

**Exhibit A**  
**Purpose and Scope of the Proposed Regulations**  
**And Revisions Since November 2007**

**A. Section 18662-0. Table of Contents**

**Purpose and Scope:** The table of contents is intended to assist withholding agents, taxpayers, and the public to quickly locate the appropriate regulations for their specific need.

**B. Section 18662-1. Withholding – Generally**

**Purpose and Scope:** This section provides a general overview of the regulations. Specifically, subsection (a) provides that the regulations being adopted and amended apply to California's withholding at source programs excepting the following withholding programs: wage withholding (administered by the Employment Development Department); withholding orders for delinquent taxes; withholding on foreign (non-U.S.) partners and members (California law conforms to federal law in this area and federal regulations and procedures apply); California's backup withholding as required by Revenue and Taxation Code (RTC) section 18664 (enacted in 2009 and operative in 2010); and the Interagency Intercept Program under Government Code section 12419.5.

Subsection (b) explains that under RTC section 18661, et. seq., withholding at source is required from all payments of California source income and from the sale of California real estate, unless specific exceptions apply. This subsection provides general withholding rules relating to California source income and real estate withholding, and cross-references to withholding subsections being adopted or amended.

Subsection (c) explains that even if an exception applies, withholding may nevertheless be required if the FTB has specifically notified the payor to withhold. Subsection (d) explains that the FTB may require other conditions of the withholding agents to assure withholding compliance. Subsection (e) explains that the regulations reflect FTB procedures relating to the form and manner for payments authorized under Revenue and Taxation Code section 19005. In addition, other changes regarding the form, time and manner of payment, returns, and statements may be required in the future, and forms and instructions will be revised accordingly.

**Revisions:** Since the approval on November 28, 2007 by the three-member Franchise Tax Board of the November 2007 draft ("2007 draft"), FTB staff added language to conform the withholding regulations to the statutory changes enacted in 2008 and 2009 (e.g., real estate withholding, the new maximum withholding calculation, and the buyer installment withholding method), and further refined the language and examples, expanded and renumbered the subsections, and changed certain titles. Due to revisions that incorporated the 2008 and 2009 withholding legislation, staff removed former subsection (e), which set forth an outdated operative date for the regulations.

**C. Section 18662-2. Definitions**

**Purpose and Scope:** This section provides definitions of the terms as used in the proposed regulations:

**Revisions:** Since the 2007 draft, staff has added the following definitions: "Permanent Place of Business," "Person," "California Real Estate," "Pass-Through Entity," "Owner of a Pass-Through Entity," and "Exempt Organization."

**D. Section 18662-3. Real Estate Withholding**

**Purpose and Scope:** This section explains the real estate withholding requirements enacted in 2002 and modified in 2006, 2008, and 2009. Generally, the regulation follows and summarizes existing statutory requirements and administrative practice as reflected in FTB's forms, instructions, and Publication 1016, Real Estate Withholding Guidelines.

**Revisions:** Since the 2007 draft, staff has added language to conform the section to new requirements as enacted in 2008 and 2009 (e.g., non-California partnership withholding, the new maximum withholding calculation, and the buyer installment withholding method), further refined the language and examples for clarity, expanded and renumbered the subsections, and changed certain titles for greater transparency. We have also added language to the section to explain how withholding applies when there are differences between state and federal law.

#### **E. Section 18662-4. Withholding on Payments (Nonresident Withholding) – General**

**Purpose and Scope:** This section provides general rules applicable to withholding on payments (nonresident withholding). This section clarifies the de minimis amount of \$1,500 for the calendar year, provides the current nonresident withholding rate on gross payments or distributions, and provides that withholding is optional by the withholding agent on amounts where withholding is not required.

The section specifies that withholding is required for payments to business entities that are not in good standing. Business entities not in good standing include suspended and forfeited corporations. It also sets forth "safe harbor" rules that allow the withholding agent to assume that an individual is a California resident or that a business entity has a permanent place of business in California if payment is made to a California address. The section also provides guidance regarding when withholding is not required, exemption certificates, waivers, and reduced withholding amounts.

Generally, the section follows and summarizes existing statutory requirements and administrative practice as reflected in FTB's forms, instructions, and Publication 1017, Resident and Nonresident Withholding Guidelines.

**Revisions:** Since the 2007 draft, staff has further refined the section language and examples for clarity, renumbered the subsections, and changed certain titles for greater transparency.

#### **F. Section 18662-5. Other Types of Payments and Withholding Obligations**

**Purpose and Scope:** Subsection (a) provides general rules applicable to other types of payments and withholding obligations by nonresidents. The subsection explains that withholding is required on California source income and distributions made to a nonresident, when the payment or distribution is greater than \$1,500 for the calendar year, unless the withholding agent receives a waiver or a notice of reduced withholding amount from the FTB.

The subsection specifies certain payments that are subject to withholding and explains withholding issues relating to business situs, intangible personal property, tax treaties, payments for certain expenses, and services in connection with the sale of goods.

Subsection (b) explains the withholding obligations on payments to nonresident independent contractors, nonresident subcontractors, rent or lease payments to nonresidents, royalty or residual payments, payments to corporate directors, seminars, expert witnesses, and an explanation of income allocation.

Generally, the section follows and summarizes existing statutory requirements and administrative practice as reflected in FTB's forms, instructions, and Publication 1017, Resident and Nonresident Withholding Guidelines.

**Revisions:** Since the 2007 draft, staff has further refined the section language and examples for clarity, renumbered the sections, and changed certain titles for greater transparency.

