# LEGISLATIVE PROPOSAL B
# EXECUTIVE SUMMARY

## Title

Real Estate Withholding/ Internal Revenue Code (IRC) section 1031 Deferred Like-kind Exchange/Failure to Withhold by Qualified Intermediaries (QI)/ Cash-Poor Exchange

## Problem

Revenue and Taxation Code (R&TC) section 18662 requires withholding on the disposition of an interest in California real property, unless the disposition meets specified exceptions. For a deferred exchange, the duty to withhold shifts from the buyer to the QI. The QI may not have sufficient funds in the exchange account to meet the withholding obligation if:

- The QI doesn't receive sufficient funds from escrow to pay the required withholding due, or
- The QI has disbursed funds for the purpose of completing an exchange under IRC section 1031 and the transaction results in a partial or failed exchange.

Thus, these scenarios create a situation where the QI cannot satisfy its withholding obligation from escrow or the exchange account.

## Proposed Solution

R&TC section 18662 would be amended to limit the QI's withholding obligation to available funds in those situations where the QI does not receive sufficient funds from escrow or the QI disbursed funds for the purpose of completing an exchange under IRC section 1031. The Franchise Tax Board (FTB) would be authorized to prescribe regulations to implement this change clarifying when a disbursement is for the purpose of completing an IRC section 1031 exchange.

## Fiscal Impact

This proposal would not significantly impact the department's costs.

## Economic Impact

Revenue Estimate

The revenue impact is unknown, although it is anticipated there could be a minor revenue loss attributable to the failure to withhold penalty that would no longer be assessed.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion

Under this proposal, QIs with insufficient funds in a deferred exchange transaction, would be relieved of their requirement to withhold to the extent of funds being unavailable. It is difficult to predict the frequency, timing, and the value of these transactions.

Historically, a penalty for failure to withhold in a deferred exchange transaction has been primarily used as a deterrent for non-compliance. If the QI is having a hardship complying with the withholding requirement because the QI does not receive sufficient funds from escrow to pay the withholding, FTB may abate the penalty based on reasonable cause.

Based on FTB withholding data, 15,000 Form 593s from QIs were filed for tax years 2017 to 2018 reporting the following withholding amounts:

For 2017, a total of approximately $85 million comprised of $30 million attributable to “boot” and $55 million for failed exchanges. For 2018, a total of approximately $100 million with $30 million and $70 million for “boot” and failed exchanges, respectively. Total penalties assessed during this time were less than $3,000.

This proposal would still require the QI to file Form 593 and report withholding for “boot” and failed exchanges absent the exchange being “cash-poor,” which would limit withholding to available funds. Additionally, the Form 593 would require the QI to provide identifying information on the seller and attest that the transaction was a “cash-poor” exchange.

This proposal would not relieve the seller of their responsibility to report and pay the tax liability on their return. As the FTB would still be receiving data that would flow to the tax return, it is presumed that there would be continued compliance with reporting requirements. However, since withholding is a prepayment of potential tax liability, we anticipate a slight change in the timing and payment of this liability, but do not expect this to be a measurable change. Actual amount of tax liabilities would not be affected.

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**Title**

Real Estate Withholding/ Internal Revenue Code (IRC) section 1031 Deferred Like-kind Exchange/ Failure to Withhold by Qualified Intermediaries/ Cash-Poor Exchanges

**Introduction**

This proposal would modify real estate withholding requirements related to the deferred like-kind exchange of California real property.

In a deferred exchange, the obligation to withhold shifts from the buyer to the qualified intermediary or accommodator, which is a person or business who enters into a written exchange agreement with a taxpayer to facilitate an IRC section 1031 deferred like-kind exchange. (Throughout this legislative proposal "QI" is used as the abbreviation for "qualified intermediary or accommodator.")

The department has determined and others have told us that QIs have difficulty meeting the withholding obligation in those situations where a QI does not have sufficient funds in the exchange account to satisfy the full withholding obligation (commonly referred to as "cash-poor exchanges"). This proposal reviews and provides a possible legislative solution to address this concern.

