

Minutes of the AB2962 Interested Parties Meeting

Monday, December 11, 2006

Agenda Items

- Withholding Services and Compliance Section Overview
 - AB2962 Overview, Major provisions, and Implementation Plan
 - Questions/Answers and suggestions about AB 2962 implementation
 - What we are doing to improve
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Presenters: Phil Gray (WSCS), Linda Castles (WSCS)

Facilitator: Christie Trykar (Corporate Planning Bureau)

Attendees: Christopher Carlisle (CAR), Pam Pucci (First American Title), Susan Schmidt (First American Title), Lexi Howard (CEA and Chicago Title), Don Smith (CEA), Gina Rodriguez (Spidell Publishing), Rose Anderson (CSB), Pat Laffin (Placer Title Company), Becky Santucci (Placer Title Company), Anne Miller (Filing Division), Nancy Ku (Technology Services Division), Silvano Gutierrez (Technology Services Division), Frank Lanza (Filing Compliance Bureau), Lu Anna Hass (WSCS), Bruce Langston (Legal), Sylvia Cuenca (WSCS), Joe Kirrene (WSCS)

Opening

Anne Miller introduced herself and informed external attendees that we welcome all issues and concerns that they might have. She gave a brief Real Estate Withholding overview, noting that the program brings in approximately \$2 billion in revenue a year. She explained that we feel the withholding program is helpful to taxpayers because it gives the taxpayer a chance to put aside taxes.

Frank Lanza asked everyone to introduce themselves. He gave a short introduction to AB 2962, and then introduced the presenters, Phil Gray and Linda Castles.

Presentation

Phil Gray provided an overview of the Real Estate Withholding Program and AB 2962. He explained that there are approximately 225,000 – 250,000 transactions each year and about \$2 billion in revenue a year. Due to the 3 1/3% withholding rate, many of the taxpayers are over withheld. AB2962 was introduced as a way to decrease over withholding. It will result in a postponement in revenue for FTB.

Phil mentioned that we retain about 58% of our revenue and refund 42%. 55% of taxpayers with a withholding transaction do not claim their withholding and 45% do claim it.

Q: Gina Rodriguez asked if we have a break down by returns professionally completed and returns completed by the taxpayer.

A: Phil responded that we don't have these numbers, but we will look into it.

Linda explained the major provisions of AB 2962, including alternate withholding, seller certification, on-line calculator form, and the disclaimer. She gave an overview of the implementation plan, including changes to form 593-B (election and certification), the new 593-E (new calculations, seller keeps for their records for 5 years, and the section for estimate gain on the sale). She talked about the new 593-E online calculator. She said that the forms would be available on 12/15/06.

Linda showed examples of how 593-E is filled out and how withholding is calculated. She gave an example of how the form will automatically calculate the withholding due on 3 1/3% of the total sales price or 9.3% of the gain. She also demonstrated the change in withholding for the tax rate selected.

Linda talked about the conferences and seminars that we offer. She also referred to the publications and articles that we have written. She mentioned that our website has a lot of good information, including Hot Topics and FAQ's.

Open Questions/Answers

<p>Q Don Smith asked what the seller should do if they don't have a computer.</p>	<p>A The seller can submit a hard copy.</p>
<p>Q Don also asked if the booklet 593 C & E is online already.</p>	<p>A The draft copies are online and the final copies are due to be online by 12/15/06.</p>
<p>Q Lexi Howard asked how would sellers know that they should keep the 593-E for five years.</p>	<p>A Silvano explained that when the form is completed online, it gives the person filling out the form a message that they should retain the form for 5 years.</p> <p>[Lexi suggested that the disclaimer should be printed on the form as well].</p>

