FIRPTA Withholding on the Sale of U.S. Real Property by Foreign Estates and by Estates with Foreign Beneficiaries

An Adviser's Guide to the two federal taxes that reach a nonresident decedent's U.S. real property; the classification of the estate as foreign or domestic and everything that turns on it; the buyer's withholding under section 1445(a) and the fiduciary's withholding under section 1445(e)(1); the stepped-up basis and the actual tax on the gain; the Form 8288-B withholding certificate and the credit and refund of the amount withheld; the estate tax lien, its discharge before closing and the transfer certificate; the estate tax and income tax conventions as they bear on the property and on the heir's home country; the state withholding regimes that run beside the federal one; and the sequence in which a fiduciary should run the whole exercise.

A nonresident decedent's U.S. real property is the one asset in the estate that cannot be administered from abroad by correspondence. It is inside the U.S. estate tax base whatever convention applies; it carries a federal lien from the moment of death, and when it is sold the buyer must withhold fifteen percent of the price unless the seller is a United States person or the Internal Revenue Service has said otherwise in writing. The withholding is not the tax. It is a deposit against an income tax that is measured from a basis reset to the date-of-death value, and in the ordinary case the deposit exceeds the tax many times over.

The Code makes the fiduciary's position turn on a question that is rarely asked before the contract is signed: whether the estate itself is a foreign estate or a domestic one. A foreign estate is the foreign person on whom the buyer withholds; a domestic estate signs a certification of non-foreign status, closes without withholding, and then becomes a withholding agent in its own right when it distributes to heirs abroad. The two regimes use different bases, different forms, different returns and different remedies, and an estate that is administered on the wrong assumption discovers the difference at the closing table.

The mistake this article exists to prevent is the treatment of FIRPTA withholding as an escrow formality to be sorted out after closing. Three things remain true. First, the withholding is fifteen percent of the amount realized, not of the gain, and the only instrument that reduces it before closing is a withholding certificate applied for on or before the transfer with the taxpayer identification numbers of every party. Second, the income tax on the gain and the estate tax on the value are computed on different amounts, on different returns, at different times, and the convention that relieves one has no bearing on the other; the two connect only through the section 1014 basis, which the estate tax value fixes. Third, the classification of the estate as foreign or domestic, the estate tax lien, the transfer certificate and the state withholding regimes each impose their own sequence, and a fiduciary who sells before those sequences have been run will find the proceeds frozen, the buyer's title insurer unwilling to close, or the estate's cash reduced by amounts that will not be refunded for a year.

This article maps the terrain in the order in which a fiduciary meets it: the two federal taxes and the taxation of the estate itself; the classification of the estate and of the trusts and entities that commonly hold the property; the buyer's withholding under section 1445(a); the basis, the gain and the actual tax; the withholding certificate; the credit and refund on the estate's return; the domestic estate's own withholding under section 1445(e)(1); two worked examples; the estate tax overlay of Form 706-NA, the lien, its discharge and the transfer certificate; the estate tax conventions; the income tax conventions and the heir's home country; the state regimes; and a compliance calendar. Statuses, figures and form revisions are stated as of September 2026, and their confirmation against current sources is part of any real engagement.

Summary

1. A nonresident decedent's U.S. real property attracts two federal taxes: the estate tax on its date-of-death value (Form 706-NA where the U.S.-situated gross estate exceeds $60,000; a $13,000 credit, or under nine conventions a pro rata share of the 2026 credit of $5,945,800) and the income tax on the gain when it is sold, measured from the section 1014 basis. The convention that relieves one tax does not touch the other.

2. The regime depends on whether the estate is foreign or domestic under section 7701(a)(31)(A), a facts-and-circumstances test that weighs the place of administration, the residence of the fiduciary, the location of the assets and the residence of the decedent and heirs. A foreign estate is a foreign person: the buyer withholds 15 percent of the amount realized (10 percent or nothing for a residence within the statutory tiers), reports on Forms 8288 and 8288-A within 20 days, and the estate files Form 1040-NR. A domestic estate certifies non-foreign status with its EIN, closes without withholding, files Form 1041 and withholds 21 percent on distributions to foreign beneficiaries attributable to its U.S. real property interest account.

3. The withholding usually overshoots. The estate's basis is the date-of-death value (or the alternate value if elected), the holding period is long term by statute, the 2026 rate is 20 percent above $16,250 of gain for an estate, and no net investment income tax applies to a foreign estate. A $2,000,000 sale of property valued at $1,850,000 at death produces about $6,700 of tax against $300,000 withheld.

4. Form 8288-B, signed by the executor and carrying the U.S. taxpayer identification numbers of all parties (an EIN for the estate; an ITIN under Form W-7 Exception 4 for a foreign heir), filed on or before the transfer, suspends the payment over, though not the withholding, until 20 days after the IRS mails its certificate or denial; the IRS acts within 90 days of a complete application. An application after closing supports only an early refund, without interest. The stamped Copy B of Form 8288-A is the estate's proof for the credit.

5. The estate tax runs in parallel. The section 6324 lien attaches at death for ten years to the U.S.-situated gross estate; where a U.S.-appointed executor administers the property, Form 4422 (at least 45 days before closing, to Advisory in Florence, Kentucky) obtains the Form 792 discharge; where none does, the transfer certificate takes 12 to 18 months from a complete file. Form 706-NA is due nine months after death, Form 8971 within 30 days of

filing, and the section 1014(f) consistency rule caps the basis at the estate tax value where the property increased the tax.

6. Every U.S. income tax convention preserves U.S. tax on gains from U.S. real property, including interests in estates and trusts holding it. The treaty content is on the residence side: Germany, Switzerland, the Netherlands, Belgium and Luxembourg exempt the gain with progression; France credits the U.S. tax actually paid; the United Kingdom, Italy, Spain, Austria, Ireland and Canada credit. Germany, Austria and Luxembourg carry the decedent's basis over; France, the United Kingdom, Spain, Ireland and Canada step it up; Italy and Belgium leave inherited real property outside their gains tax. Every estate tax convention leaves U.S. real property taxable in the United States and credits or exempts on the home side.

7. State withholding is separate and cumulative with the federal regime: California takes 3 1/3 percent of the price or, by election, 12.3 percent of the gain; New York 10.9 percent of the gain at recording; New Jersey the higher of 10.75 percent of the gain or 2 percent of the price; Hawaii 7.25 percent of the amount realized; Maryland 8.75 percent of net proceeds. Vermont and Oregon exempt estates altogether. Several states require a reduction application 5 to 21 days before closing.

8. The sequence is fixed: classify the estate; obtain the EIN and the heirs' ITINs; compute the gain from the estate tax value; file Form 8288-B and the state reduction request; clear the lien; close; file Form 8288 within 20 days; file the return and claim the credit; distribute last.

Part I. Two federal taxes on one property

The estate tax reaches the value. The gross estate of a decedent who was neither a citizen nor a resident of the United States is that part of the worldwide gross estate which is situated in the United States at death,[1] and real property located in the United States is situated there by the plain terms of the regulation.[2] Property the decedent transferred within the reach of sections 2035 to 2038, which includes a revocable trust, is deemed situated in the United States if it was so situated either at the transfer or at death, so a Los Angeles condominium held in a living trust is inside the base on the same footing as one held in the decedent's own name.[3] The tax is imposed under section 2101 at the rates of section 2001(c), which reach 40 percent above $1,000,000 of taxable estate,[4] against a unified credit of $13,000 or, where a convention so requires, the proportion of the credit allowed to a citizen's estate that the U.S.-situated gross estate bears to the worldwide gross estate.[5] A return on Form 706-NA is required where the U.S.-situated gross estate, together with adjusted taxable gifts and the former specific exemption,

[1] I.R.C. § 2103.

[2] Treas. Reg. § 20.2104-1(a)(1).

[3] I.R.C. § 2104(b).

[4] I.R.C. §§ 2101(a), (b), 2001(c). The tentative tax on the first $60,000 is $13,000, which is why the statutory credit shelters exactly that amount.

[5] I.R.C. § 2102(b)(1), (b)(3)(A). For decedents dying in 2026 the basic exclusion amount is $15,000,000 (I.R.C. § 2010(c)(3)(A), as amended by Pub. L. No. 119-21, § 70106(a) (July 4, 2025)), and the corresponding credit is $5,945,800 (Instructions for Form 706 (Rev. July 2026)).

exceeds $60,000,[6] it is due nine months after death,[7] and the deductions for expenses, claims and mortgages are allowed only in the proportion the U.S.-situated gross estate bears to the worldwide gross estate and only if the worldwide estate is disclosed on the return.[8] The estate tax conventions adjust the credit, the deductions and the marital position, and they credit the U.S. tax at home; none of them removes U.S. real property from the U.S. base.

The income tax reaches the gain. Section 897(a)(1) treats the gain of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest as income effectively connected with a U.S. trade or business, taxed under section 871(b) at the graduated rates,[9] and section 641(b) extends that treatment to a foreign estate by providing that a foreign trust or foreign estate "shall be treated as a nonresident alien individual who is not present in the United States at any time."[10] The estate's taxable income is computed as an individual's, but the tax is computed on the schedule for estates and trusts, which for 2026 reaches 37 percent above $16,000 of ordinary taxable income and, for adjusted net capital gain, applies the 0 percent rate up to $3,300, the 15 percent rate to $16,250 and the 20 percent rate above that amount.[11] Property acquired from a decedent whose basis is determined under section 1014 is deemed held for more than one year, so the gain is long-term capital gain however soon after death the sale closes,[12] and the 3.8 percent net investment income tax does not apply to a foreign estate.[13] Rents collected during the administration are a separate matter: absent an election to treat the real property income as effectively connected, they are fixed or determinable annual or periodical income taxed at 30 percent of the gross amount and withheld upon by the tenant or property manager.[14]

The two taxes are computed on different amounts, on different returns, at different times, by different fiduciaries in many estates, and under different conventions. The estate tax conventions are separate instruments from the income tax conventions; a pro rata unified credit under the German or French estate tax convention says nothing about the income tax on the gain, and the exemption of the gain in Germany under the income tax convention says nothing about the German inheritance tax on the property. What connects the two taxes is the basis. The estate's basis in the property is its fair market value at

[6] I.R.C. § 6018(a)(2), (a)(3); Instructions for Form 706-NA (Rev. Sept. 2025), "Who Must File."

[7] I.R.C. § 6075(a); Treas. Reg. § 20.6081-1(b) (automatic six-month extension on Form 4768); Instructions for Form 706-NA (Rev. Sept. 2025), "When To File."

[8] I.R.C. § 2106(a)(1), (b). A nonrecourse mortgage reduces the value included; a recourse mortgage is included in full and deducted pro rata: Treas. Reg. § 20.2053-7.

[9] I.R.C. § 897(a)(1). A United States real property interest includes an interest in real property located in the United States, an interest in a domestic corporation that was a United States real property holding corporation within the statutory period, and, under section 897(g), the portion of the consideration for an interest in a partnership, trust or estate that is attributable to such property: I.R.C. § 897(c)(1)(A)(i)-(ii), (g); Treas. Reg. § 1.897-1(c)(1).

[10] I.R.C. § 641(b); Treas. Reg. § 1.897-1(k) (a "foreign person" for purposes of section 897 includes a foreign trust or a foreign estate).

[11] I.R.C. §§ 641(b), 1(e), 1(h)(1)(B)-(D), 1(j)(2)(E), (j)(5)(B); Rev. Proc. 2025-32, § 4.01 (Table 5) and § 4.03 (2026 amounts). The section 1(j) schedule is permanent since Pub. L. No. 119-21, § 70101(a)(1), struck its sunset.

[12] I.R.C. § 1223(9).

[13] I.R.C. § 1411(e)(1); Treas. Reg. § 1.1411-3(b)(1)(ix) (foreign estates), (b)(1)(viii) (foreign trusts).

[14] I.R.C. §§ 871(a)(1), (d), 1441(a); Treas. Reg. § 1.871-10. The statute and regulation name a nonresident alien individual or foreign corporation; the election is available to a foreign estate through section 641(b), and the statement required by Treas. Reg. § 1.871-10(d)(1)(ii) is attached to the estate's Form 1040-NR.

the date of death, the value appraised for the estate tax is deemed to be that fair market value, and where the property increased the estate tax payable the basis may not exceed the value finally determined for estate tax purposes.[15] The consequence for practice is that the estate tax appraisal is also the FIRPTA appraisal, and an executor who files a Form 706-NA at one value and a Form 8288-B at another has created a problem on both returns. Both taxes matter, and the second is measured by the first.

Part II. Foreign or domestic: the classification that decides the regime

The withholding regime, the return, the rate schedule and the treaty position all follow from a single classification. A United States person includes "any estate (other than a foreign estate)," and a foreign estate is "an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A."[16] The definition is circular: an estate is foreign if it is taxed like a nonresident alien, and it is taxed like a nonresident alien if it is foreign. When Congress replaced the corresponding test for trusts in 1996 with the court and control tests of section 7701(a)(30)(E), it left the estate definition untouched, so the classification of an estate still rests on the facts-and-circumstances test developed for trusts before 1996: the Service weighs the law under which the estate is administered and the place of that administration, the citizenship and residence of the decedent, the citizenship and residence of the beneficiaries, the location of the assets, and the residence of the fiduciary.[17] No ruling articulates how the factors are weighed. In the one published application to a decedent domiciled abroad, a United States citizen domiciled in Germany who left a German will, German heirs and U.S. securities administered by a U.S. bank as executor of her U.S. estate, the Service held the estate domestic because the assets and their administration were in the United States and the executor was a U.S. person; the German domicile of the decedent and the German residence of every heir did not outweigh them.[18]

The result for the typical cross-border estate follows from the same factors. Where the principal administration is abroad, the executor or *Testamentsvollstrecker* is a foreign person acting under foreign law, the heirs are abroad, and the only U.S. connection is the real property itself, the estate is a foreign estate even if an ancillary administrator has been appointed in the state where the property lies to convey title; the ancillary proceeding is a limited administration of one asset, and the location of one asset has never been enough to make an estate domestic. Where instead the only administration is a U.S. probate, with a U.S. executor holding the decedent's U.S. assets under a U.S. will, the reasoning of the

[15] I.R.C. § 1014(a)(1), (f); Treas. Reg. §§ 1.1014-3(a), 1.1014-10(a), (c)(1), (d)(4) (included property is property whose value is included in the gross estate under section 2031 "or 2103").

[16] I.R.C. § 7701(a)(30)(D), (a)(31)(A).

