

WEBINAR SCRIPT

Nonresident Independent Contractor Withholding

Slide 1:

Hello, and welcome to California's nonresident independent contractor withholding webinar. I'm Carol Anderson.

Today, I'm here to provide information and resources for payers who must withhold on California source income payments to nonresident independent contractors. This webinar will highlight main points of the processes and forms used in withholding. It will also pinpoint a few ways our new, automated withholding system impacts withholding agents and payees.

So, without further delay, let's look at our objectives for today.

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Before we move into nonresident withholding, we'll briefly share information and resources on backup withholding, which applies to both residents and nonresidents.

After that, we'll focus on elements of nonresident withholding.

We'll go over the three phases of withholding and talk about forms to use before payment, at the time of payment, and after payment of California source income to nonresident independent contractors, otherwise referred to as **payees**.

We'll inform you of penalties and liabilities that apply to withholding noncompliance.

And of course, we'll provide you withholding resources and contact information you can use any time.

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Before we move into our discussion of nonresident withholding, we need to make you aware of a type of withholding that applies to both residents and nonresidents. It's called **backup withholding**, and it is required by California Revenue and Taxation Code Section 18664.

With certain limited exceptions, we require payers who remit backup withholding to the Internal Revenue Service to also withhold and remit to us.

Payers backup withhold when a payee submits an IRS Form W-9 that:

- Does not provide a taxpayer identification number.
- Provides an invalid taxpayer identification number, or

- Fails to certify exemption from backup withholding.

In cases where backup withholding applies, it replaces all other types of withholding.

We encourage you to learn more about your backup withholding responsibilities. You'll find helpful information along with FTB and IRS forms and publications on our backup withholding webpage.

Now that we've summarized information on backup withholding, let's turn our attention back to nonresident independent contractor withholding.

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In the next few slides, we'll look at some terms and a legal reference for nonresident withholding.

What is nonresident independent contractor withholding?

It's a prepayment of tax required by California Revenue and Taxation Code Section 18662. It requires withholding on California source income payments and distributions made to nonresidents.

This law provides that if you pay California source income to nonresidents, including nonresident independent contractors, you must withhold 7 percent on all payments that exceed \$1,500 in a calendar year. However, certain exceptions do apply, and we'll talk about some of those a bit later.

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So, why do you need to withhold on payments to nonresident independent contractors?

Because it's the law. Our system is pay as you go. It's not like property tax bills or car registration, where you get the bill at a particular time of year telling you to pay a set amount based on an assessment.

The benefit of pay as you go is that because a portion of tax is withheld with each payment, it generally prevents taxpayers from being burdened by a large tax bill at the end of the year, when they file their California tax return.

And yes, nonresident independent contractors with California source income are generally required to file California tax returns.

Nonresident independent contractor withholding is similar to payroll tax withholding on wages.

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And, who is considered a withholding agent?

It is a person or entity who controls, receives, has custody of, disposes of, or pays California source income, including compensation for services performed in California.

A withholding agent is whoever writes the check or pays the cash to the nonresident independent contractor.

Withholding agents who pay nonresident independent contractors to perform services are ultimately responsible for the withholding.

You'll find withholding agents are also referred to as payers on our forms and publications.

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If you're a withholding agent, at the time of payment you will either:

- Withhold 7 percent of all payments you make to a nonresident independent contractor for services performed, or
- You'll withhold according to instructions you receive in a letter from us.

That letter will be our response to a waived or reduced withholding request the nonresident independent contractor submits to us.

If we approve a withholding waiver request, the amount you'll withhold is zero. The waiver approval letter tells when the waiver expires, so you can keep a copy in your files for the nonresident independent contractor.

If we approve a withholding reduction request, which is based on the net California source payment after direct expenses, the letter tells how much to withhold.

After you make payment to a nonresident independent contractor performing a service in this state and you've withheld, you'll need to do two things:

- Report your list of payees and submit to us the withheld funds on set dates throughout the year using Forms 592 and 592-V.
- And, you'll need to provide your payees with a yearly Form 592-B that they can attach to their California tax return as proof of withholding credit.

We'll provide you more detail on your role as a withholding agent in a few minutes when we talk about the three phases of withholding.

