WEBINAR SCRIPT
Withholding When a Trust is On Title

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Hello and welcome to the Franchise Tax Board’s “Withholding When a Trust is On Title” webinar. My name is Sonia Caramazza and I will be your presenter today. I am accompanied by Kasey Velez as our subject matter expert. We designed this presentation to provide an overview of California real estate withholding when a trust is on title.

Throughout the webinar, please type any questions you may have and Kasey will provide answers following the webinar.

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In today’s webinar we will cover:

- Types of Trusts
- Withholding Requirements
- Withholding Exemptions
- How to Complete FTB Form 593 and Form 593-C
- Resources, Tools, and Contact Information

Let’s get started shall we?

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Generally, there are two types of trusts: **Grantor** and **Non-Grantor**.

For **grantor** trusts, the grantor retains certain powers over the trust administration. A grantor trust is disregarded for tax purposes. This information is very important when completing our withholding forms to ensure we allocate the withholding credit to the appropriate taxpayer. When completing Form 593, *Real Estate Withholding Tax Statement*, for a grantor trust, be sure to:

- List the grantor’s individual name as the seller and enter their taxpayer identification number (TIN).
- Report the income of the real estate sale.
- Claim the related withholding credit.

Therefore, complete all withholding forms with the grantor’s name and Taxpayer Identification Number, also known as the TIN. Generally, the social security number of the grantor is used as the TIN.

The other type of trust is a non-grantor trust.
For non-grantor trusts, the grantor has not retained certain powers, including revocation, termination or the right to assign a beneficial interest. A non-grantor trust is taxed as if it were a separate entity. The trustee must file a fiduciary return on behalf of the trust. When completing Form 593, for a non-grantor trust, be sure, to:

- List the non-grantor trust as the seller
- Report the income of the real estate sale.
- Claim the related withholding credit.

Therefore, list the trust’s name and federal employer identification number or FEIN (which is the number used when filing its fiduciary income tax return) on all withholding forms.

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The next topic we will cover is withholding requirements. We require withholding on any sale or transfer of California real property unless a withholding exemption applies.

Withholding is not required if the:

- Total sales price is $100,000 or less
- Seller is a bank acting as a fiduciary for a trust
- Property is being foreclosed

A seller or transferor may be exempt from withholding if certified on a Form 593-C, Real Estate Withholding Certificate.

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Here are a few examples of certifications that fully exempt the seller or transferor from withholding:

- The seller owned or lived in the property as their main home for at least two years during the five-year period ending on the date of the sale.
- The seller has a loss or zero gain for California income tax purposes for this sale.
- The property is being involuntarily converted by being seized, destroyed or condemned and the seller intends to acquire similar property.

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Here are a few examples of certifications that may partially or fully exempt the seller or transferor from withholding:

- The property is part of a simultaneous or a deferred like-kind exchange.
• The transfer of this property is structured as an installment sale as evidenced by a promissory note.

For a complete list of partial and full exemptions, please see Form 593-C.

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We will now explain how to complete Form 593. Let’s go over a few scenarios.

On this slide, we focus on the seller’s section for Form 593.

Our first example involves the Anthony Yates Living Trust. This trust is considered a grantor trust because Anthony Yates will report the sale of California real property on his individual income tax return. We only want the grantor’s Information. The grantor’s full name, social security number and address should be entered in this section. No trust information should be entered. Providing incorrect grantor information in this section can delay withholding claims when an income tax return is filed by the seller.

Keep in mind, when completing Form 593, a grantor trust uses the grantor’s individual tax information.

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In our second example, we have a non-grantor trust on title. We will complete Form 593 in its entirety. Be sure to use the correct tax year form when completing Form 593. Because this transaction occurred in 2016, we will use the 2016 Form 593.

We begin in Part 1 with the Withholding Agent information. We will use the business name, Pacific Ocean Title, and a FEIN.

In Part 2, we have the Sierra Nevada Trust. This non-grantor trust is treated as an entity for tax purposes and will use its own FEIN and address to complete this section. There is no need to include any trustee or beneficiary information when completing the form on behalf of a non-grantor trust. We require you to enter the property address or parcel number and county.