[17] Rev. Rul. 60-181, 1960-1 C.B. 257, citing *B.W. Jones Trust v. Commissioner*, 46 B.T.A. 531 (1942), aff'd, 132 F.2d 914 (4th Cir. 1943); Rev. Rul. 62-154, 1962-2 C.B. 148 (status of a nonresident alien decedent's estate "depends upon all of the facts involved"); Rev. Rul. 81-112, 1981-1 C.B. 598 (the standards developed for trusts "are equally applicable to estates"); Tech. Adv. Mem. 9413005 (Jan. 6, 1994) (listing the six factors); preamble to the 1997 proposed regulations on trust classification, 62 Fed. Reg. 30796 (June 5, 1997); Notice 98-25, 1998-1 C.B. 979.

[18] Tech. Adv. Mem. 9413005 (Jan. 6, 1994).

1994 memorandum points toward a domestic estate even though the decedent was domiciled abroad and the heirs live there, and the fiduciary should not assume foreign status merely because the decedent was a nonresident alien. Between those poles the answer is a weighing, and it should be made and documented before the purchase contract is signed, because the buyer's escrow will act on whatever the fiduciary certifies, the certification of non-foreign status is a statement under penalties of perjury, and the estate's income tax return, Form 1040-NR or Form 1041, must be consistent with it.[19] Table 1 sets out the factors and Table 2 the consequences for the transferors a fiduciary commonly meets.

Table 1. Classification of an estate as foreign or domestic: the factors

Factor	Points toward a foreign estate	Points toward a domestic estate	Authority
Law and place of administration	Principal administration abroad under foreign succession law (*Nachlass*, *succession*); U.S. proceeding, if any, ancillary and confined to the real property	Sole or principal administration in a U.S. probate court under a U.S. will	Rev. Rul. 60-181; *B.W. Jones Trust*; TAM 9413005
Residence of the fiduciary	Foreign executor, *Testamentsvollstrecker*, *notaire*-supervised heirs	U.S. bank, trust company or individual as executor or administrator	TAM 9413005 (U.S. bank executor held decisive with U.S. assets)
Citizenship and residence of the decedent	Nonresident alien domiciled abroad	U.S. citizen or resident; the memorandum shows this factor alone does not control	§ 7701(a)(31)(A); TAM 9413005
Citizenship and residence of the beneficiaries	All heirs abroad	Heirs in the United States	Rev. Rul. 81-112; TAM 9413005
Location of the assets	Worldwide estate abroad; the U.S. real property is one asset among many	Assets principally in the United States	Rev. Rul. 60-181; *B.W. Jones Trust*
Weighing	No ruling states a method; the Service considers "all of the facts involved"	Same	Rev. Rul. 62-154
Consequence	Foreign person for section 1445(a); Form 1040-NR; taxed as a nonresident alien under section 641(b); no net investment income tax	United States person; certification of non-foreign status; Form 1041; section 1445(e)(1) withholding on distributions to foreign beneficiaries; net investment income tax on undistributed net investment income above $16,000	§§ 641(b), 1411(a)(2), 1445(a), (e)(1), 7701(a)(30)(D)

[19] Treas. Reg. § 1.1445-2(b)(2)(i) (certification signed under penalties of perjury "by a trustee, executor, or equivalent fiduciary in the case of a trust or estate"); Instructions for Form 1041 (2025), "Who Must File" ("If you are the fiduciary of a foreign estate, file Form 1040-NR, U.S. Nonresident Alien Income Tax Return, instead of Form 1041"); Instructions for Form 1040-NR (2025), "Who Must File," item 8.

Trusts are classified by a different test with the same consequences. A trust is domestic only if a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all of its substantial decisions; any trust that fails either test is foreign.[20] A revocable trust created by a nonresident alien to hold a U.S. residence, with a U.S. trustee, is a foreign trust during the settlor's life, because the settlor, a non-U.S. person, holds the power to revoke, to direct distributions and to replace the trustee; it may become domestic on the settlor's death, the status being tested day by day, if from that moment only U.S. persons hold the substantial decisions and the trust is administered in the United States, and it remains foreign if a foreign co-trustee, protector or beneficiary holds a veto over any substantial decision.[21] Where the trust is domestic after the death, its sale of the property is free of withholding at closing and its distributions to foreign beneficiaries are subject to the fiduciary's withholding under section 1445(e)(1); where it is foreign, the buyer withholds fifteen percent of the amount realized. A qualified revocable trust of a nonresident alien may be joined to the estate by the section 645 election, in which case it is reported on the estate's return for the election period.[22]

Two further transferors need identifying. A single-member limited liability company that is disregarded may not certify that it is the transferor; the owner is the transferor, provides the certification if it is a United States person, and is withheld upon if it is not, and a domestic entity's certification must state that it is not a disregarded entity.[23] And the heirs themselves become transferors once the property has been distributed. A distribution in kind of the property devised to them is not a disposition by the estate: no gain is recognized, the heir takes the estate's adjusted basis, which is the section 1014 value, and the specific bequest is not even a distribution carrying out income.[24] Section 1445(e)(4), which would require withholding on a taxable distribution of a United States real property interest to a foreign beneficiary, applies only from the effective date of regulations that have not been issued.[25] When the heirs later sell, each foreign heir is a foreign person on whose share the buyer withholds fifteen percent, each needs an individual taxpayer identification number for the certificate and the credit, and each files a Form 1040-NR

[20] I.R.C. § 7701(a)(30)(E), (a)(31)(B); Treas. Reg. § 301.7701-7(a)(1)-(2), (c)(1) (safe harbor for the court test), (d)(1)(ii) (the substantial decisions, listed in (A) to (J)), (d)(1)(iii) ("control means having the power, by vote or otherwise, to make all of the substantial decisions of the trust, with no other person having the power to veto any of the substantial decisions").

[21] Treas. Reg. § 301.7701-7(a)(2) (a trust is a United States person "on any day that the trust meets both the court test and the control test"), (d)(1)(v), Examples 1 and 3 (control test failed where a nonresident alien fiduciary's agreement is required or where the U.S. fiduciaries can only veto); (d)(2) (twelve-month cure only for inadvertent changes such as death, incapacity or resignation).

[22] I.R.C. § 645(a), (b)(1) (a trust treated under section 676 as owned by the decedent; the grantor treatment survives section 672(f) for a trust revocable by the grantor, § 672(f)(2)(A)); Form 8855, filed by the due date of the estate's first return.

[23] Treas. Reg. § 1.1445-2(b)(2)(iii).

[24] I.R.C. §§ 643(e)(1), (e)(4), 663(a)(1). Gain is recognized by the estate only if the executor elects under section 643(e)(3) or if the property is used to satisfy a pecuniary legacy or a right to a specific dollar amount: Treas. Reg. § 1.661(a)-2(f); *Kenan v. Commissioner*, 114 F.2d 217 (2d Cir. 1940).

[25] I.R.C. § 1445(e)(4); Treas. Reg. § 1.1445-5(b)(8)(iv) (the provisions "shall apply to distributions made on or after the effective date of a Treasury decision under section 897(e)(2)(B)(ii) and (g)"); § 1.1445-5(f) (reserved).

reporting the gain measured from the date-of-death value.

Table 2. Who is the transferor, and which regime applies

Transferor at the closing	Withholding at the closing	Withholding on distributions	Return, certification and identification
Foreign estate (Part II)	Buyer withholds 15 percent of the amount realized under section 1445(a); 10 percent or none for a residence within the statutory tiers; reduced only by a withholding certificate	None under section 1445(e)(1); the estate is the taxpayer	Form 1040-NR; no certification available; EIN on Form 8288-B and Form 8288-A
Domestic estate	None; the executor furnishes a certification of non-foreign status with the estate's EIN	Executor withholds 21 percent of distributions to foreign beneficiaries attributable to the U.S. real property interest account (Part VII)	Form 1041; certification under penalties of perjury; Form 8288 Part II for the distribution withholding
Foreign trust (revocable trust of a nonresident settlor during life, or a trust with a foreign veto after death)	Buyer withholds 15 percent of the amount realized	None under section 1445(e)(1)	Form 1040-NR; trustee signs Form 8288-B; EIN
Domestic trust after the settlor's death (U.S. trustees control all substantial decisions; U.S. administration)	None; trustee certifies non-foreign status	Trustee withholds 21 percent on distributions attributable to the account; election for trusts with more than 100 beneficiaries	Form 1041; Form 8288 Part II
Grantor trust portion owned by a foreign person	Buyer withholds 15 percent if the trust is foreign; if the trust is domestic, none at closing	Trustee withholds 21 percent of the gain allocable to the portion owned by the foreign person, at the disposition	Treas. Reg. § 1.1445-5(c)(1)(iv)
Disregarded single-member LLC	The owner is the transferor; withholding follows the owner's status	Follows the owner	The LLC may not certify; a domestic entity's certification states that it is not disregarded
Foreign heirs after an in-kind distribution	Buyer withholds 15 percent of each heir's share of the amount realized	Not applicable	Each heir files Form 1040-NR; ITIN under Form W-7 Exception 4; basis carried over from the estate at the date-of-death value
Foreign corporation holding the property	Buyer withholds 15 percent of the amount realized on a sale by the corporation; on a distribution of the property the corporation withholds 21 percent of the gain recognized	Not applicable	Form 1120-F; sections 897(d) and 1445(e)(2)

Transferor at the closing	Withholding at the closing	Withholding on distributions	Return, certification and identification
Estate selling an interest in a partnership that holds the property	Buyer withholds 10 percent of the amount realized under section 1446(f)(1) where the partnership has effectively connected income, or 15 percent under section 1445(e)(5) and Treas. Reg. § 1.1445-11T where the partnership's assets consist principally of United States real property interests, the two regimes being coordinated by the section 1446(f) regulations	Not applicable	Form 8288 Part III; gain computed under section 864(c)(8) and section 897(g)

Part III. The sale by a foreign estate: section 1445(a) at the closing

On any disposition of a United States real property interest by a foreign person, the transferee must deduct and withhold a tax equal to 15 percent of the amount realized on the disposition.[26] The base is the gross amount realized: the cash paid or to be paid, the fair market value of any other property transferred, and the outstanding amount of any liability assumed by the transferee or to which the property remains subject.[27] A mortgage paid off at closing is therefore inside the base, and an estate whose equity in the property is thin can find that the withholding exceeds the cash the sale produces. The foreign estate is the foreign person on whom the buyer withholds: the regulation names "a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate" as the persons whose certification of non-foreign status cannot be given, and the statutory definition of a foreign person is any person other than a United States person, which by section 7701(a)(30)(D) excludes a foreign estate.[28] The buyer's escape from withholding on the strength of the seller's affidavit, which decides almost every domestic closing, is accordingly closed to a foreign estate; its only routes to a lower figure are the residence tiers and the withholding certificate.

The residence tiers depend on the buyer, not on the seller. No withholding is required if one or more individual transferees acquire the property for use as a residence and the amount realized is $300,000 or less, and the rate is 10 percent where the property is acquired by the transferee for use as a residence and the amount realized does not exceed $1,000,000.[29] The property is acquired for use as a residence only if on the date of transfer the transferee has definite plans to reside at it for at least 50 percent of the days it is used by any person during each of the first two twelve-month periods after the transfer, the exception is unavailable to a corporate or

[26] I.R.C. § 1445(a). The rate was raised from 10 percent to 15 percent for dispositions after February 16, 2016: Pub. L. No. 114-113, div. Q, § 324 (Dec. 18, 2015).

[27] Treas. Reg. § 1.1445-1(g)(5).

[28] I.R.C. § 1445(f)(3); Treas. Reg. § 1.1445-2(b)(2)(i)(B).

[29] I.R.C. § 1445(b)(5), (c)(4); Treas. Reg. § 1.1445-2(d)(1). The regulation has not been amended for the 2015 statutory 10 percent tier, which appears in the statute and the Form 8288 instructions.

other non-individual buyer, and a buyer who relies on it and does not in fact reside there is liable for the withholding if the seller does not pay the tax.[30] Nothing in the statute or the regulation conditions the tiers on the type of foreign transferor, so a sale by a foreign estate to an individual buying a home within the thresholds is entitled to them; an arm's-length sale of estate property to an investor or above $1,000,000 is not.

The buyer files Form 8288 and pays the tax withheld by the 20th day after the date of transfer, attaching Copies A and B of Form 8288-A for each foreign transferor; the Service stamps Copy B and mails it to the transferor at the address shown on the form, and it is that stamped copy that the estate attaches to its return to claim the credit.[31] The forms call for the transferor's U.S. taxpayer identification number, which for an estate is an employer identification number; if the number is missing the buyer must still file and pay, the Service writes to the transferor with instructions for obtaining a number, and the stamped Copy B is withheld until the number is supplied.[32] An estate should therefore obtain its employer identification number before the contract is signed; without it neither the withholding certificate nor the credit can be processed.

The buyer's exposure is real. Every person required to withhold is made liable for the tax by section 1461; a buyer who fails to withhold owes the tax, interest under section 6601 from the 20th day after the transfer, the additions for late filing and late payment under section 6651, and, for a willful failure, a penalty of up to $10,000 under section 7202, while responsible officers of a corporate buyer face the section 6672 penalty equal to the amount that should have been withheld.[33] If the estate later files its return and pays the tax, or obtains a withholding certificate showing no liability, the tax is not collected from the buyer, but the buyer's liability for interest for the period of the failure survives.[34] Because the title company or escrow holder that handles the closing acts for the buyer, and because a buyer who received notice that a certification was false may not rely on it, the estate should expect the escrow to insist on withholding at fifteen percent from the gross price unless a withholding certificate or a pending application is in hand.[35] A foreign estate that has not applied for a certificate before closing will lose fifteen percent of the price to the Treasury at the closing table, and

[30] Treas. Reg. § 1.1445-2(d)(1); IRS, "Exceptions from FIRPTA withholding" (updated July 15, 2026) ("For this exception, the transferee must be an individual.").

[31] Treas. Reg. § 1.1445-1(c)(1), (f)(2); Instructions for Form 8288 (Rev. Jan. 2026), "When To File," "Where To File" (Ogden Service Center, P.O. Box 409101, Ogden, UT 84409), "Copies A and B." The date of transfer is the first date on which consideration is paid or a liability is assumed by the transferee: Treas. Reg. § 1.1445-1(g)(8).

[32] Instructions for Form 8288 (Rev. Jan. 2026) ("If you do not have the transferor's TIN, you must still file Forms 8288 and 8288-A"; "When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped Copy B of Form 8288-A"); Instructions for Form 8288-B (Rev. Dec. 2025) (the identification number of an entity other than an individual "is an employer identification number (EIN)"). A foreign heir who has no number applies for an ITIN on Form W-7 under Exception 4, attaching the Form 8288-B or the Forms 8288 and 8288-A and the contract or closing statement: Instructions for Form W-7 (Rev. Dec. 2024), Exceptions Table, Exception 4.