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Today we will use the term payee to refer to a nonresident independent contractor. But it can also apply to recipients of other types of California source income, such as rents, royalties, winnings, and more.

As you can see, nonresident withholding applies to many different types of California source income payments.

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If you need help with nonresident independent contractor withholding, we have lots of online resources available to you at **ftb.ca.gov**. Let's highlight what's there and how to get to it. We'll start at FTB's homepage.

Select the Businesses tab near the top of the page. On the gray bar to the left, select **Withholding**. Then select **California Source Income**.

At the top of our Withholding on California Source Income page, you'll notice a "What's New" section. In fact, you'll find "What's New" sections on several of our pages. Take advantage of these to be aware of our latest updates.

Also on this page, access information regarding processing changes triggered by our newly automated withholding system.

The items under this page's "What's New" section contain the most updated information regarding our processing changes, including:

- How to electronically submit a request for reduced withholding using our new online Form 589.
- Future notices we'll send you to expedite corrections if we receive a Form 592, Resident and Nonresident Withholding Statement, with errors, overpayments, or underpayments; and
- Important new instructions on how to submit amended Forms 592 in compliance with our new processing requirements.

You'll want to read through these items and other information on this page, as they detail the new ways we are doing business with our withholding agents and their payees.

For your convenience, we added navigation links to the left side of our withholding pages to help you more easily find the information, forms, publications, and resources you need.

Let's use these links now to learn more about withholding.

Did you know that if you click on the Nonresident link, you'll find general information, tools, and resources for nonresident withholding? Today we'll highlight our Summary of FTB's Nonresident Withholding chart that explains when and how to use our forms, and who has responsibility for them.

We'll talk about what you may need to know or do during any one of the following three phases:

- Before making payment to a nonresident.
- At the time of payment to a nonresident, and
- After making payment to a nonresident.

There are several withholding forms available for use before payments are made to nonresident independent contractors. The first two forms may eliminate the need to withhold at all. The other two can lower the amount of withholding that must be done on a payment.

Let's start with two forms that may eliminate the need to withhold:

One is Form 590, Withholding Exemption Certificate.

You can easily get to all our current year withholding forms using the Forms and Publications link on the gray navigation bar.

An independent contractor can use Form 590 to certify exemption from withholding. Among the more common reasons for exemption is California residency status. Individuals that are California residents, or business entities with certain types of residency status, are exempt from withholding. Form 590 details these reasons for exemption and others.

No withholding is required with a valid Form 590, Withholding Exemption Certificate. This form is not submitted to FTB unless we specifically request it, but withholding agents must keep the completed and signed form in their records for at least four years.

The other form that can eliminate the need to withhold is Form 588, Nonresident Withholding Waiver Request.

By submitting Form 588, nonresident independent contractors who qualify can request waived withholding, based generally on their California tax return filing history with us. If we approve a waiver request, we send an approval letter to the requester, and no withholding is required.

Payees who request and receive a waiver approval are responsible for giving a copy of the approval to their withholding agent. Without an approved waiver at the time of

payment for services, withholding agents withhold 7 percent on all payments for services performed by nonresidents.

Withholding agents may also submit Form 588 on behalf of their payees. Please be aware that due to our new, automated system, we do not process payee information listed on separate spreadsheets. You must use Side 2 of Form 588 to report all payees for which you are requesting waivers. If Side 2 does not accommodate all your payees, print and use additional copies of Side 2 until all payees are listed.

Allow 21 business days prior to payment for services for us to process waiver requests. At this time, you can mail or fax us completed Forms 588. We'll provide you our fax number at the end of today's webinar, or you can find it in the form's instructions.

Withholding waivers are effective for a maximum term of 24 months. If the waiver is granted and effective for a period of 12 months or less, the waiver will expire on December 31 of the same calendar year. If the waiver is granted and effective for a period of 13 to 24 months, the waiver will expire on December 31 of the succeeding calendar year.

Withholding agents must keep the approved waiver in their files for at least four years.

There are two withholding forms that can reduce withholding amounts.

One is Form 589, Nonresident Reduced Withholding Request.

