State of California
Franchise Tax Board

FTB Publication 1016

Real Estate Withholding Guidelines

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ONLINE RESOURCES

Go to **ftb.ca.gov** and search for "real estate withholding" for:

- **Forms and Publications** – find forms and information regarding real estate withholding requirements.
- **Electronic Fund Transfer (EFT)** - **register** for EFT and pay real estate withholding taxes electronically.
- **SWIFT** – file your information returns electronically.
- **Subscription Services** – sign up to receive emails on a variety of tax topics.
- **Webinars** - Information on Real Estate forms.

Purpose
This publication provides guidance on the withholding requirements for sales of California real property.

We provide this information for general, informational purposes only. It provides a brief summary explanation that is subject to various exceptions, depending on specific facts and circumstances. This information is not applicable in all situations, should not be considered legal advice, and is not binding to FTB.

Legal Authority
California Revenue and Taxation Code (R&TC) Section 18662 and the related regulations require withholding of tax at source from the sale or exchange of California real estate by California resident and nonresident individuals and non-California business entities, unless certain exceptions specified in Revenue and Taxation Code section 18662, subdivision (e)(3), are met.

General Information
Real estate withholding is a prepayment of income (or franchise) tax due from sellers or transferors on the gain from the sale of California real property. It is not an additional tax on the sale of real estate.

Definitions
The terms buyer, seller, and real estate escrow personwhen used throughout this publication, have the following meanings:

Buyer – Refers to the buyer or any other transferee of real property.

Seller – Refers to the seller or any other transferor of real property.

Real Estate Escrow Person (REEP) – A REEP is any attorney, escrow company, or title company responsible for closing the transaction, or any other person who receives and disburses the consideration or value for the interest or property conveyed.

Real estate withholding forms
Go to **ftb.ca.gov** to find the following real estate forms mentioned in this publication:

Search for…	**Form Title**
593 Booklet	*Real Estate Withholding Booklet*
593	*Real Estate Withholding Tax Statement*
593-C	*Real Estate Withholding Certificate*
593-E	*Real Estate Withholding – Computation of Estimated Gain or Loss*
593-I	*Real Estate Withholding Installment Sale Acknowledgement*
593-V	*Payment Voucher for Real Estate Withholding*

Withholding requirement

Real estate withholding is required whenever there is a transfer of title on California real property. Examples are:

- Sales or transfers of real property.
- Leaseholds/options.
- Short sales.
- Easements.
- Personal property sold with real property (if not stated separately).

The requirement to withhold is the responsibility of the buyer, but may be performed by the REEP on the buyer's behalf. Whoever is remitting the payment, the buyer or the REEP, completes FTB Form 593 and FTB Form 593-V.

Who is subject to real estate withholding?

Unless an exemption applies, all of the following are subject to real estate withholding:

- Individuals
- Corporations
- Partnerships
- Limited liability companies
- Estates
- Trusts
- Real Estate Investment Trusts (REITs)
- Relocation companies
- Bankruptcy trusts and estates
- Conservatorships

When real estate withholding is not required

Real estate withholding is not required when any of the following apply:

- The total sales price is $100,000 or less.
    - Sales of multiple parcels and/or family units (duplex, triplex etc.) within the same escrow agreement constitute one transaction for purposes of determining the withholding requirements. Withholding is required where the combined sale price of all parcels exceeds $100,000, even though the sale price of each separate parcel in the same escrow transaction is under $100,000.

      Example:

      Three parcels are sold within the same escrow agreement. Parcel A is sold for $50,000; Parcel B and Parcel C are sold for $10,000 and $60,000, respectively. Since the total sales price exceeds $100,000 and the parcels are sold in one escrow, withholding is required.

- The property is being foreclosed upon in any of the following ways:
    - Sold pursuant to a power of sale under a mortgage or deed of trust.
    - Sold pursuant to a decree of foreclosure.
    - By a deed in lieu of foreclosure.
- The transferor is a bank acting as a trustee other than a trustee of a deed of trust.
- The seller or transferor certifies to an exemption on FTB Form 593-C.

The following are excluded from withholding:

- The United States and any of its agencies or instrumentalities.
- A state, a possession of the United States, the District of Columbia, or any of its political subdivisions or instrumentalities.

Information for Sellers

Withholding is required when a person (an individual, business entity, trust, or estate) sells California real property, unless the seller qualifies for an exemption.