[33] I.R.C. §§ 1461, 6601(a), 6651(a)(1)-(2), 6672(a), 7202; Treas. Reg. § 1.1445-1(e)(1), (e)(2)(i)-(ii); Instructions for Form 8288 (Rev. Jan. 2026), "Penalties." The failure-to-deposit penalty of section 6656 does not apply, because the section 1445 tax is remitted with the return rather than deposited: Treas. Reg. § 1.6302-2 contains no rule for section 1445 tax. Interest currently accrues at 7 percent for non-corporate underpayments: Rev. Rul. 2026-15 (quarter beginning Oct. 1, 2026).

[34] Treas. Reg. § 1.1445-1(e)(3)(i)-(ii).

[35] I.R.C. § 1445(b)(7); Treas. Reg. § 1.1445-2(b)(4)(iii)-(iv).

nothing in the escrow's discretion can change that.

Table 3. Withholding rates and bases

Transaction	Rate and base	Authority and form
Disposition of a United States real property interest by a foreign person, including a foreign estate or foreign trust	15 percent of the amount realized (cash, other property, liabilities assumed or taken subject to)	I.R.C. § 1445(a); Treas. Reg. § 1.1445-1(g)(5); Form 8288 Part I, Form 8288-A, within 20 days of the transfer
Residence acquired by one or more individuals for $300,000 or less	No withholding; the transferee bears the risk if the residence test is not met	I.R.C. § 1445(b)(5); Treas. Reg. § 1.1445-2(d)(1)
Residence acquired by the transferee for more than $300,000 and not more than $1,000,000	10 percent of the amount realized	I.R.C. § 1445(c)(4)
Withholding certificate issued to the transferor or transferee	Reduced to the transferor's maximum tax liability, or to zero on exemption or nonrecognition	I.R.C. § 1445(c)(1); Treas. Reg. § 1.1445-3; Form 8288-B
Distribution by a domestic estate or trust to a foreign beneficiary attributable to the U.S. real property interest account	21 percent of the distribution so attributable, on the day of the distribution	I.R.C. § 1445(e)(1); Treas. Reg. § 1.1445-5(c)(1)(iii); Form 8288 Part II
Gain of a domestic grantor trust allocable to a portion owned by a foreign person	21 percent of the gain realized on the disposition	I.R.C. § 1445(e)(1)(B); Treas. Reg. § 1.1445-5(c)(1)(iv)
Disposition by a domestic partnership with foreign partners	21 percent of each foreign partner's distributive share of the gain under section 1445(e)(1), displaced by section 1446 withholding on the same gain where the partnership is subject to section 1446	I.R.C. §§ 1445(e)(1), 1446; Treas. Reg. §§ 1.1445-5(c)(1)(ii), 1.1446-3(c)(2)(i)
Distribution of a United States real property interest by a foreign corporation	21 percent of the gain recognized by the corporation	I.R.C. §§ 897(d), 1445(e)(2); Treas. Reg. § 1.1445-5(d)
Redemption, liquidation or non-dividend distribution by a domestic United States real property holding corporation to a foreign shareholder	15 percent of the fair market value of the property distributed	I.R.C. § 1445(e)(3); Treas. Reg. § 1.1445-5(e)
Taxable distribution of a United States real property interest by a partnership, trust or estate to a foreign beneficiary	Inoperative until regulations are issued	I.R.C. § 1445(e)(4); Treas. Reg. § 1.1445-5(b)(8)(iv)

Transaction	Rate and base	Authority and form
Transfer of a partnership interest by a foreign person	10 percent of the amount realized under section 1446(f)(1); 15 percent under section 1445(e)(5) and Treas. Reg. § 1.1445-11T for partnerships whose assets consist principally of United States real property interests	I.R.C. §§ 1445(e)(5), 1446(f); Form 8288 Part III

Part IV. Basis, gain and the actual tax

The basis of property acquired from a decedent is its fair market value at the date of death, or its value at the alternate valuation date if the executor has elected under section 2032, and property acquired by bequest, devise or inheritance, or by the decedent's estate from the decedent, is property acquired from a decedent.[36] The rule does not depend on the property having been included in a U.S. gross estate or on any U.S. estate tax having been paid: the Service has held that property inherited from a nonresident alien takes the section 1014 basis under subsections (a)(1) and (b)(1) whether or not it was subject to the estate tax, and its own guidance for nonresident estates says the same.[37] Property held in the decedent's revocable trust is acquired from the decedent under subsections (b)(2) and (b)(3) without regard to inclusion, and U.S. real property so held is in any event included in the nonresident's gross estate under section 2104(b) and therefore also within subsection (b)(9).[38] The value appraised for the federal estate tax is deemed to be the fair market value for this purpose, and where no return was required the value appraised for state inheritance tax is used, so that an estate below the $60,000 threshold with no state inheritance tax needs a contemporaneous appraisal of its own.[39]

Two refinements matter in the estate context. The first is the alternate valuation date. If the executor elects it, property sold within six months after death is valued as of the date of sale, so the estate's basis equals the sale price and the only gain or loss is the selling expenses; but the election may be made only if it decreases both the value of the gross estate and the net estate tax after credits, so it is unavailable to an estate that owes no U.S. estate tax, whether because the value is below the credit or because a convention's pro rata credit absorbs the tax, and it is irrevocable and cannot be made on a return filed more than one year late.[40] The second is basis

[36] I.R.C. § 1014(a)(1)-(2), (b)(1).

[37] Rev. Rul. 84-139, 1984-2 C.B. 168, as described in Priv. Ltr. Rul. 201245006 (July 19, 2012) ("This rule applies to property located outside the United States, as well as to property located inside the United States"); IRS, "Frequently asked questions on estate taxes for nonresidents not citizens of the United States" (updated July 23, 2026) (section 1014 basis, "so there is usually little or no gain to account for if the sale occurs soon after the date of death").

[38] I.R.C. §§ 1014(b)(2), (b)(3), (b)(9), 2104(b). Property held in an irrevocable grantor trust that is not included in the gross estate takes no new basis at death: Rev. Rul. 2023-2, 2023-16 I.R.B. 658.

[39] Treas. Reg. § 1.1014-3(a).

[40] I.R.C. § 2032(a)(1)-(2), (c), (d); Instructions for Form 706-NA (Rev. Sept. 2025), Part V, line 1 ("You may not elect alternate valuation unless the election will decrease both the value of the gross estate and the net estate tax due after application of all allowable credits").

consistency. Where the property's inclusion increased the estate tax payable after credits, the estate's and the heirs' initial basis may not exceed the value finally determined for estate tax purposes, or, until a final value exists, the value reported on the statement furnished to the beneficiaries; the rule expressly covers property included under section 2103, so it reaches Form 706-NA estates; and an executor required to file the return must file Form 8971 with the Service and furnish Schedule A to each beneficiary within 30 days after the return is due or filed, whichever is earlier, with supplemental statements within 30 days of any change.[41] Property the executor sells before distribution in a recognition event is "excepted property" subject to more limited reporting, but the consistency cap still binds the estate's own basis in computing the gain, and an underpayment attributable to an inconsistent basis carries the 20 percent accuracy-related penalty in addition to the information return penalties for a missing or late Form 8971.[42] Where no U.S. estate tax is payable the cap does not apply, but the deemed-value rule of the regulation and the Service's ability to examine the appraisal remain, and the practical rule is unchanged: one appraisal, used on both returns.

The gain is the amount realized less the expenses of sale and the basis. Brokerage commissions, transfer taxes, escrow and title charges and the like reduce the amount realized in computing the gain, and an executor who has claimed them as administration expenses on the estate tax return may not use them a second time on the income tax side.[43] Depreciation allowed after death on property rented during the administration is recaptured at 25 percent as unrecaptured section 1250 gain; depreciation taken by the decedent is irrelevant, because the basis was reset.[44] On these rules the figures in the ordinary estate sale are these. A condominium valued at $1,850,000 at death is sold nine months later for $2,000,000; commissions and closing costs are $110,000; the gain is $40,000, long-term by statute; the 2026 tax on it for an estate with no other income is $6,692.50 (nothing on the first $3,300, 15 percent on the next $12,950, 20 percent on the remaining $23,750); the withholding at closing, absent a certificate, is $300,000. Where the property is sold for less than its date-of-death value after expenses, there is a capital loss, no tax, and still $300,000 of withholding unless a certificate has reduced it to zero. The stepped-up basis reduces the tax, not the withholding: the withholding is reduced only by the instrument described in the next Part.

Part V. The withholding certificate on Form 8288-B

The statute itself supplies the remedy for the overshoot. The amount required to be withheld may not exceed the transferor's maximum tax liability, which the Service determines at the request of the transferor or the transferee, and the Service must act on the request within 90 days after it receives it.[45] Either party may apply, before or after the

[41] I.R.C. §§ 1014(f)(1)-(2), 6035(a)(1), (a)(3); Treas. Reg. §§ 1.1014-10(a)(1)-(2), (b)(1)-(2), (c)(1), (d)(3)-(4), 1.6035-1(b)(1), (c)(3)(i), (d)(4), as adopted by T.D. 9991, 89 Fed. Reg. 76356 (Sept. 17, 2024), applicable to estates whose return is filed after that date (§§ 1.1014-10(f), 1.6035-1(j)); Instructions for Form 706-NA (Rev. Sept. 2025) ("Estates are required to report to the IRS and the recipient the estate tax value of each asset included in the gross estate within 30 days of filing Form 706-NA").

[42] Treas. Reg. §§ 1.6035-1(f)(1), (f)(2)(x), (i); I.R.C. §§ 6662(b)(8), (k), 6721, 6722.

[43] I.R.C. § 642(g); Treas. Reg. § 1.642(g)-2 (selling expenses may be claimed as administration expenses or as an offset against the selling price, but not both).

[44] I.R.C. § 1(h)(1)(E), (h)(6)(A).

[45] I.R.C. § 1445(c)(1)(A)-(B), (c)(3)(B).

transfer; a certificate obtained before the transfer tells the buyer that reduced or no withholding is required, and one obtained afterwards authorizes a normal or an early refund.[46] The application is made on Form 8288-B for the three ordinary grounds, a claim of exemption or nonrecognition, a calculation of the maximum tax liability, and the special installment sale rules, and by letter under Revenue Procedure 2000-35 for an agreement to pay the tax with security, a blanket certificate, or any other basis.[47] For an estate selling inherited property the ground is the second: the maximum tax liability is the sum of the maximum tax that could be imposed on the disposition, which for a non-corporate transferor "will generally be the contract price of the property minus its adjusted basis, multiplied by the maximum individual income tax rate applicable to long term capital gain," adjusted for any treaty reduction, any nonrecognition provision and any losses recognized on other United States real property interests during the year, plus the transferor's unsatisfied withholding liability, which is the tax the transferor itself should have withheld when it acquired the property and did not.[48] Where the computation shows no tax, as it does when the property is sold at or below its date-of-death value after expenses, the certificate reduces the withholding to zero.

The application stands or falls on its identification numbers and its evidence. The regulation requires the name, address and identifying number of the applicant and of every other party, and "the Service will deny the application if complete information, including the identifying numbers of all the parties, is not provided"; the form repeats that "the U.S. TIN of all parties to the transaction must be on the application" and that an application which is not substantially complete will be rejected.[49] The estate needs its employer identification number, and each foreign heir who is a transferor needs an ITIN or a pending Form W-7 attached to the application. The evidence of the maximum tax liability is a copy of the signed contract for the amount to be realized and, for the adjusted basis, closing statements, invoices for improvements and depreciation schedules, or, where no depreciation was allowable, a statement of the use of the property and why; for property acquired from a decedent the corresponding evidence is the appraisal at the date of death and, where one was filed, the Form 706-NA, and the Service's own procedures acknowledge that the basis of inherited property is its date-of-death value.[50] The application must be signed under

[46] Treas. Reg. § 1.1445-3(a) ("Either a transferee or transferor may apply for a withholding certificate"; "A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund"; the Service "will act upon an application for a withholding certificate not later than the 90th day after it is received," and may deny it "where, after due notice, an applicant fails to provide information necessary for the Service to make a determination").

[47] Rev. Proc. 2000-35, 2000-2 C.B. 211, §§ 4.01, 4.03 (six categories), 9 (blanket certificates), 12-13 (effective for applications after Sept. 27, 2000; superseding Rev. Proc. 88-23); Instructions for Form 8288-B (Rev. Dec. 2025); IRS, "Withholding certificates" and "Format for applications" (updated July 23 and Aug. 31, 2026). Note that the regulation's paragraph (f) concerns amendments to applications, not blanket certificates.

[48] Treas. Reg. § 1.1445-3(c)(1)-(3). An estate that acquired the property from the decedent by inheritance has no unsatisfied withholding liability, and Form 8288-B, line 8, asks for "a calculation of the transferor's unsatisfied withholding liability or evidence that it does not exist."

[49] Treas. Reg. § 1.1445-3(b)(2); Instructions for Form 8288-B (Rev. Dec. 2025). A transferor eligible for an ITIN may attach the completed Form 8288-B to Form W-7 and send the package to the ITIN Operation; if the ITIN application is rejected the attached Form 8288-B is not processed: IRS, "ITIN guidance for foreign property buyers/sellers" (updated Aug. 13, 2026); IRM 21.8.5 (Aug. 22, 2025).

[50] Treas. Reg. § 1.1445-3(b)(4)(i), (c)(2); Instructions for Form 8288-B (Rev. Dec. 2025), line 7b; IRM 21.8.5.

penalties of perjury by the executor or trustee, and it is sent to the Ogden campus.[51]

Timing decides what the certificate is worth. If the application is submitted to the Service on or before the day of the transfer, whether by the buyer or by the estate, and in the latter case the estate has notified the buyer before the transfer, the buyer must still withhold the full fifteen percent, but need not report and pay it over until the 20th day after the Service mails the certificate or the notice of denial; the amount sits in escrow, and when the certificate issues the buyer remits the reduced amount and releases the balance to the estate.[52] No interest runs for the deferral unless the application was made for a principal purpose of delaying payment, which is presumed where a maximum-tax-liability application ends in a liability of 90 percent or more of the amount that would otherwise have been withheld.[53] If instead the application is filed after the closing, the buyer must remit the full amount within 20 days, and the certificate, when it issues, entitles the estate to apply for an early refund of the excess before its return is due, without interest, on production of the stamped Copy B of Form 8288-A; or the estate may simply claim the credit on its return.[54] The regulation's 90 days run from receipt of the application; the form and the revenue procedure count from receipt of "all information necessary to make a proper determination," and a request for further information suspends the case for 30 days, or 45 where the address is abroad.[55] The practical rule is to file the application when the contract is signed, to build the escrow holdback into the purchase agreement, and to expect the certificate after, not before, the closing: the buyer closes on a pending application, the escrow holds fifteen percent, and the estate's cash is released when the certificate arrives. Table 4 summarizes the three positions.