**Problem**

R&TC section 18662 requires withholding on the disposition of an interest in California real property, unless the disposition meets specified exceptions. For a deferred exchange, the duty to withhold shifts from the buyer to the QI. The QI may not have sufficient funds in the exchange account to meet the withholding obligation if:

1. The QI doesn't receive sufficient funds from escrow to pay the required withholding due, or
2. The QI has disbursed funds for the purpose of completing an exchange under IRC section 1031 and the transaction results in a partial or failed exchange.

Thus, these scenarios create a situation where the QI cannot satisfy its withholding obligation from escrow or the exchange account.

**Proposed Solution**

R&TC section 18662 would be amended to limit the QI's withholding obligation to available funds in those situations where the QI does not receive sufficient funds from escrow or the QI disbursed funds for the purpose of completing an exchange under IRC section 1031.

FTB would be authorized to prescribe regulations to implement this change clarifying when a disbursement is for the purpose of completing an IRC section 1031 exchange.

**Program History/Background**

California law and regulations require withholding on sales or transfers of California real property when the total sales price exceeds $100,000 and the transaction or seller does not qualify for an exemption.  Real estate withholding is a prepayment of income (or franchise) tax due from sellers on the gain from the sale of California real property, and does not relieve sellers from the requirement to file a tax return.  Even if the seller is exempt from real estate withholding requirements, they may still owe California taxes and have a requirement to file a California tax return.

A deferred exchange, also referred to as a non-simultaneous or delayed like-kind exchange, occurs when a taxpayer transfers property, and after the transfer, receives like-kind property The QI will submit the Form 593 *Real Estate Withholding Statement* in a deferred exchange.

**Current Federal/State Law**

*Like-Kind Exchange/Deferred Exchange*

Under federal law, IRC section 1031, generally allows the deferral of gain from the sale or disposition of property used in a trade or business or held for investment if replacement property of "like-kind" is acquired.  There are specific requirements the taxpayer must meet to qualify for the gain deferral.

For federal purposes, exchanges completed in 2018 and after are not allowed for personal or intangible property.

If the taxpayer transfers property but will not receive other property in exchange until a later date, the transaction must comply with the following statutory time periods:

- The property to be received is identified within 45 days after the taxpayer transferred the property given up in the exchange.
- The identified property is received by the earlier of:
  - The 180th day after the date on which the taxpayer transferred the property given up in the exchange.
  - The due date, including extension, of the taxpayer's tax return for the year in which he or she transferred the property given up.

To be treated as a deferred exchange, a transaction must be an exchange of property for property, not a transfer of property for money, even if the taxpayer buys replacement property of a like-kind at a later date.  Thus, a sale of property followed by a purchase of property that is of a like-kind to the property sold does not qualify for no recognition of gain or loss even if the other requirements for a like-kind exchange are met.

Additionally, a partially taxable exchange occurs when the taxpayer receives money or unlike property in addition to like-kind property in the exchange on which the taxpayer realizes a gain. The taxpayer recognizes the gain to the extent of the money and of the fair market value (FMV) of the unlike property.

For state purposes, for exchanges completed after January 10, 2019, California conforms to federal law with modifications. California conforms to the federal limitation that prohibits exchanges of personal or intangible property.

For individuals, this limitation only applies if either:

- An individual who is a head of household, a surviving spouse, or spouses filing a joint return with adjusted gross income (AGI) of $500,000 or more for the tax year in which the exchange begins, or
- For any other individual with AGI of $250,000 or more for the tax year in which the exchange begins.

However, the California change does not apply to the exchange if:

- The property disposed of by the taxpayer in the exchange is disposed of on or before January 10, 2019, or
- The property received by the taxpayer in the exchange is received on or before January 10, 2019.

*California Information Return Filing Requirement for Like-Kind Exchange*

Under state law, for taxable years beginning on or after January 1, 2014, taxpayers who defer gain or loss under IRC section 1031 when they exchange California real property for like-kind property located outside of California are required to file form FTB 3840 *California Like-Kind Exchanges*, with the FTB. This form must be filed in the year the exchange is completed and each subsequent year the deferred gain or loss from the exchange is not recognized.

The filing requirement applies to all individuals, estates, trusts, and all business entities regardless of their residency status or commercial domicile.