Exemptions for sellers

As the seller, you may qualify for an exemption from withholding if you meet one of the exemptions detailed below. You must complete and sign FTB Form 593-C under penalty of perjury to be exempt from withholding. You must provide this form to the REEP by the close of escrow or withholding will be required.

If you knowingly execute a false exemption certificate, the penalty is the greater of $1,000 or 20 percent of the required withholding.

Certifications that fully exempt the seller from withholding:

1. **The property qualifies as your principal residence. Internal Revenue Code (IRC) Section 121**.

   You qualify for this exemption if during the five-year period (ten-year period for persons on qualified extended duty in the U.S. Armed Services or the Foreign Service) ending on the date of the sale both of the following are true. You:

   - Owned the property for at least two years.
   - Lived on the property as your principal residence for any two years during the five-year period
     - There are exceptions to the two-year rule if the primary reason for the sale is due to one of the following:
       - A change in place of employment.
       - Health.
       - Unforeseen circumstances such as death, divorce, loss of job, etc.

   Your principal residence is the home where you live; you may have only one principal residence at a time. If you have more than one residence, then where you live most of the time is your principal residence. Your principal residence may be any of the following:

   - House
   - Houseboat with sleeping, cooking, and restroom facilities
   - Mobile home that is permanently fixed to a foundation or is subject to real property taxes
   - Cooperative apartment
   - Condominium

   Generally, the following types of properties do not qualify as your principal residence:

   - Rental property
   - Vacant land
   - Vacation home
   - Second home

   However, property that has been rented or used as a vacation home may still qualify for an exemption, if it meets the criteria listed above.

   If there are multiple family units (duplex, triplex, etc.), the law 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. To determine what portion of the sales price is subject to withholding, use the same method that is used to determine depreciation for reporting purposes on your tax return. Withholding is still required when the total sales price of all the units exceeds $100,000, even if the portion of the sales price related to the non-principal residence does not exceed $100,000.

2. **The property was last used as their principal residence (IRC Section 121), without regard to the two year time period.**

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

3. **The sale will result in a loss or zero gain for California tax purposes.**

   For California income tax purposes, a loss or zero gain means that you will report a loss or zero gain on the sale on your 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 it is worth.

   You may only use passive activity losses that directly relate to the property being sold when determining your gain or loss.

If you believe you may have a loss or zero gain on the sale, you must complete FTB Form 593-E and indicate a loss or zero gain on line 16. You are required to retain this form, along with FTB Form 593-C, for five years.

4. **The transaction will qualify as an involuntary conversion. (IRC Section 1033).**

   An involuntary conversion occurs when the property is destroyed, condemned, or disposed of under threat of condemnation and other property or money is received in payment.

   A withholding exemption applies when both of the following are true:
   - The conversion qualifies for a deferral of gain under IRC Section 1033.
   - The seller intends to replace the property with another property that is generally similar to or related in service or use will qualify for nonrecognition of gain for California income tax purposes.

5. **The transaction will qualify for nonrecognition treatment under IRC Section 351 (property is being transferred to a corporation controlled by the transferor) or IRC Section 721 (property is being contributed to a partnership in exchange for a partnership interest).**

6. **The seller is a corporation that is either qualified through the Secretary of State (SOS) or has a permanent place of business in California.**

7. **The seller is a California partnership or qualified to do business in California or 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.**

8. **The seller is a tax-exempt entity under California or federal law.**

9. **The seller is an insurance company, individual retirement account, qualified pension plan, charitable remainder trust, or profit sharing plan.**

Certifications that may partially or fully exempt the sale from withholding:

1. **The transaction will qualify as a simultaneous or deferred like-kind exchange. (IRC Section 1031).**

   However, if you receive money or other property (in addition to property that is a part of the like-kind exchange) exceeding $1,500 from the sale, withholding is required based on the withholding calculation selected on FTB Form 593.

   If the exchange does not take place or if the exchange does not qualify for nonrecognition treatment, the intermediary or accommodator must withhold 3 1/3% (.0333) of the total sales price unless an election is made to use the alternative withholding calculation method.

2. **The transfer of the property is an installment sale.**

   In an installment sale, the buyer is required to withhold on the principal portion of each installment payment. A copy of FTB Form 593-I and a copy of the promissory note are required.

   Refer to the installment sale section for more information.