Table 4. The withholding certificate by timing of the application

Position	Withholding at closing	Payment over and release	Recovery of the excess
Application filed on or before the transfer (by the buyer, or by the estate with notice to the buyer)	Full 15 percent withheld and held, ordinarily in escrow	Not due until the 20th day after the IRS mails the certificate or denial; on a certificate, the reduced amount is remitted and the balance released; on a denial, the full amount is remitted	Released by the escrow without a return; interest and penalties only where the application was made to delay payment (presumed at 90 percent or more)

[51] Treas. Reg. § 1.1445-3(b)(1); Form 8288-B (Rev. Dec. 2025) (Internal Revenue Service, P.O. Box 409101, Ogden, UT 84409).

[52] Treas. Reg. § 1.1445-1(c)(2)(i)(A)-(B); Instructions for Form 8288 (Rev. Jan. 2026) ("you do not have to file Form 8288 and transmit the withholding until the 20th day after the day the IRS mails you a copy of the withholding certificate or notice of denial"); IRM 21.8.5.

[53] Treas. Reg. § 1.1445-1(c)(2)(ii); IRS, "Reporting and paying tax on U.S. real property interests" (updated July 23, 2026) (interest and penalties in that case run from the 21st day after the transfer).

[54] Treas. Reg. § 1.1445-3(g); IRM 21.8.5 ("An Early FIRPTA refund is issued within the same year of withholding. Therefore, no interest is paid on the refund."); Treas. Reg. § 1.1445-1(f)(1).

[55] Treas. Reg. § 1.1445-3(a); Instructions for Form 8288-B (Rev. Dec. 2025); Rev. Proc. 2000-35, § 4.01; IRS, "Withholding certificates" (updated July 23, 2026) ("within 90 days after receipt of a complete application including the Taxpayer Identification Numbers (TIN's) of all the parties"); IRM 21.8.5.

Position	Withholding at closing	Payment over and release	Recovery of the excess
Application filed after the transfer	Full 15 percent withheld	Remitted with Form 8288 by the 20th day after the transfer	Early refund on application with the stamped Copy B, before the return is due, without interest; or credit on the return
No application	Full 15 percent withheld	Remitted by the 20th day after the transfer	Credit on Form 1040-NR (or Form 1041), refund after the return is processed, with interest only if the refund is issued more than 45 days after the later of the due date and the filing date

Part VI. The credit and the refund on the estate's return

Withholding does not excuse the return. A foreign person that disposes of a United States real property interest must file a U.S. income tax return for the year, and the tax withheld is credited against the tax computed on it.[56] For a foreign estate the return is Form 1040-NR, changed to reflect subchapter J, filed under the estate's employer identification number and signed by the fiduciary; the gain is reported on Schedule D and Form 8949 as gain treated as effectively connected, and the amount withheld is entered on the line for Forms 8288-A, with the stamped Copy B attached to the front of the return.[57] The return of a nonresident alien estate that has an office in the United States is due on the 15th day of the fourth month after the close of its taxable year and otherwise on the 15th day of the sixth month, and because an estate, unlike a trust, may adopt a fiscal year, an executor who chooses a year ending shortly after the closing brings the due date, and with it the refund, forward by as much as a year.[58] A domestic estate on which a buyer has withheld, which should not happen but does where the estate had no employer identification number at closing or the escrow declined the certification, claims the credit on Form 1041 in the same way.[59]

The credit is only as good as the stamped copy. The regulation requires the stamped Copy B of Form 8288-A to be attached to establish the amount withheld, and where the Service has not provided one, because the buyer's forms carried no identification number for the estate, the estate may instead attach substantial evidence of the withholding, such as the closing documents, together with a statement supplying all the information the forms would have carried, including its own

[56]Treas. Reg. § 1.1445-1(f)(1); I.R.C. § 33 (credit for tax withheld at source under subchapter A of chapter 3, which contains section 1445).

[57]Instructions for Form 1040-NR (2025), "Who Must File," item 8; "Filing for an estate or trust"; "Identifying number" ("If the estate or trust doesn't have an EIN, you must apply for one"); "Dispositions of U.S. real property interests"; line 25f ("Form(s) 8288-A"); "Assemble Your Return."

[58]Instructions for Form 1040-NR (2025), "When To File, Estates and trusts"; I.R.C. §§ 441(b), (e), 644(a) (calendar year required for trusts only); Treas. Reg. § 1.441-1(c)(1); Instructions for Form 1041 (2025), "Accounting Periods" ("An estate may adopt either a calendar year or a fiscal year as its tax year").

[59]2025 Form 1041, Schedule G, Part II, line 14; Treas. Reg. § 1.1445-1(f)(2).

number.[60] The tax withheld under chapter 3 is deemed paid on the last day prescribed for filing the return, without extensions, so the three-year and two-year periods for a refund claim run from that date, and the Service pays no interest on a refund issued within 45 days after the later of the due date and the date the return is filed.[61] Two consequences follow for the fiduciary. The first is that the withholding is a prepayment, not the tax: the estate's home-country adviser who needs the amount of U.S. tax "paid" for a foreign tax credit must wait for the return and the refund, and a convention that credits the tax actually borne, as the French convention does, will credit only the residual figure.[62] The second is that the refund is slow money: a return filed in June for a closing the previous spring produces a refund, in the ordinary course, more than a year after the cash left the escrow, which is why the certificate, not the return, is the fiduciary's instrument of choice.

Part VII. The domestic estate with foreign beneficiaries: section 1445(e)(1)

A domestic estate closes without withholding, because it is a United States person and its executor can sign the certification of non-foreign status; the withholding obligation then moves to the executor. On any disposition of a United States real property interest by a domestic estate, the executor must withhold a tax equal to the highest corporate rate, now 21 percent, multiplied by the gain realized to the extent the gain is allocable to a foreign person who is a beneficiary of the estate.[63] The regulations translate that instruction into an account mechanism. The fiduciary of an estate or trust with one or more foreign beneficiaries must establish a U.S. real property interest account and enter in it all gains and losses realized during the taxable year from dispositions of United States real property interests; it must withhold 21 percent of the amount of any distribution to a foreign beneficiary that is attributable to the balance in the account on the day of the distribution; every distribution to a beneficiary is deemed attributable first to that balance and only then to other amounts; and any balance not distributed by the close of the taxable year is cancelled and is not carried to any other year.[64] The withholding is reported on Form 8288, Part II, with a Form 8288-A for each foreign beneficiary, and paid over within 20 days; the Service stamps the beneficiary's copy, and the beneficiary claims the credit on its own return.[65] The election that allows a

[60]Treas. Reg. § 1.1445-1(f)(2), (f)(3)(i); IRS, "Reporting and paying tax on U.S. real property interests" (updated July 23, 2026).

[61]I.R.C. §§ 6513(b)(3), 6511(a), (b)(2)(A), 6611(b)(3), (e)(1).

[62]Convention between the United States and France with respect to taxes on income and capital, signed at Paris, Aug. 31, 1994, art. 24(1)(a)(iii) and (1)(d)(iii), as amended by the Protocol of Jan. 13, 2009 (credit for "the amount of tax paid in the United States," meaning the U.S. tax "effectively borne on a final basis").

[63]I.R.C. § 1445(e)(1) (rate keyed to "the highest rate of tax in effect for the taxable year under section 11(b)"; the parenthetical 20 percent rate applies only "to the extent provided in regulations," and none so provide); Instructions for Form 8288 (Rev. Jan. 2026), Part II ("The fiduciary must withhold 21% (35% for distributions made before January 1, 2018) of the amount distributed to a foreign person from the account during the tax year").

[64]Treas. Reg. § 1.1445-5(c)(1)(i), (c)(1)(iii)(A); IRS, "Definitions of terms and procedures unique to FIRPTA" (updated June 28, 2026). The regulation now refers to "the rate specified in section 1445(e)(1)"; the 35 percent figure survives only in the regulation's 1994 example.

[65]Treas. Reg. § 1.1445-5(b)(5), (b)(7) ("The tax withheld with respect to the foreign person under section 1445(e) (as shown on Form 8288-A) shall be credited against the amount of income tax as computed in such return"); Instructions for Form 8288 (Rev. Jan. 2026). The regulation's 20 days run from "the date of the transfer"; for an estate the withholding is measured on the day of the distribution, and the form treats the distribution as the reportable event.

trust with more than 100 beneficiaries to withhold on distributions rather than at the disposition is not available to an estate, the fiduciary's liability for a failure to withhold is the transferee's liability under section 1461 with the section 6672 penalty for responsible persons, and a withholding certificate may be sought for this withholding as for the buyer's.[66]

The account mechanism produces a mismatch that the fiduciary must plan around. Gains from the sale of capital assets are ordinarily excluded from distributable net income and are not considered paid or distributed to any beneficiary, unless under the governing instrument and local law they are allocated to income, or allocated to corpus but consistently treated as part of a distribution, or actually distributed, or unless all the assets are distributed in the year of termination.[67] An estate that sells in one year and holds the proceeds is taxed on the gain itself, at the estate's rates and, being domestic, with the 3.8 percent net investment income tax on its undistributed net investment income above $16,000.[68] Yet any distribution to a foreign beneficiary in the year of the sale, whether of income, of corpus or of the sale proceeds, is deemed attributable first to the account and is withheld upon at 21 percent, even though the gain never reaches the beneficiary's return; the beneficiary then files a Form 1040-NR to recover the withholding, and the estate has paid the tax on the same gain. Where the gain is carried out, as it is in the year of termination, the character passes with it, the foreign beneficiary is taxed on its share as effectively connected income measured from the estate's basis, and the 21 percent withheld is credited on the beneficiary's return, the residual being refunded.[69] The planning rules follow from the cancellation at year end: distribute to foreign beneficiaries in the year after the sale, when the account has been cancelled, or, if the estate is terminating and the gain will be carried out in any event, distribute in the sale year and let the withholding stand as the beneficiary's prepayment. What the fiduciary must not do is distribute the proceeds in the sale year on the assumption that a domestic estate has no FIRPTA obligation; it has one, on a different base, on its own return, under its own personal liability.

Part VIII. Two worked examples

The two examples use the same property and the same numbers so that the difference lies in the estate. A Los Angeles condominium valued at $1,850,000 at the date of death is sold in October 2026 for $2,000,000 to an investor, with commissions and closing costs of $110,000; there is no mortgage; the gain is $40,000. In the first example the decedent was a German citizen domiciled in Munich, her will is administered in Germany by a *Testamentsvollstrecker*, her two heirs live in Germany, her worldwide estate is $9,000,000, and a special administrator has been appointed in Los Angeles County to convey the condominium; the estate is foreign. In the second the decedent was a lawful permanent resident domiciled in Los Angeles, a U.S. trust company is her executor under a California will, her worldwide estate is

[66] Treas. Reg. §§ 1.1445-5(c)(3) (partnerships and trusts only), (b)(6), 1.1445-1(e)(1), (e)(4), 1.1445-5(c)(2)(iv) (certificates under § 1.1445-6).

[67] Treas. Reg. § 1.643(a)-3(a), (b)(1)-(3), (e), Example 7 (all capital gains realized in the year of termination are included in distributable net income).

[68] I.R.C. § 1411(a)(2), (c)(1)(A)(iii); Treas. Reg. § 1.1411-3(a)(1)(i); Rev. Proc. 2025-32, § 4.01, Table 5.

[69] I.R.C. §§ 662(b), 897(a)(1); Treas. Reg. §§ 1.662(b)-1, 1.1445-5(b)(7).

$6,000,000, and her two heirs live in Paris;
the estate is domestic.

Table 5. Example A: a foreign estate sells the condominium

Step	Analysis and figures
Classification	Principal administration in Germany under German law, a foreign fiduciary, foreign heirs, and one U.S. asset held through a limited ancillary administration: a foreign estate (Part II). The estate obtains an EIN on Form SS-4 in February 2026 and will file Form 1040-NR.
Estate tax	U.S.-situated gross estate $1,850,000, above $60,000: Form 706-NA due October 2026 (nine months after the January death), with the worldwide estate disclosed and a treaty-based return statement. The German convention leaves the real property taxable in the United States (Art. 5(1)) and grants the pro rata unified credit (Art. 10(5)): $5,945,800 multiplied by $1,850,000/$9,000,000, or $1,222,192, against a tentative tax of $685,800 on a taxable estate of $1,850,000. U.S. estate tax: none. Germany taxes the worldwide estate and has no U.S. tax to credit under Art. 11(3)(a).
Lien and clearance	The section 6324 lien attached at death because a return is required. A U.S.-appointed administrator is acting, so the route is Form 4422, filed at least 45 days before the October closing with the contract, the appraisal and a draft Form 706-NA; the Service may require an escrow of part of the proceeds pending review, and issues Form 792. No transfer certificate is needed for the condominium; the German accounts custodied in New York, if any, would need one.
Basis and gain	Basis $1,850,000 under section 1014(a)(1); the alternate valuation date is unavailable because no U.S. estate tax is payable; the consistency cap of section 1014(f) does not apply for the same reason, but the same appraisal supports both returns. Gain: $2,000,000 less $110,000 less $1,850,000 = $40,000, long-term under section 1223(9). Form 8971 is due within 30 days of the Form 706-NA; the condominium, sold before distribution, is excepted property with limited reporting.
Federal tax on the gain	2026 estate schedule: 0 percent on $3,300, 15 percent on $12,950 ($1,942.50), 20 percent on $23,750 ($4,750): $6,692.50. No net investment income tax (foreign estate).
Withholding without a certificate	15 percent of $2,000,000: $300,000, remitted by the buyer with Forms 8288 and 8288-A within 20 days of the October closing; refund after the Form 1040-NR, due June 15, 2027 for a calendar-year estate with no U.S. office, and processed in the ordinary course months later.
Withholding certificate	Form 8288-B filed by the estate in August 2026 on signing the contract, with the estate's EIN and the buyer's TIN, the contract, the appraisal and the gain computation; maximum tax liability stated at $8,000 (20 percent of $40,000). The buyer closes in October on the pending application and holds $300,000 in escrow; the certificate issues in early 2027; $8,000 is remitted within 20 days of its mailing and $292,000 is released. Form 1040-NR then shows tax of $6,692.50 and a credit of $8,000; refund $1,307.50.
California	Form 593: 3 1/3 percent of $2,000,000, or $66,667, unless the estate elects the alternative computation of 12.3 percent of the $40,000 gain, or $4,920; the form and payment are due November 20, 2026; the estate files a California fiduciary return and recovers any excess. The federal withholding certificate has no effect on the California withholding, which has its own gain election.
Distribution to the heirs	After the certificate and the returns. No section 1445(e)(1) withholding: the estate is foreign and is itself the taxpayer. In Germany the heirs' share of the gain, computed from the decedent's 2018 acquisition cost under § 23 Abs. 1 Satz 3 EStG, is exempt with progression under Art. 23(3)(a) of the income tax convention (Art. 13(1)), so it raises the rate on their other income; the U.S. tax is final.

