



PIASCIK & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS

Main / 804-527-1815

Toll Free / 866-527-1815

Fax / 804-527-1816

Innsbrook Corporate Center

4470 Cox Road, Suite 250

Glen Allen, Virginia 23060

January, 2006

Mr. A. Smith
ABC Smith Company

Dear Mr. Smith:

Warning: IRS to Increase Audits of Real Property Managers having Foreign Investors

When a real property manager becomes a rental agent for U.S. real property owned by a foreign investor, the rental agent may be liable for withholding tax on the remittance of rental income to the foreign investor. The Internal Revenue Service (IRS) has recently released a fact sheet about foreign ownership of U.S. real property, thus one can conclude that the Service will increase its focus on the compliance in this area.

U.S. Compliance Requirements

Unless the foreign investor has properly informed the property manager that the rental income is to be treated as "effectively connected income" by submitting to the property manager with a fully completed IRS Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States, the property manager should withhold thirty percent (30%) of the gross rental receipts so as to avoid personal liability. A fully completed Form W-8ECI must include a valid U.S. tax identification number for the foreign landlord (in other words, the rental agent must withhold and remit the 30% tax to the IRS until this requirement is satisfied). A real property manager who collects rent on behalf of a foreign owner of real property is considered a withholding agent and is personally and primarily liable for any tax that must be withheld. The liability of the withholding agent includes amounts that should have been paid plus interest, penalties, and where applicable, criminal sanctions. Property managers who do not comply with these rules will be held liable (either individually or through their company) for 30% of gross rents, plus penalties and interest.

Additionally, real property managers need to report annual rents collected on behalf of foreign landlords on Forms 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. These are the equivalent of Forms 1096 and 1099-MISC but are for foreign owners. To enforce the system of withholding, the Internal Revenue Code defines a "withholding agent" to be any person in whatever capacity (including lessees and managers of U.S. real property) having the control, receipt, custody, disposal or payment of income that is subject to withholding. Thus, a real property manager who collects rent on behalf of a foreign owner of real property is clearly considered a withholding agent. A withholding agent is personally and primarily liable for any tax that must be withheld. The liability of the withholding agent includes amounts that should have been paid plus interest, penalties and, where applicable, criminal sanctions. The statute of limitations does not start until a withholding return is filed by the withholding agent. Once the



return has been filed, the statute of limitations begins to run at the later of two dates: the date of actual filing of the correct return or April 15 of the calendar year in which the return should have been filed. We hope this information is helpful and if you would like more details please do not hesitate to call Ryan Losi directly at (804) 228-4179.

Piascik & Associates, P.C., provides premier tax, business, and financial services to a broad range of clients throughout the United States, Canada and abroad. For more information, please visit www.piascik.com.

Very truly yours,
PIASCIK & ASSOCIATES, P.C.

Ryan L. Losi, CPA, REALTOR
Business Development Manager