Calculate withholding

As the seller, you may choose between the two withholding calculation methods available. The two methods are the Total Sales Price Method and the Alternative Withholding Calculation Method.

REEPs and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Sellers are encouraged to consult with a tax professional for this purpose.

Total sales price method

To calculate the withholding using the Total Sales Price Method, multiply the total sales price or boot by 3 1/3% (.0333).

Alternative withholding calculation method

To calculate the withholding using the Alternative Withholding Calculation Method, also known as the Optional Gain on Sale Election Method, multiply the estimated gain by the seller's or transferor's maximum tax rate. The current maximum tax rates are as follows:

- 12.3 percent for individuals and non-California partnerships.
- 8.84 percent for corporations.
- 10.84 percent for banks and financial corporations.
- 13.8 percent for S corporations.
- 15.8 percent for financial S corporations.

If you elect to have the withholding computed using the Alternative Withholding Calculation Method, you are responsible for completing FTB Form 593-E, the form on which the election is made. You must also sign FTB Form 593.

By signing these forms, you certify in writing under penalty of perjury the gain shall not be less than the gain required to be recognized. You are required to retain FTB Form 593-E in your records for 5 years and the Franchise Tax Board may review relevant escrow information to ensure withholding compliance.

Calculate withholding when there are multiple sellers

When there are multiple sellers, the withholding is calculated by applying the withholding rate to each seller's proportion of the sale.

Example 1: Total sales price method:

Total sale price or boot $200,000

Seller's ownership percentages:

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

Withholding calculations 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 2: Alternative withholding calculation:

Gain on sale $200,000

Seller's ownership percentages:

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

Withholding for individual seller assuming a maximum tax rate of12.3%:

A. $200,000 x 20% x .123 = $ 4,920
B. $200,000 x 30% x .123 = $ 7,380
C. $200,000 x 50% x .123 = $ 12,300

Seller's filing requirements

Withholding does not relieve you from the requirement to file a California income tax return.

To claim an amount withheld, you must file a California income tax return. If the withholding is more than the actual tax liability, FTB will refund the overpayment after the tax return has been filed and processed. If your withholding payment is more than your tax liability, you cannot receive an early refund from FTB. The law does not provide for early refunds of taxes withheld on sales of real estate. If withholding is less than the actual tax liability, additional tax may be due.

If you are exempt from withholding, you are still required to file California income tax returns if you meet the filing requirements. To get more information on California filing requirements or to order tax forms, visit our website at **ftb.ca.gov.**

To verify withholding credits have been applied to your account, go to MyFTB Account at ftb.ca.gov or call us at 916-845-4900.

Like-kind exchange filing instructions

Sellers are required for taxable years beginning on or after January 1, 2014, to file FTB Form 3840, *California Like-Kind Exchanges*, when a California resident or non-resident defers gain on the sale or exchange of California property, for out-of-state replacement property under R&TC Sections 18032 and 24953. Taxpayers are required to file an information return for the taxable year of the exchange and in each subsequent taxable year in which the gain or loss attributable to the exchange has not been recognized under IRC Section 1031. If a taxpayer fails to file the required information return, FTB can estimate the net income, from any available information, including the amount of gain deferred, and propose to assess the amount of tax, interest, and penalties due.

Installment sales filing instructions

If the sale includes an installment agreement, the buyer will withhold on the principal portion of each payment made to the seller. We require that you file the appropriate California income tax return to report installment sale income and claim the related withholding credit in each taxable year you receive installment payments.

Elect out of withholding on installment payments

If you do not want withholding from payments made by the buyer following the close of escrow, you can elect not to report the sale as an installment method. (IRC Section 453[d]) Here is how:

- File a California tax return and report the entire sale on Schedule D-1, *Sales of Business Property,* in the year of the sale.
- After filing the tax return and reporting the entire gain, submit a written request to FTB to release the buyer from withholding on the installment sale payments.

Once FTB receives the request, we issue an approval or denial within 30 days. Withholding must continue until you receive an approval.

Trusts

A grantor trust is a trust where the grantor (the person who transferred property into the trust) retains the right to cancel or revoke the trust. For tax purposes, a grantor trust is disregarded and the grantor (usually an individual) must report a real estate sale and claim the withholding on their individual tax return. Generally, family trusts and living trusts are grantor trusts.