Table 6. Example B: a domestic estate with foreign beneficiaries sells the condominium

Step	Analysis and figures
Classification	U.S. probate, U.S. corporate executor, U.S. assets, U.S. domicile of the decedent; foreign heirs alone do not make the estate foreign: a domestic estate (Part II). Form 1041; the executor obtains the EIN and signs the certification of non-foreign status.
Estate tax	A resident decedent's worldwide estate of $6,000,000 is below the 2026 basic exclusion amount of $15,000,000: no Form 706, no lien in practice, no Form 4422, no Form 8971. The section 1014 basis of $1,850,000 applies regardless.
Closing	No withholding under section 1445(a): the certification with the estate's EIN is delivered to the escrow before closing. Gain $40,000, long-term.
Federal tax at the estate level	If the proceeds are retained: $6,692.50 under the estate schedule plus net investment income tax of 3.8 percent on the undistributed net investment income above $16,000, $912: $7,604.50.
Section 1445(e)(1)	The U.S. real property interest account for 2026 carries $40,000. If the executor distributes $500,000 to each heir on the same day in December 2026, each distribution is attributable first to $20,000 of the account and the executor withholds $4,200 from each, reporting on Form 8288 Part II with two Forms 8288-A within 20 days. The gain is not in distributable net income and is taxed to the estate; each heir files Form 1040-NR with the stamped Copy B to recover $4,200. If the distributions are made in January 2027 the account has been cancelled and nothing is withheld.
Termination in the sale year	If the estate instead distributes everything in 2026 and terminates, the gain enters distributable net income and is carried out: each heir reports $20,000 of long-term capital gain as effectively connected income on Form 1040-NR, below the $49,450 at which the 15 percent rate begins for a single filer in 2026, so the tax is nil and the $4,200 withheld from each is refunded; the estate pays no tax on the gain.
California	Form 593 on the sale as in Example A ($66,667 or $4,920 by election). On distributions of California-source income to the nonresident heirs, 7 percent withholding on Form 592 where the amounts exceed $1,500 in the year, with the Form 593 credit passed through to them.
France	The heirs are taxed on their worldwide inheritance under CGI art. 750 ter with a credit for any foreign death duty under art. 784 A; on the income side, the gain carried out to them is a gain from U.S. real property taxable in the United States under Art. 13 of the income tax convention, and France credits the U.S. tax actually paid (Art. 24(1)(a)(iii)), which in the termination case is nil.

Part IX. The estate tax overlay: the lien, its discharge and the transfer certificate

The income tax reconciliation runs beside an estate tax procedure that can stop the closing. Unless the estate tax is sooner paid in full, it is a lien upon the gross estate of the decedent for ten years from the date of death, arising without assessment, notice or recording; the only statutory exception divests the part of the gross estate used to pay charges against the estate and expenses of administration allowed by a court having jurisdiction.[70] For a nonresident non-citizen the gross estate is the U.S.-situated property, and the Service applies the lien and the transferee liability of section

[70] I.R.C. § 6324(a)(1); Treas. Reg. § 301.6324-1(a)(1) ("A lien for estate tax attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into possession of the duly qualified executor or administrator"); IRM 5.5.8.1.1 (Jan. 15, 2025) (the "silent lien").

6324(a)(2) to estates that file Form 706-NA.[71] A beneficiary or transferee who receives property included in the gross estate is personally liable for the unpaid tax to the extent of its value, and property that such a person transfers to a purchaser is divested of the lien, which then attaches to the transferor's other property; but the statute gives no comparable protection to a purchaser from the executor, which is why a title insurer will not close a sale by an estate with a Form 706-NA filing requirement without a discharge or a transfer certificate.[72]

Which of the two instruments applies depends on the fiduciary, not on the estate's income tax classification. Where the property is administered by an executor or administrator appointed, qualified and acting within the United States, the executor, a beneficiary or the purchaser applies on Form 4422 for a certificate discharging the property from the lien under section 6325(c), which the Service may issue where the liability has been fully satisfied or provided for.[73] The current form asks that the application be submitted at least 45 days before the transaction date, to Advisory Consolidated Receipts in Florence, Kentucky, with the letters, the deed, the will, the contract, the closing or proposed closing statement, the title report, the appraisal and the filed or draft Form 706-NA; where the return has not been filed or reviewed the Service decides "on a case by case basis" how much of the proceeds must be prepaid or held in escrow, and the certificate is issued on Form 792.[74] Where no executor is appointed, qualified and acting within the United States, the estate needs a transfer certificate instead: a certificate permitting the transfer of property of a nonresident decedent without liability, issued when the Service is satisfied that the tax "has been fully discharged or provided for," which corporations, transfer agents, banks, trust companies and other custodians are directed to demand before transferring the decedent's property, and which is not required for property administered by a U.S.-appointed executor or in an estate whose U.S.-situated gross estate does not exceed the $60,000 threshold.[75] The application is a faxed file: the filed Form 706-NA with its asset sheets where a return was required, or, where none was, the will and codicils, the foreign death tax returns and the death certificate with English translations and a sworn affidavit of the executor setting out the decedent's birth, citizenship, residence and naturalization history, every U.S. asset at its date-of-death value and whether any U.S. bank account was used in a U.S. trade or business; the Service states that its processing

[71] I.R.C. §§ 2103, 6324(a)(2); IRM 5.5.8.2 (Jan. 15, 2025) ("The estate tax lien and personal liability transferee provisions of Section 6324(a)(1) and (2) apply to estate taxes owed by non-resident aliens who file Form 706-NA"); Form 4422 (Rev. May 2025) ("An estate tax lien only attaches to property includable on a Form 706 or Form 706-NA estate tax return").

[72] I.R.C. § 6324(a)(2)-(3), (c); IRS, "Deceased taxpayers: selling real property that is part of the decedent's estate" (updated Sept. 8, 2026).

[73] I.R.C. § 6325(c); Treas. Reg. § 301.6325-1(c)(1)-(2) (application in writing under penalties of perjury, each parcel described on a separate page in duplicate, the applicant's relationship to the estate, the purchaser and the consideration, and, if no return has been filed, the value and basis of valuation and the approximate gross estate); Form 4422 (Rev. May 2025); IRS, "Deceased taxpayers: selling real property that is part of the decedent's estate" (updated Sept. 8, 2026).

[74] Form 4422 (Rev. May 2025) (Internal Revenue Service, Advisory Consolidated Receipts, 7940 Kentucky Drive, Mail Stop 2850A, Florence, KY 41042-2915; e-fax 844-201-8382; Estate Tax Advisory Group (669) 229-1504); IRM 5.5.8.4.3, 5.5.8.7 to 5.5.8.16 (Jan. 15, 2025) (discharge processing, escrow agreements, issuance of certificates). The San Jose address and fax number printed on earlier revisions of the form are obsolete. Publication 783 covers only the general lien of section 6321 and expressly excludes the estate tax lien.

[75] Treas. Reg. § 20.6325-1(a)-(c); Form 4422 (Rev. May 2025) ("If the executor is not appointed, qualified, and acting in the United States, the estate will need a transfer certificate instead of a discharge of property from estate tax lien").

takes "12 to 18 months from the time the IRS receives all necessary documentation," and an estate below the threshold receives correspondence that no certificate is required and none will be issued.[76] For a sale of real property the practical consequence is that a foreign estate without a U.S. fiduciary cannot deliver marketable title for a year or more after death unless it obtains ancillary letters, which bring the property within the Form 4422 route and its 45-day timetable; the choice between the two routes is therefore made when the ancillary administration is planned, and it is one of the reasons for obtaining U.S. letters even where the foreign executor could otherwise act.

Three further points complete the overlay. An estate tax closing letter is issued only on request through Pay.gov, no earlier than nine months after the return is filed, for a user fee of $56 for requests received after May 20, 2025, and an account transcript showing the closed examination is accepted in its place; neither is the discharge or the transfer certificate, and neither is needed to close a sale.[77] The Form 706-NA is due nine months after death, an automatic six-month extension to file is obtained on Form 4768, an executor abroad may apply for a further extension, and the tax itself is due at nine months, with interest thereafter, unless an extension of time to pay is granted for reasonable cause.[78] And the states are not silent: New York, Massachusetts, Washington, Oregon, Hawaii, Illinois, Maryland and Connecticut impose an estate tax that reaches a nonresident's real property located there, with exemptions ranging from $1,000,000 in Oregon and $2,000,000 in Massachusetts to $7,350,000 in New York for 2026 and $15,000,000 in Connecticut, Hawaii applying a $60,000 threshold to nonresident non-citizen decedents and Maryland adding a 10 percent inheritance tax on transfers to collateral heirs; California, Florida, Nevada and Texas impose none.[79]

Part X. The estate tax conventions and U.S. real property

For the families this readership advises, the estate tax convention is the rule and the Code the residual case, and the conventions speak with one voice on real property: every one of them leaves immovable property taxable in the state where it is situated, whether by allocating the taxing right to that state, as the domicile-type conventions with Germany, France, the United Kingdom, the Netherlands, Austria and Denmark do, or by fixing its situs

[76] IRS, "Transfer certificate filing requirements for the estates of nonresidents not citizens of the United States" (updated May 5, 2026) (fax 855-201-8011 within the United States; 304-707-9970 from abroad). The certificate itself is Form 5173, which the current page does not name.

[77] Treas. Reg. § 300.12 (formerly § 300.13; redesignated by T.D. 9962, 87 Fed. Reg. 11297 (Mar. 1, 2022); amended by T.D. 10031, 90 Fed. Reg. 21412 (May 20, 2025), and T.D. 10038, 90 Fed. Reg. 55041 (Dec. 1, 2025)); Notice 2017-12, 2017-5 I.R.B. 742; Instructions for Form 706-NA (Rev. Sept. 2025). A proposed rule published June 2, 2026 (91 Fed. Reg. 32909) would raise the fee to $76; it had not been finalized as of this writing.

[78] I.R.C. §§ 6075(a), 6151(a), 6161(a)(1)-(2); Treas. Reg. § 20.6081-1(b)-(c), (e); Instructions for Form 706-NA (Rev. Sept. 2025), "When To File," "Extension of Time To File."

[79] N.Y. Tax Law §§ 952, 960 (basic exclusion amount $7,350,000 for deaths in 2026); Mass. Gen. Laws ch. 65C, § 2A ($2,000,000); Wash. Rev. Code ch. 83.100 ($3,000,000 for deaths on or after July 1, 2026; $3,076,000 for the first half of 2026); Or. Rev. Stat. ch. 118 ($1,000,000); Haw. Rev. Stat. ch. 236E and Instructions for Form M-6 (2025) ($60,000 threshold for a nonresident not a citizen); 35 Ill. Comp. Stat. 405 ($4,000,000, apportioned by the ratio of Illinois assets); Md. Code, Tax-Gen. §§ 7-302, 7-309(b)(3) ($5,000,000) and the Register of Wills' inheritance tax guidance; Conn. Gen. Stat. § 12-391 ($15,000,000 for 2026). A deduction for state death taxes paid on the U.S.-situated property is allowed on Form 706-NA: I.R.C. § 2106(a)(4).

there for the purposes of the exemption and the credit, as the older situs-type conventions with Australia, Finland, Ireland, Italy, Japan and South Africa do; the Swiss convention contains no situs article at all and simply leaves the United States to tax under its own law, and the Greek convention goes the other way, exempting the U.S. real property from Greek tax outright.[80] What the conventions change is the computation and the home-country relief. Nine of them require the United States to allow the estate of a domiciliary the unified credit of a citizen's estate in the proportion the U.S.-situated gross estate bears to the worldwide estate, which for 2026 means a share of $5,945,800 rather than $13,000 and, for the ordinary European estate with one U.S. property, eliminates the U.S. tax; the price is disclosure of the worldwide estate on the return and a treaty-based return statement.[81] The British convention gives no proration but caps the U.S. tax on the estate of a British national at the tax a U.S. domiciliary with the same worldwide estate would have paid, on claim; the Dutch, Austrian, Danish, Irish and South African conventions give no proration at all.[82] On the home side the domicile country credits the U.S. tax on the real property, within the limit of its own tax on that property, under the German, French, British, Dutch, Danish, Finnish, Italian, Japanese, Irish, South African and Australian instruments; Austria and Greece exempt instead; Switzerland's convention gives no relief for real property, leaving the matter to cantonal law; and Canada allows the U.S. estate tax as a deduction from the Canadian income tax on the deemed disposition at death.[83] The marital position matters where the surviving spouse is not a U.S. citizen: the German and French conventions exclude half the value of the U.S.-taxable property passing to the spouse and offer a marital deduction by election, and the British, Danish and Canadian instruments grant the marital deduction or credit of a domiciliary; a treaty-country decedent leaving U.S. real property to a spouse often has no U.S. estate tax at the first death without a qualified domestic trust.[84] None of this reaches the income tax on the gain, which Part XI addresses; and none of it removes the lien, the discharge or the transfer certificate, which apply to a treaty-sheltered estate exactly as to any other.

[80]See Table 7 and the convention texts cited there. The United States has estate tax conventions in force with Australia, Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, South Africa, Switzerland and the United Kingdom, and death tax provisions with Canada in Article XXIX B of the income tax convention; the conventions with Sweden and Norway have been terminated: IRS, "Estate and gift tax treaties (international)" (updated Sept. 8, 2026); Instructions for Form 706-NA (Rev. Sept. 2025).

[81]I.R.C. § 2102(b)(3)(A); Instructions for Form 706-NA (Rev. Sept. 2025), line 7 ("treaties with Australia, Canada, Finland, France, Germany, Greece, Italy, Japan, and Switzerland contained provisions to which section 2102(b)(3)(A) applies"); Treas. Reg. § 301.6114-1. The Swiss, Italian, Japanese, Greek, Finnish and Australian conventions grant a proportional "specific exemption," administered as the pro rata credit; the German, French and Canadian instruments grant the credit in terms.

[82]Convention between the United States and the United Kingdom with respect to taxes on estates and gifts, signed at London, Oct. 19, 1978, art. 8(5).

[83]See Table 7.

[84]Germany, art. 10(4), (6); France, art. 11(2), (3); United Kingdom, art. 8(2); Denmark, art. 9(2)(a); Canada, art. XXIX B(3). I.R.C. §§ 2056(d), 2056A and 2106(a)(3) govern the domestic alternative.

