State of California
**Franchise Tax Board**

# Real Estate Withholding Guidelines

FTB Pub. 1016 (REV 06-2009)

For additional information, contact Withholding Services and Compliance.

**Telephone:** **888.**792.4900
916.845.4900 (not toll-free)

Our automated telephone system allows you to access important information seven days a week, 24 hours a day. If the system does not completely answer your questions, you may speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

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To get forms, publications, and other withholding information, go to our website or email us:

**Website:** **ftb.ca.gov**

**Email Address:** WSCS.GEN@ftb.ca.gov
(for nonconfidential email)

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**Fax:** 916.845.9512

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**Mailing Address:** WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

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**Express Mail/Overnight Delivery:** FRANCHISE TAX BOARD
SACRAMENTO CA 95827

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Get FTB 1131, Franchise Tax Board Privacy Notice, at **ftb.ca.gov** or call us at 800.338.0505. If outside the United States, call 916.845.6500 (not toll-free).

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|---|---|
| Website/Sitio web: | **ftb.ca.gov** |
| Telephone/Teléfono: | 800.852.5711 from within the United States/Dentro de los Estados Unidos<br>916.845.6500 from outside the United States (not toll-free)/Fuera de los Estados Unidos (cargos aplican) |
| TTY/TDD: | 800.822.6268 for persons with hearing or speech impairments/Personas con discapacidades auditivas y del habla |

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# Purpose

This publication provides guidance on the withholding requirements for sales of California real property closing on or after January 1, 2009.

# What's New

- **Withholding Rates –** For taxable years beginning on or after 01/01/2009, non-California Partnerships are subject to withholding requirements on a sale of California real property at a rate of 3⅓% of sales proceeds or 9.55% of gain. The alternative withholding rates for the sale of California real property by S corporations increased to 11.05%, and to 13.05% for financial S corporations.
- **Installment Sales –** Buyers must now withhold on the principal portion of each installment sale payment if the sale of California real property is structured as an installment sale.

# Form Changes

The following forms were changed effective 01/01/2009:

- **Form 593,** *Real Estate Withholding Tax Statement.*
- **Form 593-C,** *Real Estate Withholding Certificate.*
- **Form 593-E,** *Real Estate Withholding – Computations of Estimated Gain or Loss.*
- **Form 593-I,** *Real Estate Withholding Installment Sale Acknowledgement.*

**Use forms preprinted with year 2009 for escrows closing on or after January 1, 2009.** To get current forms and information, go to our website at **ftb.ca.gov.**

# Frequently Asked Questions

## Part I — General Information

1. **What is real estate withholding?**
   Real estate withholding is a prepayment of California state income tax for sellers of California real property.
2. **Is real estate withholding an additional tax on the sale of California real property?**
   No. Real estate withholding is not an additional tax on the sale of real estate. It is a prepayment of the income (or franchise) tax due on the gain from the sale of California real property.
3. **What is the withholding rate?**
   The withholding rate is 3⅓ percent of the total sale price, or an optional gain on sale withholding based on the maximum tax rate on the gain on sale as follows:
   - 9.55 percent for individuals and non-California partnerships.
   - 8.84 percent for corporations.
   - 10.84 percent for banks and financial corporations.
   - 11.05 percent for S corporations.
   - 13.05 percent for financial S corporations.
4. **When is withholding required?**
   Withholding is required on sales or transfers of California real property when the total sale price exceeds $100,000 and does not qualify for an exemption on Form 593-C (see Part III Exemptions).
5. **When is withholding not required?**
   Withholding is not required when any of the following is true:
   - The total sale price does not exceed $100,000.
   - The seller is a bank acting as a fiduciary for a trust.
   - The property is being foreclosed upon (see question 28).
   - The seller meets a full exemption on Form 593-C.
6. **What is a *buyer*?**
   We use the term *buyer* throughout this publication to refer to the buyer or any other transferee of the property.
7. **What is a *seller*?**
   We use the term *seller* throughout this publication to refer to the seller or any other transferor of the property.
8. **Can sellers whose withholding payment is more than their tax liability receive an early refund from FTB?**
   No. The law does not provide for early refunds of taxes withheld on sales of real estate. You must file your California tax return to claim the amount withheld.
9. **Does withholding relieve sellers from the requirement to file California tax returns?**
   No. Sellers must file California tax returns if they meet the filing requirements. If withholding is more than the actual tax liability, FTB will refund the overpayment. If withholding is less than the actual tax liability, additional tax will be due.
10. **If sellers are exempt from withholding, are they still required to file California tax returns?**
    Yes. Sellers must file California tax returns if they meet the filing requirements.
11. **How does the seller elect to withhold on the gain?**
    The seller making the election must complete and sign Form 593-E and Form 593. By signing these forms, the seller certifies in writing under penalty of perjury the gain required to be recognized and the gain on sale withholding amount.

