

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

Regulation Section 18662-3 is amended to read:

§ 18662-3. Real Estate Withholding.

(a) General. Withholding of tax at source is required on any disposition from the sale or exchange of California real estate by a seller/transferor ~~California resident and nonresident individuals and non-California business entities~~. The rate of withholding is 3 1/3 percent of the sales price, but the seller/transferor may elect an ~~alternate~~ alternative withholding calculation based on the gain required to be recognized from the sale as set forth in FTB Form 593-E, Real Estate Withholding Statement ~~Computation of Estimated Gain or Loss~~, or any successor form designated by the Franchise Tax Board on its website at [www.ftb.ca.gov](http://www.ftb.ca.gov) ("FTB Form 593-E"). The required information specified in FTB Form 593-E is set forth in subsection (h), below. ~~The requirement to withhold is the responsibility of the buyer/transferee, but may be performed by the real estate escrow person on the buyer's/transferee's behalf. No withholding is required under the provisions set forth in Revenue and Taxation Code section 18662, subdivision (e)(3), or if an exemption certificate, on FTB Form 593-C, Real Estate Withholding Certificate, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 593 C"), is completed, signed, and submitted to the real estate escrow person prior to the close of escrow. The required information specified in FTB Form 593 C is set forth in subsection (i)(h), below. For example, the seller/transferor may certify on FTB Form 593-C that the property was the seller's/transferor's principal residence or that no gain is recognized from the sale. The Franchise Tax Board may audit escrow documents to verify compliance.~~

(b) Statutory Basis and Rates. Revenue and Taxation Code section 18662, subdivision (e), requires withholding of tax at source from any disposition, sale or transfer of California real property at an amount equal to 3 1/3 percent of the sales price, unless an election is made to use an alternative withholding calculation based on gain required to be recognized from the sale on FTB Form 593-E. The alternative withholding calculation shall be based on the maximum applicable tax rate under Revenue and Taxation Code sections 17041, 23151, and 23186.

(c) Who Must Withhold—Required Notification and Responsibility.

(1) Notification. Revenue and Taxation Code section 18668, subdivision (e)(1), requires the real estate escrow person to provide the buyer/transferee with written notice of the withholding requirements, unless the buyer/transferee is an intermediary or accommodator in a deferred exchange.

(2) Penalties for Failure to Provide Notice. If the real estate escrow person fails to provide the buyer/transferee with written notice, a penalty may be assessed 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/transferee is due to reasonable cause.

(3) The Real Estate Escrow Person May Assist the Buyer/Transferee With the Buyer's/Transferee's Withholding Obligations. Once the buyer/transferee is notified, it is the buyer's/transferee's responsibility to withhold. However, the real estate escrow

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person may assist the buyer/transferee in complying with the withholding requirements by performing or assisting in the withholding, remitting the required withholding, and completing FTB Form 593 and FTB Form 593-V, Payment Voucher for Real Estate Withholding, or any successor form designated by the Franchise Tax Board on its website at [www.ftb.ca.gov](http://www.ftb.ca.gov) ("FTB Form 593-V"). The required information specified in FTB Form 593 and FTB Form 593-V is set forth in subsection ~~(j)~~(h) and subsection ~~(k)~~(i), respectively, below. The real estate escrow person may charge a fee for this assistance not to exceed the amount set forth in Revenue and Taxation Code section 18662, subdivision (e).

(d) Exemption and Withholding Requirements. No withholding is required if the seller/transferor establishes one of the following under subsection (d)(1) or (d)(2):

(1) Full Exemption Under FTB Form 593-C. The Franchise Tax Board on FTB Form 593-C may establish that no withholding is required in the following instances:

(A) Seller/Transferor is a Corporation or Partnership. No withholding is required for a corporation or partnership incorporated or qualified to do business in California (or where the entity continues to have a permanent place of business and maintains a permanent staff within California after the sale.) Where the seller/transferor is a disregarded entity for tax purposes, no withholding is required if the owner of the disregarded entity is incorporated or qualified to do business in California or continues to have a permanent place of business and maintains a permanent staff within California after the sale.

(B) ~~Total~~ Sales Price of \$100,000 or Less. No withholding is required unless the sales price of the real property conveyed exceeds \$100,000. ~~Total~~ The "sales price" is normally the same amount as the "gross proceeds" required for information reporting purposes as shown on the federal form 1099-S. (See Treasury Regulation section 1.6045-4.)

(C) Deferred Exchange. No withholding is required other than by an intermediary or an accommodator in a deferred exchange, ~~unless written notification of the withholding requirements (set forth in Revenue and Taxation Code section 18662, subdivision (e)) has been provided by the real estate escrow person.~~ An intermediary or an accommodator in a deferred exchange is required to withhold, even if the real estate escrow person fails to provide written notice.

