1) at all times during the tax year, less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- (2) at least 20% of the corporation's gross income is derived from sources within Guam or at least 65% of the corporation's income is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands or the U.S. for the 3-year period ending with the close of the preceding tax year of the corporation, or the period the corporation has been in existence, if less.

A NONRESIDENT ALIEN TRUSTEE, ADMINISTRATOR OR EXECUTOR of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the U.S.