Table 7. The estate tax conventions and U.S. real property of a nonresident non-citizen decedent

Convention (signature; amending protocol)	U.S. right to tax U.S. real property	Pro rata unified credit or proportional exemption	Home-country relief for the U.S. tax on the real property	Gift tax covered; marital relief
Australia (May 14, 1953)	Situs-type: immovable property situated where the land is located, Art. III(1)(a)	Yes, proportional specific exemption, Art. IV(2)(a)	Credit, Art. V(1) (without object: no Australian estate duty since 1979)	Separate 1953 gift convention; no marital provision
Austria (June 21, 1982)	Domicile-type: immovable property taxable in the situs State, Art. 5(1)	None	Exemption with progression, Art. 9(5) (without object: no Austrian inheritance tax since Aug. 1, 2008)	Yes; none
Canada (Art. XXIX B of the income tax convention of Sept. 26, 1980, as amended 1995 and 2007)	No allocation; the United States taxes under the Code, and the small-estate rule leaves U.S. real property taxable	Yes, pro rata credit, Art. XXIX B(2)	Deduction of the U.S. estate tax from the Canadian tax on the deemed disposition at death, Art. XXIX B(6)	Death taxes only; marital credit, Art. XXIX B(3)
Denmark (Apr. 27, 1983)	Domicile-type, Art. 5(1)	None	Credit, Art. 10(2), limited by Art. 10(6)	Yes; U.S. marital deduction as for a domiciliary, Art. 9(2)(a)
Finland (Mar. 3, 1952)	Situs-type, Art. III(2)(a)	Yes, proportional specific exemption, Art. IV(1)	Credit, Art. V(2) (federal estate tax only)	No; none
France (Nov. 24, 1978; avenant Dec. 8, 2004)	Domicile-type, Art. 5(1); real-property-rich entities included, Art. 5(3)	Yes, pro rata credit, Art. 12(3)	Credit, Art. 12(2)(a)	Yes; 50 percent exclusion, Art. 11(2), and marital deduction election, Art. 11(3)
Germany (Dec. 3, 1980; protocol Dec. 14, 1998)	Domicile-type, Art. 5(1)	Yes, pro rata credit, Art. 10(5)	Credit, Art. 11(3)(a), including U.S. state taxes, Art. 11(4); limit Art. 11(6)	Yes; 50 percent exclusion, Art. 10(4), and marital deduction election, Art. 10(6)
Greece (Feb. 20, 1950)	U.S. real property exempt from Greek tax and Greek real property from U.S. tax, Art. III(1)-(2); the United States taxes U.S. real property under the Code	Yes, proportional allowance, Art. V (excluding the marital deduction)	Exemption of the U.S. real property, Art. III(2)	No; none
Ireland (Sept. 13, 1949)	Situs-type, Art. III(2)(a)	None (foreign property excluded from the rate, Art. IV(2))	Credit, Art. V(1), applied by Revenue at the lower of the U.S. and Irish effective rates	No (inheritances only); none

Convention (signature; amending protocol)	U.S. right to tax U.S. real property	Pro rata unified credit or proportional exemption	Home-country relief for the U.S. tax on the real property	Gift tax covered; marital relief
Italy (Mar. 30, 1955)	Situs-type, Art. III(2)(a)	Yes, proportional specific exemption, Art. IV(a)	Credit, Art. V(1)	No; none
Japan (Apr. 16, 1954)	Situs-type, Art. III(1)(a)	Yes, proportional specific exemption, Art. IV(a), keyed also to the beneficiary's Japanese domicile	Credit, Art. V(1)	Yes; none
Netherlands (July 15, 1969)	Domicile-type, Art. 6(1)	None; $30,000 de minimis rule, Art. 10(2), below the domestic $60,000 equivalent	Credit, Art. 11(1), limited by Art. 11(3)	No; Dutch-side 50 percent rule only, Art. 10(1)
South Africa (Apr. 10, 1947)	Situs-type, Art. III(2)(a)	None	Credit, Art. V(2)	No; none
Switzerland (July 9, 1951)	No situs or allocation article; the United States taxes under the Code	Yes, proportional specific exemption, Art. III (first paragraph)	None in the convention (Art. IV credit confined to shares, debts, tangibles and agreed items); relief under cantonal law	No; none
United Kingdom (Oct. 19, 1978)	Domicile-type, Art. 6(1)	None; but the U.S. tax on a British national's estate is capped at a domiciliary's tax on claim, Art. 8(5)	Credit, Art. 9(2)(a), limited by Art. 9(4)	Yes; U.S. marital deduction as for a domiciliary, Art. 8(2); U.K. 50 percent exemption, Art. 8(3)
No convention (Belgium, Spain, Luxembourg, Portugal)	The United States taxes under §§ 2103 and 2104 with the $13,000 credit	None	Unilateral rules only: Spain deducts the lower of the foreign tax and the Spanish tax on the same asset (Ley 29/1987, art. 23); Portugal's stamp duty reaches only Portuguese-situated assets and exempts spouses, descendants and ascendants (Código do Imposto do Selo, arts. 4(3), 6(e)); Belgium's regions and Luxembourg apply their own credits or exclusions for foreign immovables	Not applicable

Part XI. The income tax conventions and the heir's home country

No income tax convention of the United States relieves the tax on the gain. Each of the twelve conventions in Table 8 allows the state in which real property is situated to tax gains from its alienation, and each extends the term to a "United States real property interest" as defined in section 897, and in most cases expressly to an interest in a partnership, trust or estate to the extent attributable to U.S. real property, so that the gain of a foreign estate, and the share of that gain carried out to a foreign heir, is taxable in the United States under the convention itself and not merely under the saving clause.[85] The withholding certificate's exemption ground, which requires that the transferor be "entitled to the benefits of an income tax treaty that provides for such an exemption," is accordingly of no use for real property gains.[86] The estate's own treaty residence is a narrower matter than it appears: the German, Italian, Swiss, Austrian, Luxembourg and Canadian conventions treat an estate as a resident only to the extent its income is taxed in the residence state as a resident's income, in its own hands or in the hands of its beneficiaries, and the French, British, Dutch, Belgian, Spanish and Irish conventions now reach the same result through the rule that income derived through a fiscally transparent entity is treated as derived by a resident to the extent the residence state so taxes it.[87] Since the U.S. tax stands in every case, the treaty question is the residence-side one: whether the heir's country exempts the gain or credits the U.S. tax, and what basis that country gives the heir in property acquired at death. The two questions interact, because a country that carries the decedent's cost over will compute a larger gain than the United States did, and a credit for a small U.S. tax against a large home-country tax leaves most of the home-country tax standing.

Germany exempts and carries over. Income from sources within the United States that may be taxed there under the convention is excluded from the German base, Germany retaining the right to take it into account in fixing the rate on the taxpayer's other income; the credit method applies to gains only where the United States taxes them solely because of the real-property-company clause of Article 13(2)(b).[88] Under German domestic law the heir steps into the decedent's acquisition: a gratuitous acquisition is attributed to the acquirer with the predecessor's acquisition date and cost, so the ten-year period of § 23 EStG runs from the decedent's purchase and,

[85] Germany, Convention of Aug. 29, 1989, as amended by the Protocol of June 1, 2006, art. 13(1), (2)(b); France, Convention of Aug. 31, 1994, art. 13(1), (2); United Kingdom, Convention of July 24, 2001, art. 13(1), (2)(b); Italy, Convention of Aug. 25, 1999, art. 13(1) and Protocol; Switzerland, Convention of Oct. 2, 1996, art. 13(1), (2); Netherlands, Convention of Dec. 18, 1992, art. 14(1); Belgium, Convention of Nov. 27, 2006, art. 13(1), (2)(b); Spain, Convention of Feb. 22, 1990, art. 13(1) and Protocol para. 10(a); Austria, Convention of May 31, 1996, art. 13(1), (2)(a); Luxembourg, Convention of Apr. 3, 1996, art. 14(1), (2)(b); Ireland, Convention of July 28, 1997, art. 13(1), (2)(a); Canada, Convention of Sept. 26, 1980, as amended, art. XIII(1), (3)(a).

[86] Treas. Reg. § 1.1445-3(d)(2)(ii).

[87] Germany, art. 4(1)(b); Italy, art. 4(1)(b); Switzerland, art. 4(1)(d); Austria, art. 4(1)(b); Luxembourg, art. 4(1)(b); Canada, art. IV(1); France, art. 4(3) (the former art. 4(2)(b)(iv) having been deleted by the Protocol of Jan. 13, 2009); United Kingdom, art. 1(8); Netherlands, art. 24(4) (added by the Protocol of Mar. 8, 2004); Belgium, art. 1(6); Spain, art. 1(6) (the former Protocol para. 5(b) having been deleted by the Protocol of Jan. 14, 2013); Ireland, Protocol para. 1.

[88] Germany, art. 23(3)(a), (3)(b)(bb), as replaced by the Protocol of June 1, 2006, art. XII; § 32b Abs. 1 Satz 1 Nr. 3 EStG. The exclusion of EU and EEA rental income from the *Progressionsvorbehalt* in § 32b Abs. 1 Satz 2 Nr. 3 EStG does not reach U.S. property, the United States being a *Drittstaat* under § 2a Abs. 2a EStG, and never covered gains.

within it, the German gain is the difference between the sale price and the decedent's cost, not the date-of-death value.[89] For a German-resident heir the practical result is that the U.S. tax is final, the exempt gain, computed on the German basis, raises the rate on the heir's other German income for the year of sale, and where the decedent had held the property for more than ten years there is no German gain at all. On the transfer side the heir's *Erbschaftsteuer* reaches the U.S. property, with a credit for any U.S. estate tax under the estate tax convention.[90]

France credits the tax actually paid and steps up. The French relief for gains under Article 13(1), re-enacted and renumbered by the 2009 protocol, is a credit "equal to the amount of tax paid in the United States in accordance with the provisions of the Convention," capped at the French tax on the same income, the amount paid being the U.S. tax "effectively borne on a final basis," which is the tax shown on the estate's or heir's Form 1040-NR after the refund of the excess withholding, not the withholding itself.[91] The French basis is a step-up: for property acquired gratuitously the acquisition price is the value retained for the *droits de mutation à titre gratuit*, and where no such value exists, as for a succession not taxable in France, the real market value at the date the property entered the heir's patrimony, proven by any means, so a U.S. appraisal at the date of death serves; the holding period runs from the opening of the succession.[92] The French tax on the *plus-value immobilière* is 19 percent, plus social levies of 18.6 percent on income taxable for 2026 and later years after the increase of the CSG to 10.6 percent, plus the surtax on gains above €50,000, with abatements after the fifth year of holding that exempt the gain from income tax after 22 years and from the social levies after 30.[93] The French-resident heir therefore pays the difference between the French tax and the small U.S. tax; the withholding certificate, by keeping the U.S. tax at its true figure, does not change the total but keeps the estate's cash in the estate.

The United Kingdom credits and steps up; Switzerland exempts and, for its own purposes, does not tax at all; Italy credits but has nothing to tax. British capital gains tax is charged on a resident's worldwide gains at 18 percent or 24 percent, the assets of a deceased person being deemed acquired by the personal representatives at their market value at death without a disposal by the deceased and the legatee inheriting that acquisition, with credit for the U.S. tax under the convention; an heir who has been non-resident for ten years and becomes resident may, for four years, claim to exclude the U.S. gain as a qualifying foreign gain.[94] Switzerland exempts income that may be taxed in the United States, with progression, but for gains under Article 13(1) only if actual taxation in the United States is demonstrated, which is one more reason to keep the Form 1040-NR and the withholding

[89] § 23 Abs. 1 Satz 1 Nr. 1, Satz 3, Abs. 3 EStG; H 23 (Veräußerungsfrist) EStH, citing BFH, Urteil vom 12.7.1988, BStBl. II S. 942.

[90] § 2 Abs. 1 Nr. 1 ErbStG; § 21 ErbStG; Germany, Estate and Gift Tax Convention of Dec. 3, 1980, as amended by the Protocol of Dec. 14, 1998, art. 11(3)(a).

[91] France, art. 24(1)(a)(iii), (1)(d)(iii), as amended by the Protocol of Jan. 13, 2009, art. VIII (Légifrance, décret n° 2010-28 du 8 janvier 2010); BOI-INT-CVB-USA-10 (Feb. 19, 2020).

[92] CGI art. 150 VB, I (version in force since Feb. 21, 2026); BOI-RFPI-PVI-20-10-20-10 (Sept. 12, 2012), n° 30 ("succession non imposable en France"); BOI-RFPI-PVI-20-20 (Aug. 24, 2018).

[93] CGI arts. 150 U, 150 VC, 200 B, 1609 nonies G, 235 ter; CSS arts. L. 136-7, L. 136-8 (as amended by loi n° 2026-534 du 25 juin 2026, art. 65). Any figure of 17.2 percent for the social levies is out of date for 2026 income.

[94] TCGA 1992 ss. 1H(3), 62(1), (4), Sch. D1 (inserted by Finance Act 2025, s. 39); Finance Act 2025, s. 40 (remittance basis unavailable from 2025-26); United Kingdom, Convention of July 24, 2001, art. 24(4)(a), (5).

certificate in the file; under Swiss law the point is largely academic, because foreign real property is outside the federal base, private capital gains are exempt from the federal tax, and the cantonal *Grundstückgewinnsteuer* reaches only land in the canton, an inheritance being a *Steueraufschub* under which the heir takes over the decedent's cost and holding period.[95] Italy grants an ordinary credit for the U.S. tax, but buildings and non-building land acquired by succession are excluded from the taxable *plusvalenze* altogether, whatever the holding period, so an Italian-resident heir has no Italian income tax on the sale and the U.S. tax is final; only building land is taxed, with the value declared for inheritance tax as its cost, and the U.S. property bears the annual *IVIE* of 1.06 percent of its cost or value in the meantime.[96] Table 8 completes the map for the twelve conventions.

Table 8. The income tax conventions and the heir's home country: gains on U.S. real property

Country (convention)	U.S. right to tax the gain	Estate or trust as resident	Relief in the home country for the gain	Home-country basis at death and domestic treatment
Germany (Aug. 29, 1989; protocol June 1, 2006)	Art. 13(1); Art. 13(2)(b) extends to real-property companies and interests in a partnership, trust or estate	Art. 4(1)(b)	Exemption with progression, Art. 23(3)(a); credit only for gains taxable solely under Art. 13(2)(b), Art. 23(3)(b)(bb)	Carryover of the decedent's acquisition date and cost, § 23 Abs. 1 Satz 3 EStG; taxable only within ten years of the decedent's acquisition; exempt gain counted for the rate, § 32b Abs. 1 Satz 1 Nr. 3 EStG
France (Aug. 31, 1994; protocols Dec. 8, 2004 and Jan. 13, 2009)	Art. 13(1), (2) (USRPI; interests in a partnership, trust or estate)	No estate clause since 2009; Art. 4(3) transparency rule	Credit equal to the U.S. tax actually paid, capped at the French tax, Art. 24(1)(a)(iii)	Step-up to the value retained for the *droits de mutation* or, absent one, the market value at death, CGI art. 150 VB I; holding period from death; 19 percent plus 18.6 percent social levies for 2026 plus surtax; exempt after 22 and 30 years
United Kingdom (July 24, 2001; protocol July 19, 2002)	Art. 13(1), (2)(b) (USRPI)	Art. 4 silent; Art. 1(8) transparency rule	Credit, Art. 24(4)(a); source rule Art. 24(5)	Deemed acquisition at market value at death, TCGA 1992 s. 62(1), (4); 18 or 24 percent, s. 1H(3); four-year foreign gain relief for qualifying new residents, Sch. D1; remittance basis abolished from 2025-26

[95] Switzerland, Convention of Oct. 2, 1996, art. 23(1)(a); DBG Art. 6 Abs. 1, Art. 7 Abs. 1, Art. 16 Abs. 3; StHG Art. 12 Abs. 1, Abs. 3 lit. a.