(D) Foreclosure. No withholding is required as part of a foreclosure when the buyer/transferee acquires California real property under one of the following circumstances:

1. At a sale pursuant to a power of sale under a mortgage or deed of trust.
2. At a sale pursuant to a decree of foreclosure.
3. By a deed in lieu of foreclosure.

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(E) Bank Acting as a Trustee. No withholding is required when the seller/transferor is a bank acting as a trustee, other than a trustee of a deed of trust.

(2) Transfers Requiring an Exemption Certificate to Exempt the Sale From Withholding on FTB Form 593-G. No withholding is required if the ~~transferor or~~ seller/transferor completes and signs an exemption certificate on FTB Form 593-G stating, under penalty of perjury, that one of the following applies:

(A) Principal Residence. No withholding is required if the seller certifies that the property conveyed was his or her principal residence within the meaning of Internal Revenue Code section 121, as incorporated and modified by the Revenue and Taxation Code, or that the last use of the property was as the seller's/transferor's principal residence.

1. Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of sale, the seller/transferor owned and used the property as his or her main home for at least two years.

2. There are exceptions to the two-year rule if the primary reason the seller/transferor is selling the home is due to a change in the place of employment, health, or other unforeseen circumstance, such as death, divorce, or loss of job. (See Internal Revenue Code section 121 and Treasury Regulation sections 1.121-1 through 1.121-5.)

3. If the property does not qualify for an exclusion under Internal Revenue Code section 121, the seller/transferor may claim the exclusion from withholding if the property was last used as the seller's/transferor's principal residence within the meaning of Internal Revenue Code section 121, without regard to the two-year time period.

4. Where California law differs from federal law, California law applies.

(B) Involuntary Conversions. No withholding is required if the seller/transferor certifies on FTB Form 593-G that the transfer is the result of an involuntary conversion that qualifies for deferral of gain under Internal Revenue Code section 1033, and that he or she intends to replace the property with qualified property within the required time period under Internal Revenue Code section 1033.

(C) Loss or Zero Gain. No withholding is required if the seller/transferor certifies on FTB Form 593-G that there is either a loss or zero gain for California income tax purposes from the sale on ~~FTB Form 593-E~~, which results when the seller's/transferor's adjusted basis in the property is more than or equal to the selling price (less selling expenses). In computing gain, the seller/transferor may use previously deferred passive activity losses that directly relate to the property being sold. He or she may not use losses that are not directly related to the property, such as passive activity losses or carry forwards from a different property, capital loss carry forwards, stock losses, or net operating losses.

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- (D) Contributed Capital – Transfers to a Controlled Corporation or Partnership. No withholding is required where the ~~transferor~~ or seller/transferor certifies on FTB Form 593-G that the transfer qualifies for nonrecognition treatment under Internal Revenue Code section 351 (property transferred to a corporation controlled by the transferor) or Internal Revenue Code section 721 (property contributed to a partnership in exchange for a partnership interest).
- (E) Seller/Transferor is a Corporation. No withholding is required if the seller/transferor certifies on FTB Form 593-G that it has either qualified with the California Secretary of State or has a permanent place of business in California. This includes a limited liability company (LLC) taxable as a corporation for federal and California income tax purposes.
- (F) Real Estate Investment Trusts (REITs). No withholding is required if the seller/transferor certifies on FTB Form 593-G that it is a REIT that is treated as a corporation and that the REIT has a permanent place of business in California.
- (G) Seller/Transferor is a Partnership. No withholding is required if the seller/transferor certifies on FTB Form 593-G it is a California partnership, or qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes that is not a single member LLC that is disregarded for federal and California income tax purposes).
- (H) Tax Exempt Entities. No withholding is required if the seller/transferor certifies on FTB Form 593-G that it is a tax-exempt entity under California or federal law (e.g., government agency, Resolution Trust Corporation, or exempt, charitable, religious, or educational organization).
- (I) Insurance Companies. No withholding is required if the seller/transferor certifies on FTB Form 593-G that it is an insurer within the meaning of Section 28 of Article XIII of the California Constitution that pays the California gross premiums tax.
- (J) Other Entities. No withholding is required if the seller/transferor certifies on FTB Form 593-G that it is either an individual retirement account (IRA), qualified pension plan, or charitable remainder trust.
- (3) Transfers That May Partially or Fully Exempt the Sale From Withholding.
- (A) IRC Section 1031 Exchanges. No withholding is required on the initial transfer where the seller/transferor certifies on FTB Form 593-G that the transfer will qualify as:
1. A Simultaneous Like-Kind Exchange. However, if the seller/transferor receives proceeds (including excess debt relief) or non-like-kind property from the sale (boot) in excess of \$1,500, withholding is required at 3 1/3

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percent of that amount, unless an election is made to use the alternative withholding calculation on FTB Form 593-E.