By submitting Form 589, nonresident independent contractors can request reduced withholding by itemizing certain expenses (scroll to Part IV) against their California source income. If we approve a reduction request, we provide the withholding agent a letter stating the amount to withhold. Withholding agents cannot submit Forms 589 to us. Only payees can.

Due to our new, automated system, we no longer accept Forms 589 submitted by fax. The good news, however, is that payees can now submit their reduced withholding requests online.

We encourage online 589 submissions for the quickest response from us. We'll process requests submitted online within 10 business days.

Items all payees will need before completing the online Form 589 are:

- Withholding agent information.
- Payee information.
- A list of expenses, and
- Dates of service.

Interested payees can find all the information they need to electronically request reduced withholding on our Form 589 online submission page.

We still accept paper Forms 589, but we require 21 business days prior to payment for services to process them. Payees must mail paper Forms 589 to the address provided in the instructions.

We've developed and posted on our Webinar page a mini-webinar that details how to use our online reduced withholding request. It's available for viewing at your convenience.

The other form that can reduce withholding amounts is Form 587, Nonresident Withholding Allocation Worksheet.

Nonresident independent contractors can submit this form to their withholding agent before payment to identify California source income subject to withholding.

For example, if a nonresident payee will receive a \$3,000 payment for services performed inside and outside California, and 60 percent of the services were performed within California, then Form 587 helps allocate which portion of the \$3,000 payment constitutes California source income.

This form is not submitted to FTB unless we specifically request it, but withholding agents must keep this completed and signed form in their records for at least four years.

Now that we've covered the four forms that can modify withholding before it occurs, let's move on to the next phase.

At the time of payment to a nonresident independent contractor, there are no withholding forms to use. The withholding agent withholds 7 percent of all payments to a nonresident independent contractor that exceed \$1,500 in a calendar year, unless the independent contractor qualifies for reduced or waived withholding. If they do qualify, the withholding agent will have received an approval letter with instructions from us.

And now, the last phase of the withholding process.

After making payment to a nonresident independent contractor, there are three withholding forms to use:

The first one is Form 592, Resident and Nonresident Withholding Statement, a reporting form.

After making payments to nonresident independent contractors, withholding agents send FTB one timely, complete Form 592 that contains a report of all payees withheld upon during the filing period.

Form 592 due dates, located near the top of the form, are as follows: April 15, June 15, September 15, and January 17. These dates may vary slightly from year to year depending on holidays and weekends that fall on the 15th of a month.

FTB uses the submitted Form 592 to post the withholding to each payee's account. Therefore, we'd like to emphasize the importance of providing accurate, complete information regarding the payee and the withholding agent.

In compliance with our automated withholding system, certain Form 592 requirements currently apply:

- To amend a previously submitted Form 592, you must now mail us a new 592 that supplies us the corrected information. Check the "Amended" box at the top of the revised form and include a letter explaining what changes were made and why.
- We do not process payee information reported on separate spreadsheets. You must use Side 2 of Form 592 to report all payees. If Side 2 does not accommodate all your payees, print and use additional copies of Side 2 until all payees are reported.
- We no longer accept Form 592 submitted by fax. You must submit these forms either by mail, or electronically if you have more than 250 payees per Form 592.

For information on our electronic filing option, otherwise known as SWIFT, go to our Electronic Filing web page for details, publications, layout standards, and contact numbers.

The second form to use after making payment is Form 592-V, Payment Voucher for Resident and Nonresident Withholding.

Withholding agents **must** remit one Form 592-V with check or money order when submitting a completed Form 592 to FTB.

Please note that the name, address, and identification number provided on the 592-V pertains to the withholding agent, not the payee.

Finally, send each payee a completed Form 592-B, Resident and Nonresident Withholding Tax Statement, by January 31, following the end of the calendar year.

Withholding agents must send each payee a completed 592-B and keep a copy for their records for at least four years.

Payees claim their withholding by attaching a copy of the 592-B when filing their required California tax return. The 592-B is proof of California source income and withholding.

Be sure to check our website for new information on how you can provide payees with electronic Forms 592-B.

OK, now let's point out some other easy-to-access withholding resources on our navigation bar.

