

Instructions for Forms 592, 592-A, and 592-B

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2001**, and to the California Revenue and Taxation Code (R&TC).

General Information

For California withholding purposes only, a reference in these instructions to:

- “Partnership” or “partner” includes “limited liability company (LLC)” or “member,” respectively, if the LLC is classified as a partnership for tax purposes;
- “Nonresident” includes individuals who are not residents of California, corporations not qualified through the California Secretary of State (SOS) to do business in California or having no permanent place of business in California, partnerships with no permanent place of business in California, grantor trusts with nonresident grantors, irrevocable trusts without at least one California resident trustee, or estates where the decedent was not a California resident; and
- “Foreign” refers to non-U.S.

Preparer Tax Identification Number (PTIN)

Tax preparers may use their unique identification number (PTIN) instead of their social security number when signing tax returns.

A Purpose

Form 592, Nonresident Withholding Annual Return. Use this form to report the total withholding for the year under R&TC Sections 18662 and 18666. Form 592 is also a transmittal form for Form(s) 592-B, Nonresident Withholding Tax Statement. See General Information J, Foreign Partner Withholding, for special rules relating to withholding on foreign partners or members of a partnership or LLC.

Do not use Form 592 if:

- Withholding is for the sale of real estate. In that case, get Form 593, Real Estate Withholding Remittance Statement, and Form 593-B, Real Estate Withholding Tax Statement, to remit and report real estate withholding. (However, partnerships, estates, and trusts should use the Form 592 series for withholding on distributions to nonresident partners or beneficiaries even if the income was from the sale of California real estate.) or
- You were issued Form 594, Notice to Withhold Tax at Source for a particular engagement. Complete Form 594 and return Copy A with payment of tax withheld to the Franchise Tax Board (FTB).

Form 592-A, Nonresident Withholding Remittance Statement.

Use this form to make payments to the FTB under R&TC Sections 18662 and 18666. Each payment made during the year must be accompanied by Form 592-A.

Form 592-B, Nonresident Withholding Tax Statement. Use this form to show the amount of income subject to withholding and tax withheld for nonresidents for the year.

File a separate Form 592-B for each nonresident. Copy A of Form 592-B must be attached to Form 592 and must be filed annually with the FTB.

- Nonresident recipients: Attach Copy B of Form 592-B to the lower front of your Long Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, as you would a Form W-2, to claim credit for tax withheld. Enter the amount of tax withheld on the “Nonresident or real estate withholding” line of that return.
- Residents who receive Copy B of Form 592-B should attach it to the lower front of their Form 540, California Resident Income Tax Return, and enter the amount of tax withheld on the “Real estate or nonresident withholding” line of that return.
- A corporation must attach Copy B of Form 592-B to the lower front of its Form 100, California Corporation Franchise or Income Tax Return, or Form 100S, California S Corporation Franchise or Income Tax Return, and enter the amount of tax withheld on the “Nonresident or real estate withholding” line of that return.
- An estate or trust must attach Copy B of Form 592-B to the lower front of its Form 541, California Fiduciary Income Tax Return, if the income is not distributed to the beneficiaries, and enter the amount of tax withheld on the “Real estate or nonresident withholding” line of the return.

Copy C is retained by the recipient.

Copy D is retained by the withholding agent.

B Who Must File

Any individual or entity making payments of California source income to individuals who are nonresidents of California or to corporations or partnerships or estates and trusts that do not have a permanent place of business in California, must withhold tax from such payments and remit the amount withheld to the FTB.

Partnerships allocating California source income to foreign partners must also withhold tax.

C Withholding Rates

Withholding is required on payments made to nonresidents for income received from California sources (R&TC Section 18662). The withholding rate is seven percent unless a reduced rate is authorized by the FTB. Get Form 588, Nonresident Withholding Waiver

Request, to request a reduced rate or waiver. For information on foreign partner withholding see General Information J.