<p>Q Pat Laffin asked how taxpayer would calculate withholding if they make installment payments.</p>	<p>A Linda Castles referred her to the instructions on page 6 and 7 of Form 593-B.</p>
<p>Q Gina Rodriquez asked if it is necessary for the taxpayer to fill out a Form 593-E if they already know what the gain is?</p>	<p>A The entry on line 16, gain on sale is a calculable entry. We recommend the Form 593-E should be completed to keep for their records. It is a good reference in case FTB questions how they computed their withholding.</p>
<p>Q Do the forms or publication show a link for the online calculator?</p>	<p>A No. But, we can email all the meeting attendees the link. You can also access the calculator by going to our FTB website at www.ftb.ca.gov.</p>
<p>Q Should 2006 forms or 2007 forms be used if escrow closes before January 1, 2007 but the forms aren't submitted until after January 1, 2007?</p>	<p>A As long as the seller doesn't want to elect 9.3% of the gain, it should be ok to use 2006 forms. If you do use 2007 forms, it will be considered 2007 withholding and the seller won't be able to claim the withholding on their tax return until April 2008.</p> <p>Linda explained that 2006 forms should be used for sales closing in 2006 and 2007 forms should be used for sales closing in 2007.</p>
<p>Q Could we have the seller sign both the 2006 and 2007 forms if we are unsure if they will close in December 2006 or January 2007?</p>	<p>A Yes. If the seller is comfortable with signing both forms and if you return the unused signed form to the seller.</p>
<p>Q Gina Rodriquez asked where we should report withholding for pass-through entities.</p>	<p>A Bruce Langston said that the S-Corporation uses the credit for its share of taxes and then the remainder is pass-through to the shareholders and reflected on the K-1. Linda explained that the S corporation would need to file 592-B for each shareholder when allocating the credit to the shareholders. Escrow is not responsible for the S-Corporation shareholders. Escrow is only responsible for the S-Corporation withholding.</p>

<p>Q Lexi Howard asked if we can add an instruction to page 2 of Form 593 C & E instructions saying that 593-E should be retained by the seller for 5 years for their records.</p>	<p>A Frank said we would do this on a going-forward basis. We won't be able to make this change to the hard copy forms because the forms have already gone to press.</p>
<p>Q Lexi mentioned that the forms are inconsistent in their reference to Withholding Agents, Escrow Officers, and Preparers, and this is very confusing. She asked if we can look through the forms and make sure that we are consistent. She pointed out a few examples where it should say Withholding Agent instead of Escrow Officer, including:</p> <ul style="list-style-type: none"> • Form 593-C, Part 3, above item 10 • Page 6, under line 5 • Page 6, under the second note under line 7 <p>She also mentioned the following:</p> <ul style="list-style-type: none"> • There is an extra decimal point on Form 593-E. • Line 12 – installment sale – is not normal practice. She recommended looking at the statute to determine if this is administrative or statutory language. Could possibly take out the word, “normally”. • The bold language on Form 593-E is great, but the bigger and bolder, the better. <p>There was concern that even though the instructions in box 6 of Form 593-B say to complete box 8 and 9 only if the seller chooses the alternative election, because the instructions are small, the seller might complete box 8 and 9 when they choose to withhold 3 1/3%.</p>	<p>A We agreed to look through the forms and consider making corrections. We will try to update the online versions of the forms, but the current hard copy forms will not reflect the changes.</p>

