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## Important IRS Changes to the 2015/2016 ITIN Application Process

As you know, procuring ITIN's for non-US citizen/residents is essential when these individuals sell (or rent) US/California real estate. Starting in 2015, the IRS has made an already challenging process even more cumbersome. In 2016, the IRS plans to add yet another layer of complexity.

### 2015 Change- Form 8288's Now Really Must be Included in ITIN Applications

If you've ever read through the W-7 Instructions (Application for ITIN's), where a foreign person needs an ITIN due to 3rd party withholding on a disposition of US real estate, you'll note there has always been a requirement that an IRS Form 8288 be included (showing the amount withheld at the close). But prior to 2015 at DIRECTS we were able to routinely obtain ITIN's for our clients without submitting the Form 8288's. This was a real advantage since the other requirements of the W-7 (the certified passport (we are permitted by the IRS to certify foreign passports at DIRECTS), the estimated closing statement, the sales contract) all could be sent into the IRS at the beginning of escrow. This meant there was a good chance we could get our client the ITIN (assigned by the IRS) before the closing date. This allowed the foreign seller to avail him or herself of the reduced California withholding if applicable (the 12.3% x the appreciation or no withholding for a loss sale...either usually better than the default of 3.3% x the gross sales price requirement), since the seller must have an ID number in place at close to take advantage of those options). In addition, some escrow companies want the ITIN in place as of the close date for the purposes of the IRS Form 1099. But under the new interpretation of the rule (requiring an 8288 with the W-7), it would really be impossible to have an ITIN by the close since the 8288 is not completed typically until right at the close.

**What DIRECTS Can Do to Mitigate the Problem?** - What we can do at DIRECTS is prepare a "preliminary 8288" and send that in with the other required attachments at the beginning of the escrow. We won't need the buyer's signature (they're the withholding agent whether they sign or not), but we may need their social security number(s) (or ITIN if the buyer is also foreign). If the IRS does require a buyer's social security number on our "preliminary 8288s", and if we cannot get that from escrow or the seller, we can prepare the W-7 with the attachments and forward the whole package to escrow and let them insert the buyers' social security number. **The bottom line is at DIRECTS we should be able to continue obtaining ITIN's prior to the closing date, which is valuable for the seller and the escrow company.**

### 2016 Change- ITIN's which Haven't Been Used in 5 Years, Will Cease to be Valid

Ugh. While we knew ITIN's issued after January 1, 2013 were only good 5 years, but we had thought ITIN's issued before that were good for life. Now Not the case. Starting in 2016, if the non-US person has an ITIN but hasn't used it in the previous five years (an entirely plausible scenario), their ITIN issued over 5 years ago will no longer be valid. One thing guaranteed to cause a migraine headache for any escrow company is sending in money under a non-valid number which subsequently must be changed to a valid number. That's a recipe to get the seller's 10% stuck in bowels of the IRS for months or even years. Again, the IRS will not start to "deactivate" those non-used ITIN's until 2016.