D Income Subject to Withholding

Types of income subject to withholding include, but are not limited to:

- Compensation for services performed in California by nonresidents (including payment of expenses not separately stated). For more information, get FTB Pub. 1023, Nonresident Withholding Independent Contractor, Rent & Royalty Guidelines, or FTB Pub. 1024, Nonresident Withholding – Entertainment Guidelines;
- Payments to nonresidents for rents or royalties on property (real or personal) located in California. For more information, get FTB Pub. 1023;
- Distributions of California source income to nonresident beneficiaries from an estate or trust;
- Prizes and winnings received by nonresidents for contests in California;
- Partnership income or gain allocable under IRC Section 704 to a foreign nonresident partner (see General Information J);
- Distributions of California source income to a domestic (nonforeign) nonresident partner. For more information get FTB Pub. 1017, Nonresident Withholding – Partnership Guidelines; and
- Other payments of California source income made to nonresidents.

Compensation for services includes payments for services rendered in California, commissions paid to salespersons or agents for orders received or sales made in California, fees for professional services rendered in California, and payments to entertainers, wrestlers, boxers, etc., for performances in California.

When compensation is paid for services performed both within and outside of California, the portion paid for services performed in this state and subject to withholding should be determined by an allocation.

E Exceptions to Withholding

Withholding is not required when:

- The payment is for goods;
- The payment is being made to a resident of California or to a corporation, partnership, or an LLC that has a permanent place of business in California. Form 590, Withholding Exemption Certificate, can be used by vendors/payees to certify that they are residents of California or have a permanent

place of business in California. The signed form containing this certification should be retained by the withholding agent and be provided to the FTB upon request.

Withholding agents will be relieved of the withholding requirements if they rely in good faith on a signed Form 590 stating that the vendor/payee is a resident of California or has a permanent place of business in California.

Note: If the resident, corporation, LLC, or partnership that has a permanent place of business in California is acting as an agent for the actual vendor/payee, this exception does not apply;

- The total payments of California source income to the vendor/payee by the withholding agent are \$1,500 or less for the calendar year (for foreign partners, see General Information J);
 - The payments are for income from intangible personal property, such as interest and dividends unless derived in a California trade or business or the property has acquired a business situs in California;
 - The payments are for services performed outside of California or for rents, royalties, and leases on property located outside of California;
 - The vendor/payee is a tax-exempt organization, insurance company, IRA, or qualified pension plan under either California or federal law;
 - The payments are wages paid to employees.
- Note:** Wage withholding is administered by the California Employment Development Department (EDD). For more information contact your local EDD office;
- The vendor/payee receives a written authorization from the FTB waiving the withholding;
 - The domestic nonresident partner provides the partnership with a signed Form 590-P, Nonresident Withholding Exemption Certificate for Previously Reported Income of Partners and Members; or
 - The income of nonresident partners, including a bank or corporation, is derived from qualified investment securities of an investment partnership.

F Waivers and Reduced Rates

The FTB will generally grant a waiver if:

- The vendor/payee has a history of filing California returns including the return most recently due;
- The vendor/payee is currently making estimated tax payments;
- Distributions are made by publicly traded partnerships; or
- Distributions are made to brokerage firms and tiered partnerships.

The FTB will generally grant a reduced withholding rate when the seven percent withholding rate results in significant over-withholding.

Get Form 588, Nonresident Withholding Waiver Request, to request a waiver or a reduced rate of withholding.

Note: There is no provision in the law to allow waivers or reduced withholding to foreign partners.

If the distribution from a partnership is determined to be a return of capital or does not represent taxable income for the current or prior years, no withholding is required. Although a waiver is not required in these situations, the partnership may be liable for the withholding if, at audit, the FTB determines that the distribution represented taxable income.

G Interest and Penalties

The law provides for interest and penalties on late payments of withholding. Interest is computed from the due date of the withholding to the date paid.

Failure to withhold may result in the withholding agent being personally liable for the amount of tax that should have been withheld and for interest and penalties.

Failure to provide Forms 592-B to the payees may result in penalties up to \$100 per Form 592-B.

Failure to provide Forms 592-B to the FTB may result in penalties up to \$100 per Form 592-B.