12. **Does the seller have to complete Form 593-E?**
The seller has to complete it if they elect to have the withholding computed using the optional gain on sale calculation method.

13. **Who is responsible for completing Form 593-E?**
The seller is responsible for completing Form 593-E. Real estate escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Sellers are strongly encouraged to consult with a competent tax professional for this purpose.

14. **Is the real estate escrow person responsible for verifying the amounts on Form 593-E?**
No. As long as the form is complete and signed, then no other verification is required.

15. **How can I get withholding forms and publications?**
To get withholding forms and publications (including additional copies of FTB Pub. 1016), call **888**.792.4900 or go to our website at **ftb.ca.gov**.

16. **How can sellers determine if FTB requires them to file California tax returns?**
Usually, California real property sellers must file a California tax return. For more information on California filing requirements, or to order tax forms, call the numbers listed below:

From within the United States . . . . . 800.852.5711

From outside the United States . . . . 916.845.6500 (not toll free)

For hearing impaired with TTY/TDD. . . . . 800.822.6268

Tax forms and information are available on our website at **ftb.ca.gov**

## Part II — Real Estate Escrow Person

17. **Who must withhold?**
Although the law requires buyers to withhold, they can request the real estate escrow person to do the withholding.

18. **What is a *real estate escrow person*?**
We use the term *real estate escrow person* throughout this publication to refer either to the real estate escrow person or the buyer, whoever is taking responsibility for withholding.

19. **What is the real estate escrow person required to do?**
It is the real estate escrow person's responsibility to give written notice of the withholding requirements to the buyer. Once the real estate escrow person notifies the buyer, it is the buyer's responsibility to withhold. However, buyers may delegate the responsibility to the real estate escrow person.

The real estate escrow person should:

- Give the Form 593-C/Form 593-E Booklet to all sellers.
- Withhold when required.
- Complete Form 593 when withholding is done. The seller is to complete and certify the optional gain on sale withholding amount on Form 593.
- Give one copy of Form 593 to the sellers.
- Send a copy of Form 593 to FTB with the withholding payment.

For more information, see *Part V, Reporting and Remitting Withholding*.

20. **How must real estate escrow persons notify buyers of the withholding requirements?**
The real estate escrow person must provide written notification to the buyer or other transferee unless the transferee is an intermediary or accommodator in a deferred exchange. The written notification must be in substantially the same language as follows:

*In accordance with Section 18662 of the Revenue and Taxation Code (R&TC), a buyer may be required to withhold an amount equal to 3⅓ percent of the sale price, or an optional gain on sale withholding amount certified by the seller in the case of a disposition of California real property interest by either:*

1. *A seller who is an individual, trust, estate, or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the sellers.*
2. *A corporate seller that has no permanent place of business in California immediately after the transfer of title to the California property.*

*The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).*

*However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if any of the following apply:*

1. *The sale price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000).*
2. *The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California.*
3. *The seller, who is an individual, trust, estate, or a corporation without a permanent place of business in California, executes a written certificate, under the penalty of perjury, of any of the following:*
   A. *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 (IRC)).*
   B. *The last use of the property being conveyed was use by the transferor as the transferor's principal residence (within the meaning of IRC Section 121).*

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

*D. The California real property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and the seller 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 IRC Section 1033.*

*E. The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes.*

*The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.*

**21. When a transfer is done without an escrow, who must notify buyers of the withholding requirements?**
The person responsible for closing the transaction (attorney, title company, etc.) must notify buyers of the withholding requirements. If no one is responsible for closing the transaction, then the person who receives and disburses the funds for the property sold is responsible for notifying the buyers.

**22. Are real estate escrow persons responsible for verifying sellers' certifications on Form 593-C?**
Real estate escrow persons should only verify certifications to the extent that they have knowledge of the facts. If they have no knowledge of the facts, then they must only verify that the certificate is complete and signed. Real estate escrow persons should not rely upon an incomplete or unsigned certificate. Examples:

1. A seller completes Form 593-E, *Real Estate Withholding – Computation of Estimated Gain or Loss*, and certifies a loss on the transaction. We do not require the real estate escrow person to verify the loss shown on Form 593-E.
2. A seller completes Form 593-C, *Real Estate Withholding Certificate,* and certifies that the sale is an installment sale. However, the buyer has not provided a completed and signed Form 593-I, *Real Estate Withholding Installment Sale Acknowledgement*. The real estate escrow person should not accept Form 593-C and should withhold.
3. A seller completes Form 593-C and certifies that a California partnership is selling the property, but the real estate escrow person knows that the recorded title is not in the name of the California partnership. The real estate escrow person should not accept the exemption certificate and should withhold. See question 57.