You've obviously already found a way to register for our free webinars, but did you know we also have recorded webinars available to you 24/7? Let's take a look at that, right here, under Tools and Resources.

On our Webinar page you have full access to registration for upcoming live webinars. We generally record and post these in our Webinar library so you can revisit them later, too. We let you know when the webinar was originally broadcast and approximately how long the entire webinar is.

We also post prerecorded mini webinars on more specific topics, such as how to apply for reduced withholding. Here's the example we mentioned earlier today. These webinars take between 8 and 12 minutes to view.

If you have a topic you'd like us to cover in a webinar, feel free to email us your suggestion at wscs.gen@ftb.ca.gov. For your convenience, we'll make that address available again at the end of today's webinar.

Want to get updates on upcoming withholding webinars and other breaking news? Look no further than our Subscription Services link.

Clicking **new subscriber** allows you to request email updates on the topics of your choice. For nonresident withholding purposes, we suggest you select both **Backup Withholding** and **Nonresident**, under Withholding Information. We also suggest you select **Tax News** under the Tax Professionals heading. Tax News is a monthly FTB publication filled with information on legislation, form and processing changes, and other tax topics that may be of interest to you, including withholding.

And of course, if you're already a subscriber, you can change your topic preferences using the existing subscriber option. It's easy.

As we pointed out earlier, also under Tools and Resources you'll find a link to our Withholding Forms and Publications.

We update this page at least yearly to make the most current forms available to you. In addition to the forms we already looked at today, you'll see:

- A link to our new online Form 589 application. Use this option for faster request processing.
- And you'll find our Publication 1017, Resident and Nonresident Withholding Guidelines, a more in depth question-and-answer resource regarding many of the topics we've covered today.

It's more important than ever that you use the correct year's forms because of our new, automated system. This applies to all of our forms, but especially to Form 592, Resident and Nonresident Withholding Statement.

In fact, under the Most Common Errors heading, you'll find a list of errors that often slow 592 processing and withholding allocation.

Fortunately, you'll also find solutions to avoid delay-producing errors. This simple checklist can save you time and rework. We encourage you to familiarize yourself with it.

Last, but not least, don't overlook our Contact Us link.

It's filled with:

- Telephone and fax numbers.
- Our email address, and
- General and express mail addresses.

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Now that you know more about nonresident independent contractor withholding, you may wonder: Are there consequences for late filing or noncompliance? Yes, there are.

California Revenue and Taxation Code Section 18668 governs penalties, liabilities, and interest related to withholding noncompliance.

Withholding agents who do not file Forms 592 or furnish payees with correct and timely Forms 592-B may be assessed penalties. This includes those who intentionally disregard requirements for filing or correct information reporting.

We assess a 100 percent liability for failure to remit withholding. Any person, including the withholding agent, who fails to remit or under remits withholding, is liable for the greater of:

- The amount actually withheld, plus interest, or
- The amount of taxes due from the nonresident, but not more than the amount required to be withheld, plus interest.

Is there interest on late payments? Yes, there is.

Our primary goal is tax compliance. Withholding agents must withhold 7percent at the time of payment unless they receive the required forms or approvals for withholding exemptions, reductions, or waivers. We actively assess failure to withhold liabilities on withholding agents who are noncompliant.

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Our goal today was to provide you a general reference upon which to build your knowledge of nonresident independent contractor withholding. There are more details for you:

- On our website.
- In the laws referenced and their corresponding regulations, and
- On our withholding forms, instructions, and publications.

We hope today's webinar has helped you understand your responsibility.

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Still have questions? We're here to help!

At **ftb.ca.gov**, you'll find information, forms, and publications to help you with your withholding responsibility.

If you need to contact us, you can email us at **wscs.gen@ftb.ca.gov**. But please don't send confidential information as this is not a secure email address.

Or you can call us at 916.845.4900 or 888.792.4900.

Our fax number is 916.845.9512.

Our telephone staff is available now to take your calls and answer your questions.

This concludes our presentation regarding nonresident independent contractor withholding. On behalf of the California Franchise Tax Board, thank you for joining today's webinar. We hope it was helpful to you.

For your convenience, we'll keep this resource information available to you for the next two minutes.