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Part 3 of Form 593 will include the escrow number, close of escrow date, transaction type, withholding calculation and withholding amount. For this example, the Sierra Nevada Trust is the seller.
In Part 3, Line 1, we will enter the Escrow or Exchange Number. On Line 2, we will enter the date of transfer. On Line 3, check the box that applies to the type of transaction used for the sale or exchange.

Line 4 will be the Withholding Calculation used to determine withholding amount from the sale. On Line 5, enter the amount withheld from the seller. This amount will be remitted to the FTB along with a completed Form 593 and Form 593-V, *Payment Voucher for Real Estate Withholding*.

Finally, complete Form 593 with the real estate escrow person’s contact information, which is also known as REEP, in case we need to contact the preparer with questions during processing.

We do not require the seller or transferor to sign this form when using the Total Sales Price Method. However, if the Optional Gain on Sale Election were to be used to calculate the withholding amount, then a signature from the seller or transferor is required to certify the election.

We will now complete Form 593-C. This form is used when certifying to an exemption from withholding on the sale of California real property.

We will use a 2016 Form 593-C because our transaction occurred in this tax year. We will complete this form for the Anthony Yates Living Trust. This grantor trust uses the individual’s tax information for reporting purposes.

Therefore, in Part 1, we will use the grantor’s first and last name, social security number, address, property address or parcel number, county and ownership percentage.

The seller will determine their qualifying exemption in Part 2 and may check all boxes that apply. Anthony Yates will select line 1, because the property being sold was the seller’s principal residence.

The seller will print their name, sign and date the form and give to the REEP before the close of escrow to certify that the grantor trust is exempt from the real estate withholding requirement. The REEP will keep this form for a minimum of 5 years.

As a reminder, Form 593-C is not valid without a valid exemption checked and a certified signature.
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Here are some helpful tips and reminders to help you when completing Form 593. Using the correct tax form is important.

- The year of the form and the year of the withholding, must be the same.
- For withholding agent information, enter a business name or individual, not both.
- For seller information:
  - Grantor trust: Enter the grantor’s individual name and SSN. Do not enter the name of the grantor trust.
  - Non-grantor trust: Enter the name of the non-grantor trust and the non-grantor trust’s FEIN. Do not enter the trustee information.
- Enter contact information so we can contact you directly in case we discover an error or omission.

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We have many resources and helpful tools to answer common questions in regards to withholding when a trust is on title.

Our Form 4035, *California Real Estate Withholding Trusts*, is an overview for sellers. This brochure provides an overview of California real estate withholding when a trust is on title, including how to:

- Identify the type of trust.
- Determine if withholding is required.
- Complete withholding forms.
- Distribute withholding.
- Withholding following a grantors death.

We also have a flowchart Form 7429, *Do I Need to Withhold on This Trust?* This flow chart will help guide you with California real estate withholding when a trust is on title.

Last, but not least, we have Publication 1016, *Real Estate Withholding Guidelines*. This publication provides guidance on the withholding requirements for sales of California real property.

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Now, before we conclude our presentation, let’s go over how you can contact us.

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For more information, please visit our *Trusts and Estates* webpage. Go to [ftb.ca.gov](http://ftb.ca.gov) and search for *trusts*. You’ll find information, forms and publications to help you with all of your withholding needs.
You can view your account and available nonwage withholding credits by logging in to your MyFTB account. To register for a MyFTB account, go to ftb.ca.gov and search myftb.

You can call us Monday through Friday from 8 a.m. to 5 p.m. at 916.845.4900 or toll-free at 888.792.4900 or anytime by fax at 916.845.9512.

Your completed Form 592 or Form 593 should be mailed to:
WITHHOLDING SERVICE AND COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

This concludes our presentation portion of the webinar on how to withhold when a trust is on title. We hope that the information provided today will be helpful when completing Form 593 and Form 593-C.

We will now take any questions you have related to withholding when a trust is on title.

Thank you, Kasey.

We have now completed the question and answer portion of the webinar. If we didn’t get to your questions today, please contact our Withholding Services call center. A copy of today’s webinar and script will be available soon on our website at ftb.ca.gov.

On behalf of the Franchise Tax Board, thank you for joining us today and have a great rest of your day!