*Real Estate Withholding in a Deferred Exchange*

Federal law, the Foreign Investment in Property Tax Act (FIRTPA), provides for withholding on the disposition of U.S. real property interests by a foreign person. Persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers are generally required to withhold 15 percent of the amount realized on the disposition (special rules for foreign corporations). In most cases, the transferee/buyer is the withholding agent. For cases in which a U.S. business entity such as a corporation or partnership disposes of a U.S. real property interest, the business entity itself is the withholding agent.[1]

[1] See IRS website, FIRTPA Withholding (https://www.irs.gov/individuals/international-taxpayers/firpta-withholding)

California does not conform to FIRTPA, and instead provides a “standalone” provision for real estate withholding. The QI must withhold when either of the following occur:

- The transferor receives “boot” in excess of $1,500, including cash, excess debt relief, or non-like-kind property from the sale. The QI must withhold 3 1/3 percent (.0333) of the boot. If an election is made to use the alternative withholding calculation method (completed on Form 593) then the QI must withhold the amount determined through the election.
- The exchange fails, does not occur, or does not meet the IRC section 1031 requirements, regardless of the transferor’s certification that the transaction is a like-kind exchange, unless another exemption applies. If the exchange fails and no other exemptions applies, the QI must withhold 3 1/3 percent (.0333) of the sales price unless an election is made to use the alternative withholding calculation method.

Under current state law, the QI must remit the full withholding amount even if the QI does not receive sufficient funds from escrow. Otherwise, the QI may be subject to a penalty for failure to remit the full amount of withholding, discussed below.

*Penalty for Failure to Withhold*

State law generally provides, unless it is shown that the failure to withhold is due to reasonable cause, the transferee, including a QI, is liable for the greater of the following amounts for failure to withhold:

- Five hundred dollars ($500).
- Ten percent of the amount required to be withheld.

Reasonable cause is a standard exception to many penalties under the R&TC and the IRC. Generally, reasonable cause exists where noncompliance occurs despite the exercise of ordinary business care and prudence.

If a QI does not receive sufficient funds from escrow to pay the withholding (cash-poor exchange), the withholding penalty may be abated based on reasonable cause. A strong factor to support a reasonable cause determination would be if the QI provides evidence that the QI submitted a written demand to the transferor at the time the withholding is due to require the transferor to remit the amount of any shortage. If it is shown that noncompliance was due to reasonable cause and was not due to willful neglect based on the facts, FTB will abate the penalty.

**Effective/Operative Date of Solution**

If enacted in the 2021 legislative session as a tax levy, this proposal would be effective immediately upon enactment and specifically operative for dispositions of California real property interests that occur on or after January 1, 2022.

**Justification**

This proposal would reduce the burden of compliance on QIs in situations where QIs lack sufficient funds to satisfy the full withholding obligation. This proposal would encourage compliance by promoting a fair and equitable tax system while retaining the overall withholding structure.

**Implementation**

Implementing this proposal would require changes to existing tax forms and instructions, information on the FTB website, and information systems, which could be accomplished during the normal annual update.

**Fiscal Impact**

This proposal would not significantly impact the department's costs.

**Economic Impact**

Revenue Estimate

The revenue impact is unknown, although it is anticipated there could be a minor revenue loss attributable to the failure to withhold penalty that would no longer be assessed.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion

Under this proposal, QIs with insufficient funds in a deferred exchange transaction, would be relieved of their requirement to withhold to the extent of funds being unavailable. It is difficult to predict the frequency, timing, and the value of these transactions.

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This proposal would not relieve the seller of their responsibility to report and pay the tax liability on their return. As the FTB would still be receiving data that would flow to the tax return, it is presumed that there would be continued compliance with reporting requirements. However, since withholding is a prepayment of potential tax liability, we anticipate a slight change in the timing and payment of this liability, but do not expect this to be a measurable change. Actual amount of tax liabilities would not be affected.

**Policy Considerations**

This proposal would foster an equitable tax system by promoting fairness without undermining the existing withholding structure or the taxability of provisions related to deferred exchanges.