2. A Deferred Like-Kind Exchange. If the seller/transferor receives any proceeds (~~including excess debt relief~~) or non-like-kind property from the sale (boot) in excess of \$1,500, ~~withholding is required~~ the intermediary or accommodator must withhold at 3 1/3 percent of that amount, unless an election is made to use the alternative withholding calculation on Form FTB 593-E.

3. Failed Exchange. Notwithstanding a seller's/transferor's certification on FTB Form 593-G, if the exchange fails, does not occur, or does not meet the Internal Revenue Code section 1031 requirements, the intermediary or accommodator must withhold at 3 1/3 percent of the sales price, unless an election is made to use the alternative withholding calculation on FTB Form 593-E.

(B) Installment Sales.

~~1. The buyer/transferee real estate escrow person~~ must withhold 3 1/3 percent or the alternative withholding calculation certified on FTB Form 593 on the principal portion (e.g., down payment or ~~first installment payment~~) received in escrow upon closing.~~1. The buyer/transferee must complete and sign FTB Form 593-I, Real Estate Withholding Installment Sale Acknowledgement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 593-I"). The required information specified in FTB Form 593-I is set forth in subsection (l), below. The buyer/transferee must provide give FTB Form 593-I, along with the installment agreement terms and give a copy of the promissory note, to the real estate escrow person to remit on with FTB Form 593 and FTB Form 593-V to the Franchise Tax Board.~~

~~2.~~ 2. The buyer/transferee must withhold and remit 3 1/3 percent or the alternative withholding calculation certified on FTB Form 593 on the principal portion of all subsequent installment payments following the close of escrow.

~~2.3.~~ 2.3. Installment Sale Payoff. The ~~buyer/transferee real estate escrow person~~ must withhold 3 1/3 percent or the alternative withholding calculation certified on FTB Form 593 on the principal portion of a seller/transferor-financed installment sale payoff or prepayment in escrow upon closing.

(e) Withholding on Special Entities.

(1) Grantor Trusts. If the trust is a grantor trust, then the seller/transferor is the grantor and withholding is required, unless an exemption applies under FTB Form 593-G. A grantor trust is a trust where the grantor retains substantial control and remains

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the owner (e.g., the right to cancel or revoke the trust). A grantor trust is disregarded for federal and California income tax purposes. Where the seller/transferor is the grantor trust and unless an exemption applies under FTB Form 593-G, withholding is remitted on FTB Form 593 and FTB Form 593-V and credited to the grantor. Where applicable, FTB Form 593, and FTB Form 593-V, ~~FTB Form 593-C, FTB Form 593-E,~~ and ~~FTB Form 593-I~~ should be completed using the individual's (grantor's) information.

(2) Trusts. If the trust is other than a disregarded grantor trust, then the seller/transferor is the trust and withholding is required, unless an exemption applies under FTB Form 593-G. Where applicable, FTB Form 593, and FTB Form 593-V, ~~FTB Form 593-C, FTB Form 593-E,~~ and ~~FTB Form 593-I~~ should be completed using the name of the trust and the trust's federal employer identification number (FEIN).

(3) Bankruptcy Trusts and Estates. Withholding is required when a bankruptcy trust or estate sells the property.

(4) Estates. Withholding is required when an estate sells real property, unless the property being sold qualifies as the decedent's principal residence or otherwise qualifies under FTB Form 593-G.

(5) Conservatorships and Receiverships. Withholding is required unless the conservatee or debtor (in receivership) qualifies under the requirements of FTB Form 593-G. The conservator or receiver should complete FTB Form 593-G using the conservatee's or debtor's information.

(6) Relocation Companies. Sales to relocation companies are subject to the same rules as other sales, and withholding is required. There is no withholding on the sale if the relocating seller/transferor certifies on FTB Form 593-G that the property was the seller's/transferor's principal residence or if the seller/transferor otherwise qualifies under the requirements contained in FTB Form 593-G. Relocation companies themselves are subject to the same rules as other non-individuals.

Example 1. A relocation company resells California real property to a third party. There is no withholding on the sale if the relocation company certifies it is a California corporation, hasis qualified to do business in California, or otherwise qualifies under the requirements of FTB Form 593-G. If the relocation company is not a California corporation, hasis not qualified to do business in California, or does not meet the requirements of FTB Form 593-G, withholding is required.

Example 2. An employer that holds title to California real property gives a relocation company power of attorney to act on its behalf in the sale of the property to a third party. No withholding is required on the sale if the employer certifies on FTB Form 593-G that it is a California corporation, hasis qualified to do business in California, or has a permanent place of business in California, or otherwise qualifies under the requirements of FTB Form 593-G. If the employer has not met any of the above requirements set forth in this Example 2, withholding is required. Because the

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relocation company does not hold title, the employer must meet the withholding obligations.

(f) Procedures.