H When and Where to File

Form 592: For withholding on domestic nonresident partners, independent contractors, recipients of rents and royalties, and beneficiaries of estates and trusts, file Form 592 on or before January 31 following the close of the calendar year.

Note: Withholding on distributions of California source income to domestic nonresident partners is reported on Form 592, Side 1 (for foreign partners, see General Information J).

Include the total amount of withholding not previously remitted and attach Copy A of Forms 592-B or a list containing the information reported on Form 592-B. The withholding agent must still provide Copy B and Copy C of Form 592-B to each vendor/payee. If the number of Forms 592-B is 250 or more, see General Information I, Magnetic Media Filing.

Form 592-A: File Form 592-A with the payment of withholding by the 20th day of the month following the month that the total amount withheld from all vendors/payees exceeds \$2,500. Do not include Form 592-A when the final payment for the year is

included with Form 592 (for foreign partners, see General Information J).

Form 592-B: Copy B and Copy C of Form 592-B must be sent to the vendor/payee by the same time that Form 592 is due to the FTB.

Except for foreign partners, withholding of tax by withholding agents shall be on a calendar year basis, regardless of the accounting period adopted by the vendor/payee or withholding agent. For foreign partners, withholding of tax depends on the tax year of the partnership. See General Information J for information regarding withholding on foreign partners.

Send forms and payment of tax withheld at source to:

FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001

I Magnetic Media Filing

Form 592-B information is required to be submitted to the FTB via magnetic media instead of paper for 250 or more nonresidents. However, withholding agents must continue to provide vendors/payees with paper Form 592-B, showing their California income and withholding amounts for the year. For more information on magnetic media, get FTB Pub. 1023F, Nonresident Withholding Magnetic Media Guidelines, or call (916) 845-6059.

J Foreign Partner Withholding

R&TC Section 18666 requires withholding on income from California sources which is allocated to foreign partners. This section generally conforms to federal IRC Section 1446 and is therefore different from rules for withholding on domestic partners. The differences are:

- Foreign partner withholding is **based on allocations** of California source income rather than distributions.
- There is **no minimum** threshold before withholding is required.
- The foreign partner withholding rate is the **maximum California tax rate** applicable to the partner (corporations 8.84%, banks 10.84%, foreign partners that are not corporations or banks 9.3%).
- **Payments are due quarterly** to the FTB with Form 592-A, Nonresident Withholding Remittance Statement, on the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's tax year. (Use the worksheet provided on Form 592-A, Side 2 to figure installment payments of withholding for foreign partners.)
- Form 592 and Form 592-B are due on or before the 15th day of the 4th month following the close of the partnership's tax year. (If all the partners are foreign,

Form 592 must be filed on or before the 15th day of the 6th month after the close of the partnership's tax year.) If the number of Forms 592-B is 250 or more, see General Information I, Magnetic Media Filing.

Note: If a partnership has both foreign and domestic nonresident partners, a separate Form 592 must be filed for each type of partner.

- Excess withholding on foreign partners can be carried over to the following year.
- There are no provisions in the law to waive or reduce withholding on foreign partners.

See federal Revenue Procedure 89-31 for more information on foreign partner withholding.

K Where to Get Publications, Forms, and Additional Information

By Internet: You can download, view, and print California tax forms and publications from our Website at www.ftb.ca.gov

By Fax or Phone: Nonresident withholding forms and instructions may also be obtained via Forms-by-Fax by calling (800) 998-3676. To order publications or forms or to get additional nonresident withholding information, please contact the Withholding Services and Compliance Section at the address or the automated telephone service number below:

WITHHOLDING SERVICES AND
COMPLIANCE SECTION
FRANCHISE TAX BOARD
PO BOX 651
SACRAMENTO CA 95812-0651

Telephone: (888) 792-4900
(916) 845-4900 (not toll-free)
FAX: (916) 845-9512

L Where to Get Publications, Forms, and Information Unrelated to Nonresident Withholding

By Internet: www.ftb.ca.gov

By Automated Phone Service: Use this service to check the status of your refund, order California and federal tax forms, obtain payment and balance due information, and hear recorded answers to general tax questions. This service is available 24 hours a day, 7 days a week, in English and Spanish.