**23. Can the real estate escrow person charge a fee for withholding?**
Yes. The real estate escrow person may charge no more than $45 for providing assistance in complying with the withholding requirements.

Assistance includes, but is not limited to:

- Helping the parties clarify whether withholding is required with FTB.
- Withholding and remitting the payment to FTB.

Assistance does not include:

- Providing written notification of the withholding requirements to buyers.
- Providing the Form 593-C/Form 593-E Booklet to sellers.

**24. Who pays the escrow fee for withholding?**
The fee is negotiable. Either buyers or sellers may pay the escrow withholding fee.

**25. Does withholding relieve the real estate escrow person from the Form 1099-S reporting requirements?**
No. The regular Form 1099-S requirements continue to apply.

# Part III — Exemptions

## In General

**26. What are the withholding exemptions for sellers?**
Sellers are exempt from withholding if the:

- Property qualifies as their principal residence (IRC Section 121).
- Property was last used as their principal residence (IRC Section 121).
- Sale will result in a loss or zero gain for California tax purposes.
- Transaction will qualify as a like-kind exchange, with the exception of boot (IRC Section 1031).
- Transaction will qualify as an involuntary conversion (IRC Section 1033).
- Transaction will qualify for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest).
- Seller is a corporation with a permanent place of business in California.
- Seller is a California partnership.
- Seller is an LLC classified as a California partnership for federal and California income tax purposes, which is not a single member LLC that is disregarded for federal and California income tax purposes.
- Seller is a tax-exempt entity.
- Seller is an insurance company, individual retirement account (IRA), qualified pension plan, or charitable remainder trust.

Sellers who meet one of the above exemptions must sign a written certification (Form 593-C) under penalty of perjury to be exempt from withholding.

**27. What form do sellers use to certify that they qualify for an exemption?**
Sellers must use California Form 593-C to certify that they qualify for one of the exemptions. Sellers must give a completed and signed form to the real estate escrow person by the close of escrow or withholding will be required. The real estate escrow person will be relieved of the withholding requirements if they rely in good faith on a completed and signed Form 593-C that certifies an exemption.

**28. Does the law always require withholding when sellers do not qualify for any of the exemptions?**
Withholding is required unless the sale qualifies for an automatic exclusion (total sale price is $100,000 or less, the transferor is a bank acting as a trustee other than a trustee of a deed of trust, or the transferee is acquiring the property as part of a foreclosure). Pursuant to a foreclosure, the transferee must be acquiring the property under one of the following to be excluded:

- A power of sale required under a mortgage or deed of trust.
- A decree requiring foreclosure.
- A deed in lieu of foreclosure.

**29. Once sellers complete and sign Form 593-C, should the Form 593-C be sent to FTB?**
No. Form 593-C should not be sent to FTB unless requested by FTB. The real estate escrow person must keep this form in their files for five years following the close of the transaction.

**30. Can sellers request a waiver?**
No. There is no waiver process for real estate transactions. Sellers can get Form 593-C to certify that they qualify for an exemption.

**31. Can sellers who will have a small gain or a lower tax liability apply for reduced withholding?**
No. There is no provision in the law that allows reduced withholding for any sellers. The real estate escrow person must withhold the full 3⅓ percent (.0333%) of the total sales price or the withholding amount based on gain on sale even when the sale will only result in a small gain.

## Principal Residence

**32. Does the law require withholding on the sale of a principal residence?**
There is no withholding if sellers certify on Form 593-C that the property qualifies as their principal residence (IRC Section 121).

**33. What qualifies as a principal residence under IRC Section 121?**
Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of the sale, the sellers have owned and lived in the property as their main home for at least two years. There are exceptions to the two-year rule if the primary reason they are selling the home is due to a change in their place of employment, health, or other unforeseen circumstances such as death, divorce, or loss of job, etc.

There may be other restrictions, limitations, or exceptions. For more information, get Internal Revenue Service's Publication 523, *Selling Your Home*, at **www.irs.gov** or call the IRS at 800.829.3676.

**34. Can sellers certify that the property was their principal residence, even though they are not living in it at the close of escrow?**
Even though the sellers do not currently live in the property, it may still qualify as their principal residence. If the sellers have owned and lived in the property as their main home for at least two of the past five years, then they meet the requirement. The two years can be **any** two years during the five-year period.

For example, the sellers retired 2½ years ago and moved from their city home of 20 years to a home on the coast. For the past 2½ years, they have been renting the city home and are now selling it. Since the sellers have owned and lived in the home as their main home for at least two of the last five years, they may certify the city home was their principal residence.