<p>Q Lexi says that the forms require a lot of information, and sellers don't always read the instructions. 593-B is confusing for the seller because it requires a signature under Part 2 of the form if they are electing the alternative withholding rate, but the seller should not sign there if they are choosing the 3 1/3% withholding rate.</p> <p>Pat Laffin asked what the escrow or Withholding Agent should do if this happens.</p>	<p>A It was agreed that they should send in the form anyway. The calculation on the form will show which rate they choose.</p>
<p>Q Pat asked what the Withholding Agent should do if escrow closes and there is no signature on the form even though the seller chose the 9.3% rate on the gain. She was concerned about this because the instructions on the form say that the 3 1/3% rate will be applied if there is no signature.</p>	<p>A Bruce said he doesn't see any reason why escrow can't make the correction as long as everything is done correctly when it is submitted to the FTB.</p> <p>Frank said we'd follow up on this.</p>
<p>Q Several attendees feel that the penalties for Withholding Agents is ambiguous and there was concern that Withholding Agents could be penalized even though the seller might make mistakes that the Withholding Agent is not in the position to question or is unaware of.</p>	<p>A Frank assured everyone that the penalties are not in place for unintentional mistakes. As long as the Withholding Agent provides the information to the best of their knowledge, penalties will not be charged.</p>
<p>Q Lexi asked what the determination is for issuing penalties.</p>	<p>A Frank said that penalties are focused on extraordinary situations and flagrant violators.</p>
<p>Q Who gets the \$50 penalty – the seller or FTB? It was expressed that the 593-B is unclear about this.</p>	<p>A All penalty amounts should be sent to the FTB.</p>
<p>Q Is there a statutory basis for the penalty? And, how does the state know if the Withholding Agent gave the appropriate form(s) to the seller?</p>	<p>A Yes, there is a statutory penalty for late payments. The state can determine the appropriate forms are provided when FTB requests the documents that were given to the seller by the Withholding Agent during an audit.</p>

<p>Q Lexi was concerned that the following language from FTB 677, Information for Sellers and Buyers, might be misleading and the buyer may presume that withholding will be done by the Escrow Officer.</p> <p>“.....as part of the escrow services, the Escrow Officer generally assumes the responsibility for withholding or documenting why no withholding was done and for sending payment to the Franchise Tax Board.”</p>	<p>A We will take note of this and rethink the language for our next update.</p>
<p>Q Lexi suggested that maybe the 593-B should be revised to require a signature from the seller whether they choose the 3 1/3% or 9.3% rate. If not, she suggested that Part 2 language should stand out more. Or, if they elect 3 1/3%, maybe have a note that says do not sign below.</p> <p>Rose Anderson suggested that maybe the Seller could initial next to the 3 1/3% rate if the seller chooses this rate.</p> <p>Don suggested making Box 6 bigger because it is kind of small.</p>	<p>A The response was that these are all good comments. We will take note of everything.</p>
<p>Q Lexi said that she understands that the signatures are not supposed to be faxed, but what if they are?</p> <p>Pam and Susan added that First American sends electronically scanned forms to FTB, so whether the signatures are faxed or not is kind of irrelevant.</p>	<p>A Bruce said he would follow up on this.</p>

<p>Q Lexi expressed concern about language in AB 2962 that says Escrow Officers accept and submit information in good faith. She said she is concerned about overstepping her responsibilities. An Escrow Officer is not supposed to know the seller's gain. Is the Withholding Agent liable for incorrect information given to them by the seller?</p>	<p>A Bruce assured her not to worry. This language was designed to address blatant wrongdoing.</p>
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Closing Comments

Phil provided an email address for follow up questions.

Phil explained that Lu Anna Hass is working on streamlining our processes and identifying any bottlenecks as well as completing a feasibility study report to get funds to improve our systems, which is a two-year project.

Christi Trykar spoke about the real estate withholding survey. She said we are looking for feedback for future improvements. Approximately 112 people responded, and we are hoping to get more feedback. She said we received suggestions for an online method of payment. Also, people are concerned about security.

Frank mentioned that we would like to know more about the escrow process to provide better tools and information.

Someone mentioned that although the fillable form function is nice, it is probably not necessary for most of the bigger escrow offices since they have systems that populate the forms without the need for FTB's fillable function.

Some of the things the attendees said they would like to see are an outreach schedule, different outreach options such as a recorded presentation or web cast, and an email to interested parties when draft forms are available for review so there is time to provide input to the forms before they go to press.

We received compliments from the attendees that the instructions on the forms and publication are much clearer than they ever were, the questions on the forms represent the questions that Escrow Officers need answers to, and there is more consistency of information provided over the phone.

Frank and Phil welcomed everyone back for a follow-up meeting.