

NOTE: This handout is intended only for purposes of facilitating discussion at the interested parties meeting on July 11, 2016.

Regulation Section 18662-2 is amended to read:

§ 18662-2. Definitions.

- (a) Buyer. The term "buyer" includes the buyer or any other transferee of property.
- (b) California Business Entity. For purposes of withholding, the term "California business entity" is a business entity as defined in Regulation section 23038(b)-2, subsection (a), that is incorporated, organized, or formed, and existing under the laws of California, or is qualified through the Office of the Secretary of State to transact intrastate business. A business entity that has not qualified to transact intrastate business (such as a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains an office in California that is permanently staffed by its employees.
- (c) California Real Estate. The term "California real estate" has the same meaning as the term "California real property interest" as defined in Revenue and Taxation Code section 18662, subdivision (e)(5). For purposes of Regulation sections 18662-0 through 18662-8, an ownership interest does not include an option to acquire real estate, unless the option is exercised by the seller/transferor and the real property is transferred.
- (d) California Resident. The term "California resident" includes every individual who is in California for other than a temporary or transitory purpose, and any individual domiciled in California who is absent for a temporary or transitory purpose. (See Revenue and Taxation Code section 17014 and Regulation section 17014.)
- (e) California Trust or Estate. For purposes of withholding, a trust is considered a California trust if at least one fiduciary is a California resident or a California business entity, or if the decedent was a California resident on the date of death. An estate is considered a California estate for withholding purposes when the decedent was a California resident on the date of death.
- (f) Exempt Organization. The term "exempt organization" means an organization that meets the requirements of Chapter 4 of Part 11 of the Revenue and Taxation Code (commencing with section 23701) or Subchapter F of the Internal Revenue Code (commencing with section 501), that is exempt from withholding under this regulation.
- (g) Individual. The term "individual" means a natural person. (See Revenue and Taxation Code section 17005.)
- (h) Items of Income. For purposes of withholding, the term "income" includes items of income that are included in the information return reporting requirements of Article 5 of Chapter 2 of Part 10.2, Division 2 of the Revenue and Taxation Code (section 18631 et seq.) and federal provisions incorporated by reference. The items of income include, but are not limited to, interest, dividends, rents, royalties, prizes and winnings, premiums, annuities, emoluments, compensation for personal services including bonuses, partnership income, or gains, and other fixed or determinable annual or periodical gains, profits, and income.

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(i) Non-California Business Entity. For purposes of withholding, a non-California business entity means any business entity that does not meet the requirements of a California business entity as set forth in subsection (b), herein.

(j) Nonresident. A "nonresident" or "nonresident individual" is an individual who does not meet the requirements of a California resident as set forth in subsection (d), herein.

(k) Nonresident alien. "Nonresident alien" has the same meaning as defined in Internal Revenue Code section 7701(b)(1)(B).

(l) Nonresident Estate or Trust. For purposes of withholding, the term "nonresident estate or trust" means an estate or trust that does not meet the requirements to be a California estate or trust as set forth in subsection (e), herein.

(m) [Reserved].

(n) Partner. The term "partner" has the same meaning as defined in Revenue and Taxation Code section 17008. For purposes of withholding, members of limited liability companies classified as partnerships and owners of multiple-owner entities are included in the term "partner" under Regulation sections 18662-0 through 18662-8.

(o) Partnership. The term "partnership" has the same meaning as defined in Revenue and Taxation Code section 17008. This includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust, estate, or corporation. For purposes of withholding, limited liability companies classified as partnerships, limited partnerships, and limited liability partnerships are treated as partnerships under Regulation sections 18662-0 through 18662-8.

(p) [Reserved].

(q) Payee. The term "payee" includes, but is not limited to, any person, partner, member, corporation, limited liability company, partnership, fiduciary, business entity, association, joint venture (whether or not classified as a disregarded entity for tax purposes), estate, trust, foreign entity, agency, or political subdivision that receives payments from a payer. The term "payee" also includes any person who receives payments or distributions from a pass-through entity, estate, or trust.

(r) Payer. The term "payer" means the person who makes a payment or a distribution to a payee. The payer includes a withholding agent. The term also includes any person making a payment to an intermediary, pass-through entity, or person to the extent the intermediary, pass-through, or person provides a Form W-9 or other appropriate information relating to a payee so that the payment can be reported under Chapter 61 of the Internal Revenue Code.

(s) Permanent Place of Business. A business entity has a "permanent place of business" in California if it is organized and existing under the laws of California or, if a foreign

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corporation, it has qualified through the Office of Secretary of State to transact intrastate business. A business entity that has not qualified to transact intrastate business, for example, a corporation engaged exclusively in interstate commerce, will be considered as having a permanent place of business in California only if it maintains a permanent office in California permanently staffed by its employees.

(t) Person. The term "person" has the same meaning as defined in Revenue and Taxation Code section 17007, and includes individuals as well as business entities.

(u) Real Estate Escrow Person. The term "real estate escrow person" has the same meaning as defined in Revenue and Taxation Code section 18662, subdivision (e)(6), plus Regulation sections 18662-0 through 18662-8, and includes 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.

(v) Remitter. The term "remitter" means any person who is required under Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8 to remit any tax withheld on any disposition from the sale or exchange of California real estate by California resident and nonresident individuals and non-California business entities to the Franchise Tax Board on or before the due dates required by Regulation sections 18662-0 through 18662-8, and who is required to make the information returns prescribed under forms and instructions by the Franchise Tax Board. The term "remitter" applies to the person who will remit the withheld tax on any disposition from the sale or exchange of California real estate and file the prescribed forms on the buyer's/transferee's behalf.

~~(w)~~ Seller. The term "seller" includes the seller or any other transferor of real property.

~~(w)~~ Transferee. The term "transferee" of real property has the same meaning as in Revenue and Taxation Code section 18662, subdivision (e), and includes the buyer of the real property, and, in a deferred exchange, an intermediary or exchange accommodator as set forth in Revenue and Taxation Code section 18662, subdivision (e).

~~(x)~~ Transferor. The term "transferor" of real property has the same meaning as in Revenue and Taxation Code section 18662, subdivision (e), and includes the seller of the real property, and, in a deferred exchange, an intermediary or exchange accommodator as set forth in Revenue and Taxation Code section 18662, subdivision (e).

~~(y)~~ Withholding Agent. The term "withholding agent" means the person that has the control, receipt, custody, disposal, or payment of an item of income of a person subject to withholding. Any person who meets the definition of a withholding agent is required to remit any tax withheld and to make the information returns prescribed under forms and instructions by the Franchise Tax Board. The term "withholding agent" also means the person charged by the law or by the Franchise Tax Board's order or regulation with the duty to withhold any tax, interest or penalties from payments to the taxpayer and to remit such amounts over to the Franchise Tax Board.

Note: Authority cited: Section 19503, Revenue and Taxation Code.

Reference: Section 18662, Revenue and Taxation Code.