Withholding is required on a grantor trust unless the grantor qualifies for an exemption. All withholding forms should be completed using the individual's (grantor’s) information.

A non-grantor trust is a trust that is not owned by an individual and is viewed as a taxable entity. If the seller is a non-grantor trust, then all withholding forms should be completed using the name of the trust and the trust's federal employer identification number. **Do not use** trustee information on withholding forms.

If the trust distributes the income from the gain on the sale of California real estateand withholding was required, then the trust must file FTB Form 592 *Resident and Nonresident Withholding Statement* to allocate the related withholding credit to the beneficiary. The schedule K-1 cannot be used to pass through the withholding.

Estates

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 if certified on FTB Form 593-C.

Disregarded single member limited liability companies (LLCs)

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

Incidental sellers

If incidental sellers have no financial ownership in a real estate sale, then their ownership percent is zero and no withholding is required.

Examples of sellers on title for incidental purposes:

- A father is on title only because he cosigned to help his daughter qualify for a loan. If the father completes FTB Form 593-C, showing zero percent 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 FTB Form 593-C, showing zero percent of ownership, no withholding is required on the son. The mother is subject to the normal withholding requirements.

Penalties and interest

For complete penalty and interest information, see the "Penalties and Interest" section found on page 14.

Information for Buyers

Withholding requirement

As the buyer, you are required to withhold on the sale of California real estate. Once you are notified by the REEP of your responsibility to withhold, you must fulfill your withholding requirement. The REEP may assist you in complying with the withholding requirements by doing the following:

- Performing or assisting in the withholding.
- Completing the necessary withholding forms.
- Remitting the required withholding.

The REEP may charge a fee for this assistance, not to exceed $45. This fee is negotiable and may be paid by either you or the seller.

Qualified intermediary

In deferred exchange transactions, the intermediary or accommodators are considered to be the buyer:

- For withholding purposes.
- For boot received in excess of $1,500.
- Or if the exchange does not occur or meet the requirements of IRC Section 1031.

Buyer's instructions during escrow

Unless you delegate your withholding responsibility to the REEP, you must:

1. Provide the seller with a copy of the following forms with instructions as soon as escrow opens:
    - FTB 593
    - FTB 593-C
    - FTB 593-E

o FTB 593-I

Ensure the tax year on the forms matches the tax year in which the transaction will take place.

2. Instruct the seller to complete and sign FTB Form 593-C and return it to the REEP by the close of escrow if they qualify for an exemption. FTB Form 593-C should not be sent to FTB unless requested by FTB. The REEP must keep this form in their files for five years following the close of the transaction.

3. Complete the following forms:

   - FTB Form 593.
   - FTB Form 593-V.
   - FTB Form 593-I with a copy of the promissory note attached (if applicable).

4. Withhold the required amount from the seller.

5. Report and remit the withholding following the instructions below.

Calculate withholding

If no exemptions apply, the seller may choose between the two withholding calculation methods available.

If the seller elects to use the alternative withholding calculation method, they are responsible for completing FTB Form 593-E, providing the withholding amount, and certifying by signing FTB Form 593. If FTB Form 593 is not certified with the seller's signature or the withholding amount is not provided, calculate the withholding using the total sales price method.

For more information on withholding calculations, see the "Information for Sellers" section found on page 5.

Report and remit withholding

To report and remit the withholding, mail the required withholding amount to FTB with the following completed forms:

- FTB Form 593.
- FTB Form 593-V.
- FTB Form 593-I, with a copy of the promissory note attached (if applicable).

Use FTB Form 593 to report and FTB Form 593-V to remit real estate withholding.

Complete three copies of FTB Form 593 to report real estate withholding on sales, installment payments, or exchanges that are completed or failed. Distribute them as follows:

- Send one copy of the form along, with the FTB Form 593-V and withholding payment, to FTB.
- Provide one copy to the seller for income tax reporting purposes by the 20th day of the month following the close of escrow.
- Retain one copy of the form for a minimum of five years, to be provided to FTB upon request.

Unless the sellers are married or in a registered domestic partnership, a separate FTB Form 593 should be filed for each seller. Each seller's form should only include their proportional share of withholding. If a seller has elected the Alternative Withholding Calculation Method, they must provide the withholding amount and sign the FTB Form 593.