**35. Can sellers claim the property as their principal residence if they have not owned or lived in the property for two years and do not meet any of the exceptions or unforeseen circumstances under IRC Section 121?**
If the property was last used as the seller's principal residence within the meaning of IRC Section 121 without regard to the two-year time period, no withholding is required. If the last use of the property was as a vacation home, second home, or rental, the seller does not qualify for an exemption. Sellers must have lived in the property as their main home. If they have two homes and lived in both of them, the main home is the one they lived in most of the time.

Note: The exemption based on the seller's last use of the property as their principal residence is for withholding purposes only. IRC Section 121 has not changed. If the sale does not qualify for exclusion under IRC Section 121, the gain must be reported on the seller's federal and California tax returns.

**36. Does the law require withholding when an estate is selling property that was the decedent's principal residence?**
No. The exemptions for the sale of a principal residence were expanded to include sales by estates when the property was the decedent's principal residence (IRC Section 121).

**37. What types of property qualify as a principal residence?**
A mobile home, houseboat, cooperative apartment, or condominium can be a principal residence. Usually, the place where the seller lives is the principal residence. If the seller owns more than one home, the principal residence is the home lived in most of the time.

**38. What types of property do not qualify as principal residences?**
Generally, the following types of property do not qualify as principal residences:

- Rental property.
- Vacant land.
- Vacation home or second home.

However, property that has been rented or used as a vacation home may still qualify as a principal residence if the seller meets the criteria (IRC Section 121).

**39. Does the law require withholding when the property is a multiple family unit (duplex, triplex, etc.) and the sellers lived in one of the units as their principal residence?**
Yes. However, the law only requires withholding on the portion of the sale price that is not for the principal residence. The sale price should be allocated between the principal residence and the remainder of the units using the same method that the seller used to determine depreciation.

Withholding is still required when the total sales price of all the units exceeds $100,000, even if the portion of the sale price related to the nonprincipal residence does not exceed $100,000.

**40. When does the law require withholding on the sale of a mobile home?**
The law requires withholding if the mobile home was not the seller's principal residence and the mobile home is permanently affixed to a foundation or is subject to real property taxes. The law also requires withholding on the land sold with the mobile home.

## Loss or Zero Gain

**41. Does the law require withholding when the seller will not have a gain on the sale?**
Withholding is not required when the seller certifies on Form 593-C that the sale will result in a loss or zero gain for California income tax purposes.

**42. What is *a loss or zero gain for California income tax purposes*?**
*A loss or zero gain for California income tax purposes* means that sellers will report a loss or zero gain on the sale on their California tax return. There is a loss or zero gain on the sale when the adjusted basis is more than or equal to the selling price (less selling expenses).

It is not a loss or zero gain just because there are no proceeds from the sale or because the property is selling for less than what it is worth.

**43. How do sellers determine if they will have a loss or zero gain on the sale?**
If sellers believe they may have a loss or zero gain on the sale, they must complete Form 593-E. Sellers certify that they will have a loss or zero gain on the sale when they complete Form 593-C and Form 593-E and they have a loss or zero gain on line 16 of Form 593-E.

**44. Can sellers use suspended passive activity losses or other losses to compute the loss or zero gain on the sale?**
Sellers may only use passive activity losses that directly relate to the property being sold. They may not use losses that are not directly related to this property (e.g., capital loss carryforwards, stock losses, passive activity losses from other properties).

**45. Who is responsible for completing Form 593-E?**
The seller is responsible for completing Form 593-E.

**46. Once sellers certify that they have a loss or zero gain, should Form 593-E be sent to FTB?**
No. Form 593-E should not be sent to FTB unless requested by FTB. The seller must keep this form for five years and provide it to FTB upon request.

## Involuntary Conversions

**47. Does the law require withholding when the sale is the result of an involuntary transfer such as a condemnation?**
Withholding is not required when sellers certify on Form 593-C that the transfer is the result of an involuntary transfer as defined under IRC Section 1033 **and** that they intend to replace the property with qualified property.

**48. What is an *involuntary conversion*?**
An *involuntary conversion* occurs when property is destroyed, condemned, or disposed of under the threat of condemnation and other property or money is received in payment. For example, the government informs the seller that it intends to acquire the seller's property for public use.

To qualify for the withholding exemption, the seller must also intend to replace the property with qualified property. In general, the replacement property must be similar or related in service or use to the converted property. Visit the Internal Revenue Service website at **www.irs.gov** to download IRS Publication 544, *Sales and Other Dispositions of Assets*.