**Other Agency/Industry Impacted**

External organizations representing persons and businesses who facilitate like-kind IRC section 1031 deferred exchanges have expressed an interest in a legislative solution addressing the withholding obligation when the QI does not have sufficient funds to cover the full withholding obligation in specified situations.

**Potential Compromises**

None identified.

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# Franchise Tax Board’s Draft Proposed Amendments LP B

**Subject:** Real Estate Withholding/ Internal Revenue Code (IRC) section 1031 Deferred Like-kind Exchange/ Failure to Withhold by Qualified Intermediaries/ Cash-Poor Exchanges

## Amendment 1

*Section 18662 of the Revenue and Taxation Code is amended to read:*

**18662**.

(a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state, or any political subdivision or agency of the state, or any city organized under a freeholder’s charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person that fails to withhold from any payments any amounts required to be withheld by this section or fails to remit the taxes withheld is liable for the amount specified in Section 18668.

(e) (1) This subdivision applies to any disposition of a California real property interest by:

(A) Any person, other than either of the following:

(i) Except as otherwise provided in this subdivision, a corporation, including an entity classified for tax purposes as a corporation under Part 11 (commencing with Section 23001).

(ii) Except as otherwise provided in this subdivision, a partnership, as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, including an entity classified as a partnership for tax purposes under Part 10 (commencing with Section 17001).

(B) A corporation or partnership, if that corporation or partnership immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation or partnership has no permanent place of business in California if all of the following apply:

(i) It is not organized and existing under the laws of California.

(ii) It does not qualify with the office of the Secretary of State to transact business in California.

(iii) It does not maintain and staff a permanent office in California.

(2) (A) Except as provided in subparagraph (B), in the case of any disposition of a California real property interest by a transferor described in paragraph (1), the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to $3^{1}/_{3}$ percent of the sales price of the California real property conveyed.
(B) If the transferor makes an election under this subparagraph, the transferee, including any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to an amount certified by the transferor in writing under penalty of perjury. The amount certified shall not be less than the gain required to be recognized under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) on the disposition of the California real property multiplied by the rate specified in either Section 23151 or Section 23186, as applicable, for transferors that are corporations, or the highest rate specified in Section 17041 for transferors other than corporations. For purposes of applying the previous sentence, the following shall apply:

(i) The highest rate specified in Section 17041 is determined without regard to any other tax rate specified under Part 10 (commencing with Section 17001) irrespective of whether the applicable statute provides that tax shall be treated as if imposed under Section 17041.

(ii) For corporations that are “S” corporations subject to the modified tax rate specified in Section 23802, the rate shall be the sum of the rate specified in subdivision (b) of Section 23802 and the highest rate specified in Section 17041, as described in clause (i).

(C) (i) The written certification required by subparagraph (B) shall be in a form, as prescribed by the Franchise Tax Board. The form shall provide as follows:

“Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose.”

(ii) The Franchise Tax Board shall make this form available electronically on its Web site in a format that allows a transferor to complete and print the form. The Franchise Tax Board shall also provide electronic means to enable the transferor to estimate the amount of gain required to be recognized by the transferor in the transaction. Any form or worksheet, electronic or otherwise, developed for this purpose shall provide as follows:

“Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose.”

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:
(A) No transferee is required to withhold any amount under this subdivision unless the sales price of the California real property conveyed exceeds one hundred thousand dollars ($100,000).

(B) No transferee, other than an intermediary or an accommodator in a deferred exchange, is required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) (i) No transferee, trustee under a deed of trust, or mortgagee under a mortgage with a power of sale is required to withhold under this subdivision when the transferee has acquired California real property at a sale pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the property by a deed in lieu of foreclosure.

(ii) No transferee is required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying, under penalty of perjury, one of the following:

(i) (I) The California real property being conveyed is the seller's or decedent's principal residence, within the meaning of Section 121 of the Internal Revenue Code.

(II) The last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of Section 121 of the Internal Revenue Code.

(ii) (I) The California real property being conveyed is being exchanged, or will be exchanged, for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of the gain not required to be recognized for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code.