FTB Form 593 may be filed with FTB electronically, using FTB's Secure Web Internet File Transfer (SWIFT), instead of paper. However, the buyer/REEP must continue to provide the seller or transferor with paper FTB Form 593. For electronic filing, submit your file using the SWIFT process as outlined in FTB Pub. 923, *Secure Web Internet File Transfer (SWIFT) Guide for Resident, Nonresident, and Real Estate Withholding*.

FTB Form 593-V is the payment voucher used to remit real estate withholding payments to FTB in the form of check or money order. The payment voucher is used regardless of whether the FTB Form 593 was submitted electronically or by mail. Payments may also be automatically withdrawn from a bank account via an electronic funds transfer (EFT).

FTB Form 593-I is required to report the installment sale. FTB Form 593-I, with a copy of the promissory note attached, must be sent to FTB with the first installment payment, only. Do not include these documents with any subsequent installment payments following the close of escrow.

Due dates

Conventional sale or transfer

The withholding payment, FTB Form 593-V, and a copy of FTB Form 593 are due by the 20th day of the month following the month escrow closes.

IRC Section 1031 like-kind exchange

The withholding payment, FTB Form 593-V, and a copy of FTB Form 593 are due by the 20th day of the month following the month in which the exchange was completed or failed. More specifically, for:

- *Simultaneous exchanges*, payment and reporting documents are due the month escrow closed.
- *Deferred exchanges,* payment and reporting documents are due the month the last leg of the exchange was completed.
- *Failed exchanges*, payment and reporting documents are due the month when it was determined the exchange would not meet the IRC Section 1031 requirements, and the proceeds were distributed to the seller.

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.

Installment payments

The withholding payment, FTB Form 593-V, and a copy of FTB Form 593 are due by the 20th day of the month following the month of each payment.

Installment sales

An installment sale is a sale of property where at least one payment is to be received after the tax year in which the sale occurs.

As the buyer, you are required to withhold on the principal portion of the first installment payment (this includes any deposits, down payments, or amounts paid in escrow, excluding the interest portion). Remit the withholding payment with FTB Form 593, 593-V, and 593-I, with a copy of the promissory note attached.

You must also withhold on the principal portion of all subsequent installment payments. You are required to:

- Calculate the withholding amount on the principal portion of the payment.
- Withhold the required amount from the seller.
- Mail the required withholding amount to FTB with the following completed forms (ensure the tax year on the forms matches the tax year of the installment payment):
    - FTB Form 593.
    - FTB Form 593-V.
- Send a copy of FTB Form 593 to the seller by the 20th day of the month following the month of the installment payment.

Withholding on all installment payments is due by the 20th day of the month following the month of the installment payment.

Withholding is required on all installment payments, unless the seller fulfills the requirements to elect out of future withholding.

Calculate the withholding on installment payments

Total sales price method

If FTB Form 593 is not certified, calculate the withholding using the total sales price method, as follows:

Step 1: Determine the amount of the installment payment excluding interest $________
- If you are withholding on the first installment payment in escrow, enter the amount of the down payment.
- If you are withholding on an installment payment following the close of escrow, enter the principal portion of the payment.
- If you are withholding on the final payoff in escrow, enter the amount required to pay the remaining principal.

Step 2: Calculate the withholding amount:

a. Installment payment amount excluding interest $_________
b. Withholding amount, multiply line a by 3 1/3% (0.333) $_________
c. Enter the results on FTB Form 593, line 5.

Alternative withholding calculation method

To calculate the withholding using the alternative withholding calculation method as follows:

Step 1: Determine the amount of the installment payment excluding interest $________
- If you are withholding on the first installment payment in escrow, enter the amount of the down payment.
- If you are withholding on an installment payment following the close of escrow, enter the principal portion of the payment.
- If you are withholding on the final payoff in escrow, enter the amount required to pay the remaining principal.

Step 2: Calculate the alternative withholding amount:

a. Installment payment amount excluding interest $_________
b. Installment sale withholding percentage from FTB Form 593-I Part II _______%
c. Multiply line a by line b $_________
d. Withholding amount, multiply line c by the applicable tax rate for the sellers filing type $_________
e. Enter the results on FTB Form 593, line 5.

Individuals and non-California partnerships calculate withholding using 12.3 percent, corporations use 8.84 percent, bank and financial corporations use 10.84 percent, S corporations use 13.8 percent, and financial S corporations use 15.8 percent.

Penalties and interest

For complete penalty and interest information, see the “Penalties and Interest” section found on page 14.