## Contributed Capital

**49. Does FTB require withholding when the property is transferred to a corporation or contributed to a partnership?**
Withholding is not required when transferors certify on Form 593-C that the transfer qualifies for nonrecognition treatment under IRC Section 351 (property is being transferred to a corporation controlled by transferor) or IRC Section 721 (property is being contributed to a partnership in exchange for a partnership interest).

## IRC Section 1031 Exchanges

**50. Does the law require withholding when the sale is part of a like-kind exchange as defined under IRC Section 1031?**
Withholding is not required on the initial transfer if the seller certifies on Form 593-C that:

- The transaction will qualify as a *simultaneous* like-kind exchange. However, if the seller receives proceeds (boot) in excess of $1,500 from the sale, the real estate escrow person must withhold 3⅓ percent (.0333%) of the total proceeds or the optional gain on sale withholding amount.
- The transaction will qualify as a *deferred* like-kind exchange. However, if the seller receives proceeds (boot) in excess of $1,500 from the sale, the real estate escrow person must withhold 3⅓ percent (.0333%) of the total proceeds or the optional gain on sale withholding amount.
- The intermediary or accommodator must withhold 3⅓ percent (.0333%) of the total sale price or the optional gain on sale withholding amount based on gain on sale if the exchange does not occur or does not meet the requirements of IRC Section 1031.

## Installment Sales

**51. Must the real estate escrow person withhold the full 3⅓ percent (.0333%) of the total sale price or the optional gain on sale withholding amount on installment sales?**

The real estate escrow person is no longer required to withhold the full 3⅓ percent (.0333%) of the total sale price if there is an installment sale certified by the seller. Beginning on 01/01/2009, the real estate escrow person withholds on the principal portion of the first installment payment (this includes any deposits, down payments, or amounts paid for the seller received in escrow).

- The real estate escrow person withholds at 3⅓ percent (.0333%) of the first installment payment if a Form 593 is not certified.
- The real estate escrow person withholds at the optional withholding amount if a Form 593 is certified.

**52. What forms must be completed for withholding on the principal portion of the first installment payment (this includes any deposits, down payments, or amounts paid for the seller received in escrow)?**

At escrow, the buyer must complete and sign Form 593-I. The buyer must give this form to the real estate escrow person with a copy of the promissory note. The real estate escrow person will then withhold either 3⅓ percent or the installment withholding percentage on the principal portion of the first installment payment (this includes any deposits, down payments, or amounts paid for the seller received in escrow) and attach Form 593-I with the promissory note to Form 593 and send the required withholding amount to FTB.

**53. What forms must be completed for withholding on the principal portion of each installment payment after escrow is closed?**

The buyer must complete Form 593 and send the required withholding amount to FTB.

**54. How do I calculate the optional gain on sale withholding amount for the principal portion of each installment payment?**

Calculating the optional gain on sale withholding amount for an installment sale takes two steps.

Step 1: Calculate the installment withholding percent that will be applied to all installment payments, including the first installment payment (this includes any deposits, down payments, or amounts paid for the seller) received during escrow as follows:

a. Gain on sale $_____ (sale price minus cost of sale)
b. Sale price $_____ (total sale price)
c. Installment sale percent, divide line a by line b _____%

Step 2: Calculate the optional gain on sale withholding amount as follows:

a. Installment payment $_____
b. Multiply line a by installment sale percent calculated above $_____
c. Withholding amount, multiply line b by the applicable tax rate for your filing type $_____

Individuals and non-California partnerships 9.55%, corporations 8.84%, bank and financial corporations 10.84%, S corporations 11.05%, and financial S corporations 13.05%.

## Corporations

**55. Does the law require withholding when a corporation sells California real property?**

Yes. Withholding is required unless the corporation certifies on Form 593-C that it will continue to have a permanent place of business in California after the sale.

**56. When does a corporation have a permanent place of business in California?**

Corporations have a permanent place of business in California if they meet one of the following conditions:

- They are incorporated in California.
- They are qualified to transact business in California through the California Secretary of State.
- They will still maintain a permanent office in California permanently staffed by its employees after the sale.

## Partnerships

**57. Does the law require withholding when a partnership sells California real property?**

No. Withholding is not required if the title to the property is recorded in the name of a California partnership. However, withholding is required on non-California partnerships. If you are a California partnership, you are required to withhold on nonresident partners. For more information, get FTB Pub. 1017, *Resident and Nonresident Withholding Guidelines*, at **ftb.ca.gov**.

## Limited Liability Companies (LLCs)

**58. Does the law require withholding when a *single member* limited liability company is the seller?**
If the single member LLC is classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. Withholding is required unless the LLC meets one of the exemptions as a corporation.