(II) Subclause (I) may not apply if an exchange does not qualify for nonrecognition treatment for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code, in whole or in part, due to the failure of the transaction to comply with the provisions of Section 1031(a)(3) of the Internal Revenue Code, relating to the requirement that property be identified and that the exchange be completed not more than 180 days after the transfer of the exchanged property.

(III) In any case where clause (ii) applies, the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to notify the Franchise Tax Board in writing within 10 days of the expiration of the statutory periods specified in Section 1031(a)(3) of the Internal Revenue Code and thereafter remit the applicable withholding amounts determined under this subdivision in accordance with paragraph (4), <u>but only to the extent that an intermediary or accommodator has received amounts from the disposition of California real property and has not disbursed those amounts for the purpose of completing an exchange or exchanges within the meaning of Section 1031 of the Internal Revenue Code, relating to exchange of real property held for productive use or investment.</u>

<u>(IV)(ia)The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of subclause (III), including, but not limited to, any regulations to clarify the meaning of disbursement for the purpose of completing an exchange within the meaning of Section 1031 of the Internal Revenue Code.</u>

<u>(ib) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of subclause (III). Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to subclause (III).</u>

(iii) The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(iv) The transaction will result in either a net loss or a net gain not required to be recognized for California income or franchise tax purposes.

(v) The transferor is a corporation with a permanent place of business in California.

(E) (i) In the case of any transaction otherwise subject to this subdivision that qualifies as an “installment sale,” within the meaning of Section 453(b) of the Internal Revenue Code, for California income tax purposes, the provisions of this subdivision shall be separately applied to each principal payment to be made under the terms of the installment sale agreement between the parties.

(ii) For purposes of clause (i), subparagraph (A) of paragraph (3) does not apply to each individual payment to be received under the terms of the installment sale agreement.

(4) (A) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board. Notwithstanding the foregoing, funds withheld on individual transactions by real estate escrow persons may, at the option of the real estate escrow person, be remitted by the 20th day of the month following the close of escrow for the individual transaction, or may be remitted on a monthly basis in combination with other transactions closed during that month.

(B) The transferor shall submit a copy of the written certificate and supporting documentation for the reduced withholding specified in subparagraph (B) of paragraph (2) or subparagraph (D) of paragraph (3), executed by the transferor, to the Franchise Tax Board upon request.

(5) For purposes of this subdivision, “California real property interest” means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(6) For purposes of this subdivision, “real estate escrow person” means any of the following persons involved in the real estate transaction:

(A) The person, including any attorney, escrow company, or title company, responsible for closing the transaction.

(B) If no person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(7) (A) Unless the real estate escrow person provides “assistance,” it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, “assistance” includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision or, upon request of the parties, withholding an amount under this subdivision and remitting that amount to the Franchise Tax Board.

(C) For purposes of this paragraph, “assistance” does not include providing the written notification of the withholding requirements of this subdivision.

(D) In a case where the real estate escrow person provides “assistance” in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars ($45).

(8) For purposes of this subdivision, “sales price” means the sum of all of the following:

(A) The cash paid, or to be paid, but excluding for this purpose any stated or unstated interest or original issue discount, as determined under Sections 1271 through 1275, inclusive, of the Internal Revenue Code.

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(9) The Franchise Tax Board may prescribe, by forms, instructions, published notices, or regulations, any requirements necessary for the efficient administration of this subdivision relating to the treatment of “de minimis” amounts otherwise required under this section.

(f) Withholding is not required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors’ meeting.

(g) In the case of any payment described in subdivision (f), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

(h) (1) The amendments to this section made by Chapter 488 of the Statutes of 2002 apply to dispositions of California real property interests that occur on or after January 1, 2003.

(2) In the case of any payments received on or after January 1, 2003, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2003, the amendments to this section made by Chapter 488 of the Statutes of 2002 do not apply to those payments.

(i) (1) The amendments made to this section by the act adding this subdivision shall apply to dispositions of California real property interests that occur on or after January 1, 2009.

(2) In the case of any payments received on or after January 1, 2009, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2009, the amendments made to this section by the act adding this subdivision do not apply to those payments.

<u>(j) The amendments made to this section by the act adding this subdivision shall apply to dispositions of California real property interests that occur on or after January 1, 2022.</u>