From within the
United States (800) 338-0505
From outside the
United States (916) 845-6600
(not toll-free)

Follow the recorded instructions. Have paper and pencil handy to take notes.

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments, please call:

TTY/TDD (800) 822-6268

Specific Instructions

Private Mailbox (PMB) Number

If you lease a private mailbox (PMB) from a private business rather than a PO box from the United States Postal Service, include the box number in the field labeled "PMB no." in the address area.

Form 592, Nonresident Withholding Annual Return

Complete and sign Form 592, Side 1, Section A if you are reporting withholding on independent contractors, recipients of rents and royalties, beneficiaries of estates or trusts, domestic nonresident partners, or other entities. Complete and sign Form 592, Side 2, Section B if you are reporting withholding on foreign partners. Check the appropriate box at the top of the form to show how you are providing Form 592-B information.

If you withheld on both foreign partners and other nonresident payees, file a separate Form 592 for the foreign partners. See General Information J for the differences between foreign partner withholding and withholding on other nonresident payees.

Complete Form 592 at the end of the year to determine the total amount of withholding for the year and any remaining balance due. Enter the amounts paid to the FTB during the tax year and the dates of the payments to help reconcile the year-end totals. To determine if a final payment for the year is required, subtract the total payments made during the year from total withholding tax due and enter the balance. If the balance is zero, no additional payments are needed. If a balance is due, submit the additional withholding with Form 592.

To meet required payment dates and annual return filing dates for withholding, you may have to make reasonable estimates of income on which to base withholding. The FTB will not assess underpayment or late payment penalties if estimates are reasonable and based on the information available to the withholding agent at the time.

If a partnership, estate, or trust is withheld upon by another entity, the credit must be allocated to all partners, members, or beneficiaries, whether residents or nonresidents of California, according to their interests in the partnership, estate, or trust.

If the other entity withheld because the partnership, estate, or trust was a foreign partner, use Section B, Part III (on Side 2). Otherwise, use Section A, Part IV (on Side 1).

Write "Tax Withheld by Another Entity" on the withholding document and attach it to Form 592 to document the withholding credit. If any of the withholding credit is retained to offset tax at the partnership, estate, or trust level, show only the net flow through amount in Section A, Part IV or Section B, Part III.

Form 592-A, Nonresident Withholding Remittance Statement

General withholding. Complete and mail Form 592-A to the FTB with payment each time tax withheld from all vendors/payees exceeds \$2,500. Enter the amount of tax withheld on the appropriate lines. Payment of tax withheld at the end of the year that is less than or equal to \$2,500 is submitted with Form 592.

Foreign nonresident partners. If a partnership has foreign partners, the partnership must make four installment payments of withholding during the taxable year. In general, the amount of a partnership's installment payment is equal to the sum of the partnership's foreign partners. For a foreign partner, an installment amount of the R&TC Section 18666 tax is correct if figured by applying the principles of IRC Section 6655(e)(2). To figure installment payments under this method, use the worksheet on Form 592-A. The worksheet provides for the annualization of the partnership income and is used throughout the year to compute each installment payment.

As an alternative to completing the worksheet, each installment payment during the tax year may be made in an amount equal to 25% of the withholding that would be payable on the partnership's California source taxable income allocable to foreign partners for the prior year if the following three conditions are met:

1. The prior tax year consisted of 12 months;
2. The partnership filed Form 565, Partnership Return of Income, (an LLC must file Form 568, Limited Liability Company Return of Income), for the prior year; and
3. The amount of California source taxable income for the prior year was not less than 50% of the California source taxable income for the current year.

Form 592-B, Nonresident Withholding Tax Statement

Complete Form 592-B at the end of the year and attach Copy A or your schedule to Form 592 unless provided via magnetic media. Send Copy B and Copy C to the recipient. Withholding agents should retain Copy D for their records.

The total amount of all withholding for all Form(s) 592-B should equal the total amount of withholding on Form 592.