If the LLC is a single member LLC that has chosen to be disregarded for federal and California income tax purposes, then that single member is considered the seller and title to the property is considered to be in the name of the single member for withholding purposes.

- If the single member is an *individual*, Form 593-C should be completed using the individual's information.
- If the single member is a *corporation*, Form 593-C should be completed using the corporation's information.
- If the single member is a *partnership*, Form 593-C should be completed using the partnership's information.
- If the single member is an *LLC*, Form 593-C should be completed using the single member's information.

**59. Does the law require withholding when a *multiple member* limited liability company is the seller?**
If a multiple member LLC elected to be classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes.

If a multiple member LLC elected to be classified as a partnership for federal and California income tax purposes, then the seller is considered a partnership for withholding purposes. Withholding is:

- Not required for a California partnership.
- Required for a non-California partnership.

## Tax-Exempt Entities

**60. Does FTB require withholding when the seller is a tax-exempt entity?**
Withholding is not required when the seller certifies on Form 593-C that it is exempt from withholding because it is exempt from tax under either California or federal law (e.g., religious, charitable, educational).

**61. Does FTB require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation sell the property?**
FTB does not require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation are the sellers.

## Other Exemptions

**62. Does FTB require withholding when the seller is an insurance company?**
No. Insurance companies are not subject to withholding because they do not pay income taxes. Insurance companies pay a gross premium tax to the California Department of Insurance instead of income or franchise tax. The seller should use Form 593-C to certify that it is an insurance company.

**63. Does FTB require withholding when the seller is a charitable remainder trust?**
Withholding is not required when the seller certifies on Form 593-C that it is a charitable remainder trust.

**64. Does FTB require withholding when the seller is an individual retirement account, a qualified pension, or a profit-sharing plan?**
Withholding is not required when the seller certifies on Form 593-C that it is an individual retirement account, a qualified pension, or a profit-sharing plan.

# Part IV — Other Common Questions

## Multiple Sellers/Parcels

**65. How is withholding calculated when there are multiple sellers?**
The withholding is calculated by applying the withholding rate to each seller's proportion of the sale.

**Example for 3⅓ percent of total sale price:**

Total sale price $200,000

Sellers' ownership percentages:

A = 20%, B = 30%, C = 50%

Withholding per seller:

| | | | | | | |
|---|---|---|---|---|---|---|
| A | $200,000 | x 20% | x .0333 | = | $1,332 |
| B | 200,000 | x 30% | x .0333 | = | 1,998 |
| C | 200,000 | x 50% | x .0333 | = | 3,330 |

**Example for optional gain on sale withholding:**

Gain on sale $200,000

Seller's ownership percentages:

A = 20%, B = 30%, C = 50%

Withholding for individual seller:

| | | | | | |
|---|---|---|---|---|---|
| A | $200,000 | x 20% | x .093 | = | $3,720 |
| B | 200,000 | x 30% | x .093 | = | 5,580 |
| C | 200,000 | x 50% | x .093 | = | 9,300 |

**66. Does FTB require withholding when sellers are on the title for incidental purposes?**
If the incidental sellers have no financial ownership, then their ownership percentage is zero and there is no withholding required for them.

Examples of sellers who are on title for incidental purposes are:

- A father is on title only because he cosigned to help his daughter qualify for a loan. If the father

completes Form 593-C showing zero percentage of ownership, no withholding is required on the father. The daughter is subject to the normal withholding requirements.

- A son is on title only to receive property upon his mother's death. If the son completes Form 593-C showing zero percentage of ownership, no withholding is required on the son. The mother is subject to the normal withholding requirements.

**67. Does the law require withholding on the sale of multiple parcels when the total sale price of all properties exceeds $100,000, but the sale price of each separate parcel is under $100,000?**
Yes. Sales of multiple parcels within the same escrow constitute one transaction for determining the withholding requirements.

## Trusts

**68. What is a grantor trust?**
A grantor trust is a trust where the grantor (person who transferred the property into the trust) retains the right to cancel or revoke the trust. For tax purposes, a grantor trust is disregarded and the grantor must report the sale and claim the withholding on its individual tax return.

**69. When a trust holds title to the property, who is considered the seller?**
If the trust is a grantor trust, then the seller is the grantor. Usually the grantor of a trust is an individual. All withholding forms should be completed using the individual's (grantor's) information.

If the trust is a nongrantor trust, then the seller is the trust. All withholding forms should be completed using the name of the trust and the trust's federal employer identification number (FEIN). DO NOT USE trustee information on withholding forms.

**70. Does the law require withholding on sales by grantor trusts?**
Yes. Withholding is required unless the grantor qualifies for an exemption on Form 593. See question 69.