Information for Real Estate Escrow Person (REEP)

Real estate escrow person responsibilities

The REEP plays an important role in the closing of the real estate transaction. In addition to their own responsibilities described below, the REEP may assist the buyer in complying with their withholding requirements by performing or assisting in the withholding, completing the required withholding forms, or remitting the required withholding.

Withholding notification requirement

The REEP must provide the buyers with written notification of their withholding requirements unless the buyer is an intermediary or accommodator in a deferred exchange. In addition, the REEP must provide all sellers with a copy of the FTB Form 593-C/593-E booklet. 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.

If the REEP fails to provide the buyer, unless the buyer is an intermediary or accommodator in a deferred exchange, with written notice, FTB may assess a penalty in the amount of $500 or 10 percent of the amount required to be withheld, whichever is greater, unless it is shown that the failure to notify the buyer is due to reasonable cause.

Notification Language

The written notification must be in substantially the same language as follows:

> "In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 31/3% (.0333) of the sale price, or an alternative withholding calculation amount certified by the seller in the case of a disposition of California real property interest by either:
>
> - A seller who is an individual, trust, or estate, or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the sellers.
> - A corporate or partnership 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. The penalty is 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:
>
> - The sale price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000).
> - The seller executes a written certificate under the penalty of perjury certifying that the seller is a corporation or a partnership with a permanent place of business in California.
> - The seller, who is an individual, trust, estate, partnership 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:
>   - 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)).
>   - The last use of the property being conveyed was by the transferor as the transferor's principal residence (within the meaning of IRC Section 121).
>   - 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.
>   - 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.
>   - The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes."

FTB Form 593-C verification requirement

REEPs are required to verify certifications on FTB Form 593-C to the extent that they have actual knowledge of the facts. If they have no actual knowledge of the facts, then they must only verify that the certificate, FTB Form 593-C, is complete, signed, and received by the close of escrow.

Example 1: A seller completes FTB Form 593-E and certifies a loss on the transaction. We do not require the REEP to verify the loss shown on FTB Form 593-E.

Example 2: A seller completes FTB Form 593-C and certifies that the sale is an installment sale. However, there is no first deed of trust in escrow, nor has the buyer provided a completed and signed FTB Form 593-I or promissory note.

The REEP should not accept FTB Form 593-C and should withhold on this transaction.

Example 3: A seller completes FTB Form 593-C and certifies that a California partnership is selling the property, but the REEP knows that the recorded title is not in the name of the California partnership. The REEP should not accept FTB Form 593-C and should withhold on this transaction.

Withhold and remit withholding

The requirement to withhold is the responsibility of the buyer, but the REEP may assist with the withholding on the buyer's behalf. REEPS who choose to assist the buyer complete all applicable withholding forms, and remit the required withholding to FTB.

For more information on the withholding requirements, reference the "Information for Buyer" section found on page 9.

Providing buyer assistance

The REEP may charge a fee for providing withholding assistance, not to exceed $45. This fee is negotiable and may be paid by either the buyer or the seller.

While providing withholding assistance to buyers is optional for REEPs, providing written notification of withholding and the FTB 593 booklet is required.

Requirement to retain withholding forms

The REEP must retain a copy of all completed real estate withholding forms for five years following the closing date of the transaction.

Penalties and interest

For complete penalty and interest information, see the "Penalties and Interest" section below.

Penalties and Interest

Unless it is shown that the failure is due to reasonable cause the following applies:

Non-notification Liability

We assess a liability when the REEP fails to provide written notice of the withholding requirements to the buyer. The amount is the greater of $500 or 10 percent of the required withholding. (R&TC Section18668).

Penalty for Completing a False Certification

Any seller or transferor who, for the purpose of avoiding the withholding requirements, knowingly executes a false exemption certificate is liable for a penalty of $1,000 or 20% of the required withholding amount, whichever is greater. (R&TC Section 18668(e) (5)).

Information Return Penalty

We assess a penalty for failure to file complete, correct, and timely information returns. The penalty is calculated per payee:

- $15 if filed 1 to 30 days after the due date.
- $30 if filed 31 days to 6 months after the due date.
- $50 if filed more than 6 months after the due date.

