

# the IRS AND YOUR SALE ESCROW

## IRS Reporting Key Factors

- The IRS requires that settlement agents report the sales they close
- The report is submitted by the filing of Form 1099-S
- Certain transactions do not have to be reported
  - No report is submitted for a Corporation Seller
  - No report is submitted under certain Residing Seller certifications
    - » Married = \$500,000 (or less) sale | Single = \$250,000 (or less) sale
- **The reporting of a transaction does not create a tax obligation**
  - Any related tax obligation is determined through the income tax filing process
- Form 1099-S is concerned only with the Gross Proceeds (Sales Price)
- The full Sales Price is reported for each Seller unless Sellers furnish an alternate allocation
  - The allocation cannot be inferred by a title vesting or distribution of net proceeds

## IRS Withholding Key Factors (FIRPTA)

- Each Seller's withholding status is assessed separately, including married Sellers
- A completed Affidavit of Non-foreign Status avoids withholding
  - Case Escrow will furnish a Qualified Substitute statement upon receipt of the Affidavit
- **Place Foreign Sellers in contact with a Tax Professional immediately**
  - it is already late in the process and stressful if sellers wait until an offer is accepted
  - ask the Tax Professional to contact the escrow officer once escrow is opened
- **Place Buyers in contact with a Tax Professional when FIRPTA applies to the Seller**
  - Buyers are responsible for Withholding under IRS Guidelines
  - ask the Tax Professional to contact the escrow officer once escrow is opened
- Foreign Sellers may apply for a waiver or reduction in withholding using Form 8288-B
- Sellers with no Taxpayer Identification Number need to apply for one with Form W-7
  - The two applications are filed together **as early in the process as possible!**
- With a valid application for waiver/reduction, withholding may be retained in escrow until the IRS makes a determination of the tax obligation, if any