[96] Italy, Convention of Aug. 25, 1999, art. 23(3); TUIR (D.P.R. 917/1986) art. 67(1)(b) ("esclusi quelli acquisiti per successione"), art. 68(2); D.L. 201/2011, art. 19, commi 13-16. From January 1, 2027 the *Testo unico delle imposte sui redditi* enacted by D.Lgs. 19 giugno 2026, n. 117, arts. 76(1)(b), 77 and 244, replaces these provisions with the same wording (art. 376(1)(e), art. 377).

Country (convention)	U.S. right to tax the gain	Estate or trust as resident	Relief in the home country for the gain	Home-country basis at death and domestic treatment
Italy (Aug. 25, 1999)	Art. 13(1) with the Protocol's USRPI clause	Art. 4(1)(b)	Ordinary credit, Art. 23(3); none where a final substitute tax is elected	Buildings and non-building land acquired by succession excluded from taxable gains, TUIR art. 67(1)(b) (D.Lgs. 117/2026 art. 76(1)(b) from 2027); building land at the declared inheritance value, art. 68(2); *IVIE* 1.06 percent
Switzerland (Oct. 2, 1996; protocol Sept. 23, 2009)	Art. 13(1), (2) (USRPI)	Art. 4(1)(d)	Exemption with progression, Art. 23(1)(a), for Art. 13(1) gains only on proof of U.S. taxation	Foreign real property outside the federal base, DBG Art. 6 Abs. 1; private gains exempt, Art. 16 Abs. 3; cantonal *Grundstückgewinnsteuer* confined to cantonal land, with *Steueraufschub* and carryover on inheritance, StHG Art. 12 Abs. 1, Abs. 3 lit. a
Netherlands (Dec. 18, 1992; protocol Mar. 8, 2004)	Art. 14(1)(a)-(b) (USRPI)	Art. 4 silent; Art. 24(4) transparency rule	Exemption by proportional reduction under Dutch law, Art. 25(2); Bvdb 2001 arts. 22 to 24	No gains tax on private real property; deemed return in Box 3 at 6 percent taxed at 36 percent, Wet IB 2001 arts. 2.13, 5.2, 5.3, relieved for foreign property; actual-return regime intended from 2028 (bill 36.748, pending)
Belgium (Nov. 27, 2006)	Art. 13(1), (2)(b) (USRPI)	Art. 4 silent; Art. 3(1)(a) and Art. 1(6)	Exemption with progression for income "taxed in the United States," Art. 22(1)(a)	Private gains taxable only on Belgian property acquired for consideration and sold within eight years (land) or five years (buildings), CIR 92 art. 90, 8° and 10°; inherited property outside the rule; art. 155 exemption with progression
Spain (Feb. 22, 1990; protocol Jan. 14, 2013)	Art. 13(1); Protocol para. 10(a) (USRPI); Art. 13(4)	Art. 4 silent; former Protocol para. 5(b) deleted 2019; Art. 1(6)	Ordinary credit, Art. 24(1)(a); LIRPF art. 80	Step-up to the inheritance tax value capped at market value, LIRPF art. 36; savings scale 19 to 30 percent (top rate since 2025)
Austria (May 31, 1996)	Art. 13(1), (2)(a) (USRPI; interests in a partnership, trust or estate)	Art. 4(1)(b)	Ordinary credit, Art. 22(3)(a), unlike Austria's usual exemption method	Carryover of the predecessor's acquisition date, § 30 Abs. 1 dritter Satz EStG 1988; 30 percent special rate, § 30a; pre-2002 *Altvermögen* at 4.2 percent of proceeds, § 30 Abs. 4; *ImmoESt* self-assessment confined to Austrian land, so the U.S. gain is assessed

Country (convention)	U.S. right to tax the gain	Estate or trust as resident	Relief in the home country for the gain	Home-country basis at death and domestic treatment
Luxembourg (Apr. 3, 1996; protocol May 20, 2009)	Art. 14(1), (2)(b) (USRPI)	Art. 4(1)(b)	Exemption with progression, Art. 25(2)(a)	Carryover: inherited property deemed acquired at the last acquisition for consideration, at the predecessor's price revalued by coefficients, LIR art. 102; speculation period five years since 2025, art. 99bis; longer holdings at the *demi-taux global*, art. 99ter
Ireland (July 28, 1997)	Art. 13(1), (2)(a) (USRPI)	Art. 3(1)(a); Protocol para. 1	Credit, Art. 24(4)(a); remittance limitation, Art. 24(6)	Deemed acquisition at market value at death, TCA 1997 s. 573(2), (5); 33 percent, s. 28(3); worldwide charge, s. 29(2); remittance basis for non-domiciled residents, s. 29(4)
Canada (Sept. 26, 1980; protocols to 2007)	Art. XIII(1), (3)(a) (USRPI)	Art. IV(1) (estate or trust to the extent liable to tax)	Credit, Art. XXIV(2)(a), (3); ITA s. 126(1); U.S. estate tax deductible from the Canadian tax on the deemed disposition, Art. XXIX B(6)	Deemed disposition at fair market value immediately before death and cost equal to that value, ITA s. 70(5); one-half inclusion, s. 38(a) (the 2024 increase cancelled Mar. 21, 2025); graduated rate estate for 36 months, s. 248(1)

Part XII. The state withholding regimes

Thirteen states withhold, or collect an estimated tax, on sales of real property by sellers they treat as nonresident, and their rules are cumulative with the federal regime: none of them honors a federal withholding certificate, none is reduced by the federal withholding, and each has its own base, its own exemptions, its own timetable and its own idea of when an estate is a nonresident. Four patterns recur. California withholds from every seller regardless of residence and exempts by transaction; New York, New Jersey, Maine, Rhode Island and South Carolina test an estate by the decedent's domicile; Colorado tests it by the place of administration; and Vermont and Oregon leave estates out of their regimes altogether, Vermont by defining "nonresident" to exclude estates and Oregon by confining its transferors to individuals and corporations and exempting conveyances by a personal representative.[97] No state distinguishes a foreign estate from an out-of-state estate; a Munich estate selling in Los Angeles or Miami is treated exactly as a Chicago estate would be.

[97] Cal. Rev. & Tax. Code § 18662(e); N.Y. Tax Law § 663 and Form IT-2663 (2026); N.J. Stat. Ann. §§ 54A:8-8 to 8-10 and Form GIT/REP-3 (Rev. Aug. 2025); 36 M.R.S. § 5250-A; R.I. Gen. Laws § 44-30-71.3; S.C. Code § 12-8-580; Colo. Rev. Stat. §§ 39-22-103(7), 39-22-604.5; 32 V.S.A. § 5847 ("'nonresident' of Vermont shall include individuals, trusts, partnerships, and corporations, but not estates"); Or. Rev. Stat. § 314.258 and Form OR-18-WC (2025).

California is the regime this readership meets most often. The buyer, acting through the escrow as real estate escrow person, withholds 3 1/3 percent of the sales price on any sale above $100,000, unless the seller elects the alternative computation of the gain multiplied by the applicable rate, which is 12.3 percent for individuals and for trusts and, the instructions naming no separate estate rate, for a decedent's estate; Form 593 and the payment are due by the 20th day of the month following the month in which escrow closes; the exemptions that matter to an estate are the sale of the decedent's principal residence by the estate or trust and a sale at a loss or with no gain; the estate claims the withholding on its California fiduciary return and, where it distributes the gain to nonresident beneficiaries, passes the credit through on Form 592 and withholds 7 percent on its own distributions of California-source income to them above $1,500 in the year.[98] New York and New Jersey take the money at the recording office: the nonresident seller, including a nonresident estate, certifies and pays estimated tax at the top rate on the gain, 10.9 percent in New York and, in New Jersey, the higher of 10.75 percent of the gain or 2 percent of the consideration, with no relief for a loss in New Jersey below the 2 percent floor.[99] Hawaii's regime is the closest to the federal one, with 7.25 percent of the amount realized withheld by the buyer, a Form N-288 due 20 days after the transfer, a certification of exemption on Form N-289 that includes a treaty nonrecognition ground and the $300,000 residence ground, a withholding certificate on Form N-288B that must be filed at least 10 working days before the transfer, and a tentative refund on Form N-288C.[100] Maryland collects 8.75 percent of the net proceeds from nonresident individuals, estates and trusts at recording, a rate raised from 8 percent for sales after June 30, 2025, and requires its exemption or reduction application to be received at least 21 days before closing, listing the transfer of inherited property within one year of death among the grounds.[101] The pre-closing deadlines are the trap: Maryland's 21 days, West Virginia's 21 days, Rhode Island's 20 days, Hawaii's 10 working days and Maine's 5 business days each fall before the date on which a fiduciary who has just signed the contract is likely to think about the state at all. Table 9 sets out the thirteen regimes and the states without them.

[98] Cal. Rev. & Tax. Code § 18662(a)-(b), (e); Cal. Code Regs. tit. 18, §§ 18662-3, 18662-4(a)(2)-(3); Instructions for Form 593 (2026); FTB Pub. 1016 (Rev. Feb. 2026) ("Foreign sellers follow the same rules as domestic sellers"); FTB Pub. 1017 (Rev. Feb. 2026).

[99] N.Y. Tax Law §§ 605(b)(3)-(4), 663 and Form IT-2663 (2026); N.J. Stat. Ann. § 54A:8-9 and Forms GIT/REP-1, GIT/REP-3, A-3128; N.J. Div. of Taxation, TB-57(R) (June 15, 2026).

[100] Haw. Rev. Stat. § 235-68; Forms N-288, N-288A, N-288B, N-288C and N-289 (Rev. 2025); Hawaii Dep't of Taxation, Tax Facts 2010-1 (Rev. Apr. 2025).

[101] Md. Code, Tax-Gen. § 10-912; Forms MW506NRS, MW506AE and MW506R (2026); Md. Comptroller, Tax Alert (Apr. 13, 2026).

Table 9. State withholding on sales of real property by nonresident sellers, as applied to estates and trusts

State (authority; forms)	Withholding agent; rate and base; threshold	Estates and trusts	Exemption or reduction	Timing and credit
California (Rev. & Tax. Code § 18662(e); 18 CCR § 18662-3; Form 593 (2026); Pub. 1016 (Feb. 2026))	Buyer through the escrow: 3 1/3 percent of the sales price, or by election the gain at 12.3 percent for individuals and trusts (no separate estate rate), 8.84 percent for corporations; none at $100,000 or less	Applies to every seller regardless of residence; a foreign estate follows the same rules	Decedent's principal residence sold by the estate or trust; loss or zero gain; the gain election	Form 593 and payment by the 20th day of the month after closing; credit on the fiduciary return; pass-through on Form 592
New York (Tax Law § 663; Form IT-2663 (2026))	Seller: estimated tax of 10.9 percent of the gain, certified on IT-2663	Nonresident individuals, estates (decedent not domiciled in New York) and trusts	Principal residence under section 121; foreclosure; no gain or nonrecognition	Filed with the recording officer when the deed is presented; fiduciary may allocate the payment to beneficiaries (IT-205-T)
New Jersey (N.J.S.A. 54A:8-8 to 8-10; GIT/REP-1 (Oct. 2021), GIT/REP-3 (Aug. 2025); TB-57(R) (June 15, 2026))	Seller, before or at closing: the higher of 10.75 percent of the gain or 2 percent of the consideration; the deed is not recorded without it	Nonresident individuals, estates and trusts; estate of a New Jersey-domiciled decedent exempt; executor's distribution deed exempt	Resident status; no loss exemption below the 2 percent floor	At closing; refund on NJ-1040NR or Form A-3128; foreign sellers need an ITIN
Hawaii (HRS § 235-68; N-288, N-288A, N-288B, N-288C, N-289 (Rev. 2025))	Buyer: 7.25 percent of the amount realized	Nonresident person includes any estate or trust that is not a Hawaii resident estate or trust	N-289 certification (resident; nonrecognition including treaty; residence of $300,000 or less); N-288B certificate at least 10 working days before transfer; N-288C tentative refund	N-288 within 20 days after the transfer; credit on N-15 or N-40
Maryland (Tax-Gen. § 10-912; MW506NRS, MW506AE, MW506R (2026); Tax Alert Apr. 13, 2026)	Clerk collects at recording: 8.75 percent of net proceeds (individuals, estates, trusts; 8 percent before July 1, 2025); 8.25 percent for entities	Estate of a Maryland-domiciled decedent is a resident; a foreign estate is a nonresident	MW506AE received at least 21 days before closing (inherited property transferred within one year of death is a listed ground); MW506R tentative refund except for prices of $1,500,000 or more	With the deed; claimed as an estimated payment on Form 504 or 505

State (authority; forms)	Withholding agent; rate and base; threshold	Estates and trusts	Exemption or reduction	Timing and credit
Georgia (O.C.G.A. § 48-7-128; Reg. 560-7-8-.35; G-2RP (June 2023), IT-AFF2)	Buyer: 3 percent of the purchase price, or 3 percent of the gain with the seller's affidavit; none at $20,000 or less	Nonresident includes individuals and trusts (nonresident fiduciary or beneficiaries); estates not named in the statute or forms	Affidavit of gain (IT-AFF2); residence affidavit; section 121 residence	By the last day of the month following closing; G-2RP attached to the Georgia return
South Carolina (S.C. Code § 12-8-580; I-290 (July 2023), I-295 (June 2022); IL 26-20 (Aug. 31, 2026))	Buyer: the maximum individual rate (5.21 percent for 2026; 6 percent for 2025) of the gain shown on the seller's affidavit, otherwise of the amount realized, capped at net proceeds; 5 percent for corporations	Nonresident estate is one whose decedent's permanent home was outside the State; trust administered outside the State	I-295 affidavit (resident; gain amount; exempt organization; section 121 residence)	By the 15th day of the month following the sale; credit on the South Carolina return
Colorado (C.R.S. § 39-22-604.5; DR 1083 (Oct. 2025), DR 1079)	Title company or closing agent: the lesser of 2 percent of the sales price or the net proceeds, on prices above $100,000	Nonresident estate is one not administered in Colorado other than in an ancillary proceeding; a foreign estate is nonresident	DR 1083 affirmations: residency; principal residence; no Colorado tax reasonably estimated to be due; no net proceeds; no certificate procedure	DR 1079 within 30 days of closing; credit on DR 0105
Vermont (32 V.S.A. § 5847; RW-171 (Rev. Oct. 2014); FS-1177 (June 2026))	Buyer: 2.5 percent of the consideration	"Nonresident" excludes estates; no withholding on any estate's sale; nonresident trusts covered	Commissioner's certificate requested through myVTax for a loss, a lower tax, section 121 or section 1031	Within 30 days of the transfer; credit on FIT-161, allocable to beneficiaries
Rhode Island (R.I. Gen. Laws § 44-30-71.3; 280-RICR-20-10-1; Forms RI 71.3 (Sept. 2020))	Buyer: 6 percent of the net proceeds for individuals, estates, trusts and partnerships; 7 percent for corporations	Nonresident estate or trust by reference to the decedent's domicile (§ 44-30-5)	Election to withhold on the gain filed at least 20 days before closing; Division certificate	Within three banking days of closing, with acknowledgment of discharge of the lien
Maine (36 M.R.S. § 5250-A; REW-1-1041 (Dec. 2025), REW-5 (July 2026))	Buyer: 2.5 percent of the consideration where the consideration is $100,000 or more	Estate residency by the decedent's domicile; a foreign estate is nonresident	REW-5 exemption or reduction at least 5 business days before closing through the Maine Tax Portal	Within 30 days of the transfer; credit on Form 1041ME, split among beneficiaries by their share of distributable net income