(R&TC Section 19183 and IRC 6721)

Failure to Furnish Correct Payee Statements

We assess a penalty for failure to furnish complete, correct, and timely copies of Form 593 to the seller or transferor by the due date. The penalty is $50 per FTB Form 593.
(R&TC Section 19183 and IRC 6722)

Intentional Disregard Penalty

We assess a penalty on any person, including the buyer and REEP, who intentionally disregards the filing or correct information reporting requirements. The penalty assessment is the greater of $100 or 10 percent of the required withholding. (R&TC Section 19183 and IRC 6721(e))

Failure to Withhold

We assess a liability for not withholding as required only after the buyer, as specified, has been notified in writing of the requirements. Any person, including the buyer, who fails to withhold is liable for the greater of $500 or 10% of the amount required to be withheld. (R&TC 18662 and 18668).

Failure to Remit

We assess a liability for not remitting when required. Any person, including the buyer and REEP, who fails to remit or under remits withholding, is liable for the greater of:

- The amount actually withheld, plus interest.
- The amount of taxes due from the taxpayer to whom the payments are made, but not more than the amount required to be withheld, plus interest. (R&TC sections 18662 and 18668).

Reasonable Cause

Reasonable cause is a standard exception to most penalties under the R&TC and the IRC. Generally, *reasonable cause* exists where noncompliance occurs despite the exercise of ordinary business care and prudence. If it is shown that noncompliance was due to reasonable cause based on the facts, FTB will abate the penalty.

FTB charges interest on late withholding payments

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. (R&TC section 18668(b)).

Bill of Rights and Your Rights as a Taxpayer

The California Taxpayers' Bill of Rights (R&TC Sections 21001-21028) ensures that we adequately protect the rights, privacy, and property of all California taxpayers during the process of assessing and collecting taxes. Our goal is to make certain we protect your rights. We want you to have the highest confidence in the integrity, efficiency, and fairness of our state tax system. FTB 4058, *California Taxpayers' Bill of Rights*, includes information on state taxpayers' rights and how to request written tax advice from us. Get FTB 4058 at **ftb.ca.gov** or call us at 800.338.0505 (Select Personal Income Tax), or mail us at FRANCHISE TAX BOARD, PO BOX 942840, SACRAMENTO CA 94240-0040.

Taxpayers' Rights Advocate Review

You may contact the Taxpayers' Rights Advocate if you have an ongoing state income tax problem that you have not been able to resolve through normal channels. Contacting the Taxpayers' Rights Advocate, however, is not an appeal and does not extend the period of time for filing one. You have the right to an independent administrative review if we notify you that we may levy your income or assets, file or record a notice of lien, or reject your request for an installment agreement. You must submit your request for review within 30 days of the date of the Final Notice Before Levy or within 30 days of the date of the tax lien notice. (R&TC Sections 19008(e), 19225, and 21015.5) You may contact Executive and Advocate Services (EAS) for additional information or to submit your request for review. You may reach EAS by phone: 800.883.5910, by fax: 916.843.6022, or by mail: Executive and Advocate Services MS-A381, PO Box 157, Rancho Cordova, 95741-0157.

Internet and Telephone Assistance

Website: **ftb.ca.gov**
Telephone: 800.852.5711 from within the United States
916.845.6500 from outside the United States
TTY/TDD: 800.822.6268 for persons with hearing or speech impairments

How to Get Additional Information

Withholding information

Website: **ftb.ca.gov**, and search for **withholding**.

For additional information, or to speak to a representative, call Withholding Services and Compliance at:

888.792.4900, or
916.845.4900
FAX 916.845.9512

Or write to:
WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD MS F-182
PO BOX 942867
SACRAMENTO CA 94267-0651

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

You can download, view, and print California tax forms and publications at **ftb.ca.gov**. Or to get forms by mail write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307RANCHO CORDOVA CA 95741-0307

General tax information

Website: **ftb.ca.gov**

Telephone assistance is available year-round from 7 a.m. to 5pm. Monday through Friday, except holidays. Hours are subject to change.

Telephone:
800.852.5711 from within the U.S.
916.845.6500 from outside the U.S.

TTY/TDD for persons with hearing or speech impairments:
800.822.6268

Asistencia por internet y teléfono
Sitio web: **ftb.ca.gov**
Teléfono:
800.852.5711 dentro de los Estados Unidos
916.845.6500 fuera de los Estados Unidos

TTY/TDD personas con discapacidades auditivas y del habla:
800.822.6268