**71. Does the law require withholding on sales by family trusts or living trusts?**
Typically, family trusts and living trusts are grantor trusts and the sellers are the grantors. Therefore, withholding is required unless the grantors qualify for an exemption on Form 593-C. See question 69.

## Relocation Companies

**72. What are the withholding rules when the buyer is a relocation company?**
Sales to relocation companies are subject to the same rules as other sales. There is no withholding on the sale if the relocating sellers certify that the property was their principal residence or if they qualify for any other exemption. Otherwise, withholding is required.

**73. What are the withholding rules when the seller is a relocation company?**
Relocation companies are subject to the same rules as other nonindividuals. Examples are:

1. A relocation company resells the property to a third party.
   - There is no withholding on the sale if the relocation company meets an exemption.
   - If the relocation company does not meet an exemption, withholding is required.
2. An employer gives a relocation company power of attorney to act on its behalf in the resale of property to a third party.
   - No withholding is required on the sale if the employer has a permanent place of business in California. The employer can use Form 593-C to certify this fact.
   - If the employer does not have a permanent place of business in California, withholding is required.
   - The relocation company is not subject to real estate withholding because it is only acting as an agent for the seller.

## Real Estate Investment Trusts (REITs)

**74. Does FTB require withholding when a REIT sells the property?**
For withholding purposes, a REIT is treated as a corporation. Withholding is not required as long as the REIT has a permanent place of business in California. See question 56.

## Bankruptcy Trusts and Estates

**75. Does FTB require withholding when a bankruptcy trust or estate sells the property?**
Yes. There are no exemptions for trusts with a California trustee.

## Estates

**76. Does the law require withholding on sales by estates?**
Yes. There is no provision in the law to grant an exemption to an estate because the decedent was a California resident. However, if the property being sold qualifies as the decedent's principal residence, withholding is not required. See questions 33 and 34.

## Conservatorships

**77. Does FTB require withholding on sales by conservators?**
Yes. Withholding is required unless the conservatee qualifies for an exemption on Form 593-C. The conservator should complete Form 593-C using the conservatee's information.

## Leaseholds/Options

**78. Is withholding required on the sale of a leasehold interest in California real property?**
Yes. Since the sale of a leasehold is considered a sale of a real property interest, withholding is required.

**79. Is withholding required on the sale of an option to buy California real property?**
Yes. Since the sale of an option to buy real property is considered a sale of a real property interest, withholding is required.

## Personal Property

**80. Does California require withholding on personal property sold with real property?**
Yes. California requires withholding on the sale, unless the personal property is stated separately in the sales contract.

## Short Sale Transactions

**81. Does the law require withholding in a short sale transaction?**
Yes. Withholding is required when there is a sale or transfer of real property. Real property sold for less than what is owed on the property (including all loans and any other liens such as back property taxes, utility liens, etc.) is not excluded from withholding. The parties must arrange to pay the withholding.

## Tax Liens

**82. When a tax lien is recorded on the property, which is paid first, the tax lien or the withholding?**
Use the proceeds in the escrow account to first pay the required withholding before applying the proceeds to an existing lien (including IRS liens). If there are not enough proceeds to pay off an IRS lien and the withholding, the parties can arrange to pay the withholding outside of escrow.

# Part V — Reporting and Remitting Withholding

**83. What forms must the real estate escrow person use to report and remit withholding?**
The real estate escrow person must use California Form 593 to report and remit withholding. Send a copy of Form 593 to FTB with the payment. The Form 593 must be signed by each seller if optional gain on sale withholding is elected. Give two copies to the sellers. The real estate escrow person MUST provide the sellers with their copies to attach to their California tax returns to claim the credit for the amount withheld. The real estate escrow person retains a copy for their records.

**84. When sellers are husband and wife or registered domestic partners (RDP), how many Forms 593 should real estate escrow persons file?**
Normally, they should file just one Form 593 for a husband and wife or RDP. However, if the husband and wife or RDP intend to file separate returns and wish to have the withholding applied to separate accounts, then each spouse or RDP should have a separate Form 593. Each must sign a separate Form 593 if optional gain on sale withholding is elected. Each spouse's or RDP's Form 593 should include only the spouse's or RDP's proportional share of the withholding.

**85. When there is more than one seller (other than husband and wife or RDP), how many Forms 593 should real estate escrow persons file?**
They should file a separate Form 593 for each seller. Each must sign a separate Form 593 if optional gain on sale withholding is elected. Each seller's Form 593 should include only the seller's proportional share of the withholding.

**86. What should the real estate escrow person do if the seller has not returned a completed Form 593-C by the close of escrow?**
The real estate escrow person should withhold 3⅓ percent of the total sale price or the optional gain on sale withholding amount as certified on Form 593 by seller.