State (authority; forms)	Withholding agent; rate and base; threshold	Estates and trusts	Exemption or reduction	Timing and credit
West Virginia (W. Va. Code § 11-21-71b; WV/NRSR (Apr. 2026), WV/NRAE (Apr. 2022); TSD-389 (Apr. 2026))	Real estate reporting person: 2.5 percent of the total payment or, in lieu, the top individual rate (4.58 percent for 2026) of the estimated gain	Nonresident individuals, estates and trusts	WV/NRAE exemption at least 21 days before closing; NRER early refund; ITINs accepted	Collected before the deed is recorded; remitted within 30 days; credit on IT-141
Oregon (ORS 314.258; OR-18-WC (2025))	Escrow agent: the least of 4 percent of the consideration, 8 percent of the gain, or the net proceeds, on prices above $100,000	"Transferor" means nonresident individuals and non-Oregon C corporations only; conveyances by a personal representative or executor are exempt, so estates are outside the regime	Written affirmation on the form; no certificate procedure	Within 20 days of disbursement (OR-18-WC-V)
Delaware (30 Del. C. §§ 1126, 1606, 1909; Form REW-EST (2024), formerly Form 5403)	Seller declares estimated tax at 6.6 percent (8.7 percent for C corporations) of the gain with the deed	Statute names individuals, pass-through entities and corporations; the form carries a "trust or estate" box at 6.6 percent	Declaration of no gain or of resident status on the form	With the deed at recording; credit on the Delaware return
No withholding: Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, Wyoming; the District of Columbia	No personal income tax on the gain (Washington's capital gains excise tax excludes real estate, RCW 82.87.050(1)); the District taxes no nonresident income	Not applicable	Not applicable	North Carolina withholds nothing but requires the buyer's information report (NC-1099NRS) within 15 days of closing

Part XIII. The compliance calendar

The deadlines in the preceding Parts belong to four different systems, the federal income tax, the federal estate tax, the state withholding regimes and the home country, and they are not coordinated with one another. Table 10 places them in the order in which an executor selling U.S. real property meets them, taking a January death and an October closing as the frame.

Table 10. Compliance calendar for the sale of U.S. real property by an estate

When	What	Authority
On appointment	Classify the estate as foreign or domestic and record the analysis; obtain the estate's EIN (Form SS-4); identify foreign heirs who will need ITINs; obtain the date-of-death appraisal that will serve both returns; decide whether to seek ancillary letters in the state where the property lies	§§ 7701(a)(30)(D), (a)(31)(A), 1014(a); Treas. Reg. § 1.1014-3(a); Treas. Reg. § 20.6325-1(c)
Before the contract	Confirm whether a Form 706-NA is required (U.S.-situated gross estate above $60,000) and hence whether the lien must be discharged; check the state regime and its residency rule for estates	§§ 6018(a)(2), 6324(a)(1); Table 9
At contract signing	File Form 8288-B (or have the buyer file it) with the TINs of all parties, the contract, the appraisal and the gain computation; give the buyer notice of the application; write the escrow holdback into the contract; file the state reduction request (Maryland and West Virginia at least 21 days, Rhode Island 20 days, Hawaii 10 working days, Maine 5 business days before closing)	I.R.C. § 1445(c)(1); Treas. Reg. §§ 1.1445-1(c)(2)(i), 1.1445-3(b); Table 9
At least 45 days before closing	File Form 4422 with Advisory (Florence, Kentucky) where a U.S.-appointed executor administers the property; otherwise confirm that the transfer certificate is in hand or that ancillary letters will be obtained	I.R.C. § 6325(c); Treas. Reg. § 301.6325-1(c); Form 4422 (Rev. May 2025); Treas. Reg. § 20.6325-1
At closing	Foreign estate: buyer withholds 15 percent (10 percent or none within the residence tiers) and holds it pending the certificate; domestic estate: deliver the certification of non-foreign status with the EIN; state forms (New York IT-2663, New Jersey GIT/REP, Maryland MW506NRS, Delaware REW-EST) filed with the deed	I.R.C. § 1445(a), (b)(2), (b)(5), (c)(4); Treas. Reg. § 1.1445-2(b), (d); Table 9
Within 20 days after closing	Buyer files Form 8288 with Forms 8288-A and pays the tax withheld, unless the application was pending on the date of transfer, in which case by the 20th day after the IRS mails its determination; Hawaii N-288 and Oregon payment within 20 days	Treas. Reg. § 1.1445-1(c)(1)-(2); Instructions for Form 8288 (Rev. Jan. 2026)
Within the following month	California Form 593 and payment by the 20th day of the following month; Colorado, Vermont, Maine and West Virginia within 30 days; Rhode Island within three banking days; Georgia by the last day of the following month; South Carolina by the 15th day of the following month	Table 9
Nine months after death	Form 706-NA and payment of any tax; Form 4768 for the automatic six-month extension to file; treaty-based return statement and worldwide disclosure where a convention is claimed	I.R.C. §§ 6075(a), 6151(a), 2106(b); Treas. Reg. §§ 20.6081-1(b), 301.6114-1

When	What	Authority
Within 30 days after Form 706-NA is due or filed	Form 8971 and Schedule A to each beneficiary; supplemental statements within 30 days of any change	I.R.C. § 6035(a)(3); Treas. Reg. § 1.6035-1(c)(3), (d)(4)
Within 20 days after any distribution to a foreign beneficiary in the year of sale (domestic estate)	Form 8288 Part II and Form 8288-A for the 21 percent withheld on distributions attributable to the U.S. real property interest account; California Form 592 for the 7 percent on California-source distributions	I.R.C. § 1445(e)(1); Treas. Reg. § 1.1445-5(b)(5), (c)(1)(iii); Cal. Rev. & Tax. Code § 18662
First 65 days of the following year	Section 663(b) election for distributions to be treated as made in the prior year (income tax only; the account cancellation follows the calendar)	I.R.C. § 663(b)
Return due date	Foreign estate: Form 1040-NR by the 15th day of the fourth month after the year end with a U.S. office, otherwise the sixth month (a fiscal year may be adopted); domestic estate: Form 1041 by the 15th day of the fourth month; credit for the withholding with the stamped Copy B attached; state fiduciary returns	I.R.C. §§ 6072, 6513(b)(3); Instructions for Form 1040-NR (2025); Instructions for Form 1041 (2025)
Before the return is due	Early refund application on a certificate issued after closing, with the stamped Copy B (no interest)	Treas. Reg. § 1.1445-3(g)
Nine months after filing Form 706-NA	Request the estate tax closing letter through Pay.gov ($56) or obtain the account transcript	Treas. Reg. § 300.12; Notice 2017-12
12 to 18 months after a complete file	Transfer certificate issued for property not administered by a U.S.-appointed executor	Treas. Reg. § 20.6325-1; IRS transfer certificate page (May 5, 2026)
Three years after the return is filed	Last day for a refund claim on the withheld tax (two years from payment if later)	I.R.C. § 6511(a), (b)(2)(A)
Ten years after death	Estate tax lien expires unless the tax was sooner paid	I.R.C. § 6324(a)(1)

Part XIV. Practice points

1. **Classify the estate before the contract.** Decide, on the six factors, whether the estate is foreign or domestic, record the reasoning, and make the certification, the withholding position and the return consistent with it. An ancillary administration of the real property alone does not make a foreign estate domestic; a sole U.S. probate with a U.S. executor may make a nonresident's estate domestic.

2. **Obtain the numbers first.** The estate's EIN and each foreign heir's ITIN, or a Form W-7 under Exception 4 attached to the Form 8288-B, are conditions of the certificate and of the credit; an application without them is denied, and a Form 8288-A without them yields no stamped copy.

3. **Use one appraisal for both returns.** The date-of-death value fixes the section 1014 basis, feeds the Form 706-NA, supports the Form 8288-B and, where the property increased the estate tax, caps the basis under section 1014(f). Elect the alternate valuation date only where it reduces the estate tax; it is unavailable otherwise, and where available it makes the FIRPTA gain disappear on a sale within six months.

4. **File Form 8288-B on or before the transfer, and build the holdback into**

the contract. Only an application pending on the date of transfer defers the payment over; an application after closing buys an early refund without interest. Expect the certificate after the closing and the escrow to hold fifteen percent until it arrives.

5. **Run the lien workstream in parallel.** Where a U.S.-appointed executor is acting, Form 4422 at least 45 days before closing; where none is, the transfer certificate with its 12 to 18 months, or ancillary letters to bring the property within the discharge route. The buyer's title insurer will not close without one of them.

6. **Treat the domestic estate as a withholding agent.** Keep the U.S. real property interest account, withhold 21 percent on distributions to foreign beneficiaries in the year of sale, report on Form 8288 Part II within 20 days, and, where the gain is being taxed at the estate level, distribute to foreign heirs in the following year, after the account has been cancelled.

7. **Check the state regime and its residency rule for estates.** California withholds from everyone and offers the gain election; New York and New Jersey collect at recording; Maryland, West Virginia, Rhode Island, Hawaii and Maine require the reduction request weeks before closing; Vermont and Oregon exempt estates. No state honors the federal certificate.

8. **Tell the home-country adviser what the U.S. tax actually is.** The withholding is a prepayment; the credit in France, the United Kingdom, Italy, Spain, Austria, Ireland and Canada, and the exemption with progression in Germany, Switzerland, the Netherlands, Belgium and Luxembourg, are computed on the tax finally assessed and on a basis that may be the decedent's cost rather than the date-of-death value. Keep the Form 1040-NR, the stamped Copy B and the certificate in the file for that purpose.

Conclusion

The sale of U.S. real property by the estate of a nonresident decedent is governed by two federal taxes computed on different amounts and connected only through the basis, by a withholding regime whose base is the price rather than the gain, and by a classification of the estate that decides whether the buyer or the executor is the withholding agent. The mistake this article exists to prevent is the treatment of that withholding as an escrow formality: fifteen percent of the price leaves the estate at closing unless a certificate applied for on or before the transfer says otherwise, the lien on the property must be discharged or certified before a title insurer will close, the state regimes take their own share on their own timetables, and the home country will relieve the gain by reference to the U.S. tax finally assessed and to its own rule on basis at death. Handled in the order the Code and the regulations impose, classification, identification numbers, appraisal, certificate, discharge, closing, return and distribution, the whole exercise is a sequence of filings whose outcome is known before the contract is signed; handled in any other order, it is a year of frozen cash, a fiduciary's personal liability, and a home-country credit computed on the wrong figure. The rule that governs every case is that the withholding is measured by the price, the tax by the gain, and the gain by the value at death, and that the fiduciary who fixes the value, files the application and clears the lien before the closing controls all three.

Cross-border estate administration involving U.S. real property runs on several tracks at once: the classification of the estate as foreign or domestic, the buyer's withholding under section 1445(a) and the fiduciary's under section 1445(e)(1), the withholding certificate on Form 8288-B, the section 1014 basis and its consistency with Form 706-NA, the estate tax lien and the transfer certificate, the estate tax and income tax conventions, and the state regimes. **Ashford International Law PC advises families, fiduciaries, and their advisers** on the classification of estates and trusts and the certification position at closing, withholding certificate applications and the escrow arrangements that accompany them, Form 706-NA preparation with the treaty computation and the lien discharge or transfer certificate, the section 1445(e)(1) mechanics of a domestic estate with foreign beneficiaries, the estate's Form 1040-NR or Form 1041 and the refund of over-withholding, and the coordination of the U.S. figures with the heirs' overseas advisers.

The firm is led by attorney **Caroline Esche Ashford, PhD, JD**. A graduate of Columbia University Law School, her practice focuses on international estate planning and the cross-border taxation and administration of estates and trusts, including estates of nonresident decedents holding United States real property. Dr. Ashford is also licensed to practice law in Germany. She advises English, German as well as French.

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This article is intended for general educational purposes for U.S. and foreign estate planners, fiduciaries, and their clients and does not constitute legal or tax advice, nor does it create an attorney-client relationship. The matters described, sections 897, 1014, 1223, 1411, 1445, 1446, 641, 643, 663, 2101 to 2106, 2032, 6018, 6035, 6075, 6324, 6325, 6511, 6513, 6611, 7701 and related provisions of the Internal Revenue Code and the regulations under them, Revenue Procedure 2000-35, Forms 706-NA, 1040-NR, 1041, 4422, 4768, 8288, 8288-A, 8288-B, 8971, SS-4 and W-7, the estate tax conventions with Australia, Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, South Africa, Switzerland and the United Kingdom and Article XXIX B of the Canadian convention, the income tax conventions with Germany, France, the United Kingdom, Italy, Switzerland, the Netherlands, Belgium, Spain, Austria, Luxembourg, Ireland and Canada, the domestic laws of those countries on the taxation of gains and on basis at death, the state withholding and estate tax regimes described, and the IRS procedures, addresses and processing times cited, depend on the specific facts, entities, states, and countries concerned and on the law in effect at the relevant time, and they change. Statuses are stated as of this writing and must be confirmed before any filing, sale or distribution decision. Nothing here is advice on any particular estate, sale or filing. Confirm every point with qualified counsel and current law before acting.

#FIRPTA #Section1445 #Section897 #ForeignEstate #DomesticEstate #Form8288 #Form8288A #Form8288B #WithholdingCertificate #USRPIAccount #Section1014 #SteppedUpBasis #Form706NA #EstateTaxLien #Section6324 #Form4422 #TransferCertificate #Form1040NR #Form1041 #EstateTaxTreaties #IncomeTaxTreaties #StateWithholding #CrossBorderEstateAdministration #InternationalEstatePlanning