#### **G. Section 18662-6. Nonresident Withholding, Entertainers, Athletes and Speakers**

**Purpose and Scope:** This section provides general rules applicable to nonresident entertainers, athletes, and speakers. Generally, the section follows and summarizes existing statutory requirements and administrative practice as reflected in FTB's forms, instructions, and Publication 1017, Resident and Nonresident Withholding Guidelines.

**Revisions:** Since the 2007 draft, staff has further refined the section language and examples for clarity, renumbered the sections, and changed certain titles.

#### **H. Section 18662-7. [Reserved]**

**Purpose and Scope:** The text of the section is repealed and the section is reserved. The section is reserved to provide withholding rules for domestic (U.S.) pass-through entities.

## **I. Section 18662-8. Reporting and Remitting Amounts Withheld; Penalties and Interest**

**Purpose and Scope:** This section consolidates the rules relating to reporting and remitting payment of withholding at source. It provides for reporting procedures for information returns, remitting procedures, quarterly withholding procedures, payment due dates, withholding adjustments, penalties, withholding liabilities, and interest. Generally, the section follows and summarizes existing statutory requirements and administrative practice as reflected in FTB's forms, instructions, Publication 1016, Real Estate Withholding Guidelines, and Publication 1017, Resident and Nonresident Withholding Guidelines. It also includes requirements mandated by the WASS project implementation to allow automated cashiering and noticing.

**Revisions:** Since the 2007 draft, staff has further refined the language for clarity, renumbered the sections, and changed certain titles for greater transparency.

## **J. Sections 18662-11 through 18662-14.**

These sections are repealed.

## **K. Section 19002. Credit for Tax Withheld**

**Purpose and Scope:** This section amends and renumbers Regulation section 25401b to new Regulation section 19002, adding specific guidance for the credit of withholding of payments by pass-through entities, and the date of the credit for withholding. Generally, the section follows and summarizes existing statutory requirements and administrative practice as reflected in FTB's forms, instructions, and Publication 1017, Resident and Nonresident Withholding Guidelines.

**Revisions:** Since the 2007 draft, staff has further refined the language for clarity, renumbered the sections, and changed certain titles for greater transparency.

## Exhibit B

### Cross-Reference Chart of Proposed Regulations to Existing Regulations

The proposed regulations are written and organized into a simpler, more descriptive order. For example, the regulations contain a Table of Contents, definitions, and general rules applicable to all withholding at source. The regulations then provide specific guidance for major withholding areas that FTB administers (e.g., real estate withholding, nonresident withholding, withholding on nonresident independent contractors, entertainers, athletes, and pass-through entities), provide guidance on different types of California source income, set forth reporting and remitting obligations and penalties, and provide rules for the crediting of withheld amounts.

Below are general cross-references between the proposed regulatory section and the former section.

#### General Framework of Proposed Regulatory Action and Cross-References

<b>Section</b>	<b>Proposed Action</b>	<b>Derived From Former Section(s)</b>	<b>Content of Adopted or Amended Section</b>
18662-0	Adopt	New Section	Table of Contents
18661-1	Amend	18662-1 18662-2 18662-11 18662-13 25401(b)	General Application; areas not covered; notice to withhold; withholding on payments, reporting and remitting amounts, credit for tax withheld; notice to withhold; other conditions as may be required.
18662-2	Amend	18662-1 18662-2 18662-6 18662-11 18662-13	Definitions
18662-3	Amend		Real Estate Withholding, Rate, Alternative Election Method, Exclusions, Exemptions, Special Entities, Procedures
18662-4	Amend	18662-2 18662-3 18662-11 18662-12 18662-13	Withholding on Payments – General; Nonresident Persons and Non-California Business Entities, Rates, Optional Withholding, Withholding Exceptions, Persons and Entities Specifically Subject to Withholding, Exemption Certificates, Waivers, Filing Requirements
18662-5	Amend	18662-2 18662-3 18662-11 18662-12	Other Types of Payments and Withholding Obligations
18662-6	Amend	18662-2 18662-3 18662-11 18662-12	Nonresident Withholding, Entertainers, Athletes, and Speakers
18662-7	Repeal Text and Reserve Section		Reserved for Domestic (U.S.) Pass-Through Entities
18662-8	Amend	18662-5 18662-6	Reporting and Remitting Amounts Withheld; Penalties and Interest

19002	Amend/ Re-number	25401b 18662-5	Credit for Tax Withheld
18662-11	Repeal		Content incorporated into other sections.
18662-12	Repeal		Content incorporated into other sections.
18662-13	Repeal		Content incorporated into other sections.
18662-14	Repeal		Content not incorporated into other sections.

**Content of Existing Regulations Not Incorporated Into the Proposed Regulations**

The following sections have not been incorporated into the proposed regulations:

Section 18662-4. This section (Withholding of Delinquent Taxes Due) is now addressed under other sections. The proposed amendment to section 18662-4 will operate to delete the content of the existing section in its entirety.

Section 18662-7. This section (Certificate of Residence) is now replaced by an exemption certificate and other FTB forms and procedures as addressed in these regulations. The proposed repeal of this section will operate to delete the content of the existing section in its entirety. The section will be reserved for rules applicable to domestic (U.S.) pass-through entities.

Section 18662-8. This section (Time and Place for Filing Returns of Tax Withheld) is now replaced by FTB forms and procedures as addressed in these regulations. The proposed amendment to section 18662-8 will operate to delete the content of the existing section in its entirety.

Section 18662-14. This section (Interpleader Action by Withholding Agent) is repealed. The repeal of section 18662-14 will operate to delete the content of the existing section in its entirety.