**87. When should the real estate escrow person send the withholding on regular sales to FTB?**
The withholding and a copy of Form 593 are due by the 20th day of the month following the month escrow closes. The Form 593 must be signed by each seller if optional gain on sale withholding is elected.

**88. When should the withholding on IRC Section 1031 like-kind exchanges be sent to FTB?**
The withholding and a copy of Form 593 are due by the 20th day of the month following the month in which the exchange was completed or failed. For *simultaneous* exchanges, this is the month escrow closed. For *deferred* exchanges, this is the month the last leg of the exchange was completed. For *failed* exchanges, this is the month when it was determined that the exchange would not meet the IRC Section 1031 requirements and the proceeds were distributed to the seller.

**89. When do we send the withholding payments to FTB?**

- Withholding on first installment payment (this includes any deposits, down payments, or amounts paid for the seller received in escrow):

  The real estate escrow person sends the completed Form 593-I, a copy of the promissory note, and seller's certified Form 593 with the required withholding amount by the 20th day of the month following the month escrow closed.

- Withholding on subsequent principal payments:

  The buyer sends the withholding and Form 593 by the 20th day of the month following the month of the installment principal payment. Seller's signature on each new and completed Form 593 is unnecessary.

**90. Does the seller need to send Form 593-E to FTB for approval?**
No. FTB approval is not needed. However, the seller is required to provide a copy to FTB upon request.

**91. In what year should withholding be reported when the relinquished property in a Section 1031 exchange is sold in one year, but the proceeds are not distributed until the next year?**
If the proceeds from a completed or failed exchange are not distributed until the year after the relinquished property is sold, the withholding should be reported for the year in which the proceeds were distributed since the seller qualifies for installment sale reporting.

**92. Where should the real estate escrow person send amounts withheld?**
Amounts withheld, along with Form 593, should be sent to:

**FRANCHISE TAX BOARD**
**PO BOX 942867**
**SACRAMENTO CA 94267-0651**

## Part VI — Interest and Penalties

**93. Does FTB charge interest on late withholding payments?**
Yes. Assessing interest on late payments is mandatory. Interest is not a penalty, but compensation for the use of funds. FTB computes interest from the due date of the withholding payment to the date it was received.

**94. What is the penalty for not properly notifying buyers?**
The penalty is the greater of $500 or 10 percent of the required withholding.

**95. What is the penalty for not withholding?**
The penalty for not withholding is the greater of $500 or 10 percent of the required withholding.

**96. Can FTB abate the penalty for not withholding?**
Yes. If the failure to withhold was due to reasonable cause, FTB will abate the penalty.

**97. What is *reasonable cause*?**
*Reasonable cause* is a standard exception to most penalties under the California Revenue and Taxation Code and the Internal Revenue Code.

Generally, *reasonable cause* exists where noncompliance occurs despite the exercise of ordinary business care and prudence.

**98. What is the penalty for not filing a timely and correct Form 593 with FTB?**
A $15 penalty is charged if real estate escrow persons file a correct Form 593 within 30 days after the due date. A $50 penalty is charged if a correct Form 593 is filed more than 30 days after the due date or if a correct Form 593 is never filed.

If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of $100 or 10 percent of the required withholding.

The penalty is assessed each time the real estate person does not file Form 593 correctly or timely.

**99. What is the penalty for not providing a timely and correct Form 593 to the sellers?**
A $50 penalty is charged if the real estate escrow person does not provide the sellers with copies of Form 593 by the due date. If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of $100 or 10 percent of the required withholding.

The penalty is assessed each time the real estate person does not file Form 593 correctly or timely.

**100. What constitutes a correct Form 593?**
Form 593 is correct when all of the following occur:

- All applicable fields are completed.
- The information is correct.
- The correct version of the form is used. The preprinted year must match the year the transaction occurred. For sales, this is the year escrow closed.
- If the seller elects an optional gain on sale withholding amount, the seller must complete and sign Form 593.

**101. What is the penalty for completing a false certification?**
If the seller knowingly executes a false exemption certificate, the penalty is the greater of $1,000 or 20 percent of the required withholding.

## Part VII — Where to Get More Information

**102. Where can I get more information about the withholding requirements?**
If you have Internet access, you can view, download, and print withholding forms, publications (including additional copies of FTB Pub. 1016), and California tax forms from FTB's website at **ftb.ca.gov**.

To get withholding forms and publications or to speak to a representative, contact FTB's Withholding Services and Compliance automated telephone service at **888**.792.4900 or 916.845.4900 (not toll-free).

Our automated telephone service allows you to access important information seven days a week, 24 hours a day. If the service does not completely answer your questions, you may choose to speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

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