(1) Exemption Certificate and Estimated Gain or Loss Certificate. If a seller/transferor seeks to qualify for no withholding under the requirements set forth in the real estate withholding exemption certificate on FTB Form 593-G, the seller/transferor must complete, sign, and submit to the real estate escrow person the withholding exemption certificate on FTB Form 593-G prior to the close of escrow the real estate transaction to claim an exemption from withholding. Failure to provide a completed and signed real estate withholding exemption certificate on FTB Form 593-G by the close of the real estate transaction will result in withholding. If the seller/transferor seeks to establish a loss or zero gain, the seller/transferor must also complete and sign a withholding exemption certificate on FTB Form 593-C and a the real estate withholding-computation of estimated gain or loss certificate on FTB Form 593-E. All real estate sales/transfers qualifying for an exemption from withholding are reportable to the Franchise Tax Board on FTB Form 593, which can be filed on paper or electronically (where allowable).

~~(2) Retention of Withholding Exemption Certificate on FTB Form 593-C. The Franchise Tax Board may specify in FTB Form 593-C whether the exemption certificate, FTB Form 593-C, must be filed with the Franchise Tax Board, or retained by the real estate escrow person for submission, upon request, at a later date to the Franchise Tax Board. If required to be filed immediately, the Franchise Tax Board may specify the conditions for filing and the due date of such filing. The real estate escrow person must retain a copy of the withholding exemption certificate, FTB Form 593-C, for five years following the closing date of the transaction.~~

~~(3)~~(2) Verification. Real estate escrow persons are only required to verify exemption certifications on FTB Form 593-G 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-G, is complete and signed. The real estate escrow persons will be relieved of the withholding requirements if they rely in good faith on a completed and signed real estate withholding certificate, FTB Form 593-G. Real estate escrow persons should not rely upon an incomplete or unsigned certificate, FTB Form 593-G.

Example 1: A seller/transferor ~~completes a worksheet~~ calculates the estimated gain or loss and certifies on FTB Form 593-E a loss on the transaction. The real estate escrow person is not required to verify the amounts ~~shown on the worksheet~~ used in the calculation.

Example 2: A seller/transferor completes, signs, and submits to the real estate escrow person a real estate withholding exemption certificate on FTB Form 593-G prior to the close of escrow and certifies that the sale is an installment sale. However, the buyer/transferee has not provided the installment agreement terms ~~a completed and~~

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~~signed installment sale acknowledgement on FTB Form 593-I and or promissory note to the real estate escrow person. The real estate escrow person may not rely on the real estate withholding exemption certificate, FTB Form 593-G, and is required to withhold on this transaction.~~

Example 3: A seller/transferor completes, signs, and submits to the real estate escrow person a real estate withholding exemption certificate on FTB Form 593-G prior to the close of escrow and certifies therein that a California partnership is selling the property, but the real estate escrow person has actual knowledge that the recorded title of the property is not in the name of the California partnership. The real estate escrow person may not rely on the real estate withholding exemption certificate, FTB Form 593-G, and is required to withhold on this transaction.

~~(4)(3) Electing the Alternate Alternative Withholding Calculation. The seller/transferor making the election must complete and sign the FTB Form 593-E, and sign a completed Form 593. The signature on FTB Form 593-E, and Form 593 certifies the gain required to be recognized and the alternate alternative withholding calculation. The Franchise Tax Board may specify in FTB Form 593-C and FTB Form 593-E whether FTB Form 593-C and FTB Form 593-E must be filed with the Franchise Tax Board, or retained by the real estate escrow person for submission, upon request, at a later date to the Franchise Tax Board. If FTB Form 593-C and FTB Form 593-E are required to be filed immediately, the Franchise Tax Board may specify on FTB Form 593-C and FTB Form 593-E the conditions for filing and the due date of such filing. The seller/transferor must retain FTB Form 593-C and FTB Form 593-E for five years following the closing date of the transaction.~~

(g) Special Rules.

(1) Multiple Family Units. If the property sold is a multiple family unit (duplex, triplex, apartment building, etc.) and the seller/transferor lived in one of the units as his or her principal residence, withholding is required for the portion of the sales price that is not certified on FTB Form 593-G as a principal residence. The sales price should be allocated between the principal residence and the remainder of the units using the same method that the seller/transferor used to determine depreciation deductions. Withholding is required when the ~~total~~ sales price of the property (all units) exceeds \$100,000, even if the portion of the sales price allocable to the non-principal residence portion of the property does not exceed \$100,000.

(2) Multiple Sellers/Transferors. When there are multiple sellers/transferors, the withholding amount is calculated by applying the withholding rate to each seller's/transferor's proportionate share of the ~~total~~ sales price.

Example 1: Withholding at 3 1/3 percent of ~~total~~ sales price:

~~Total~~ Sales price \$200,000  
Sellers'/Transferor's ownership percentages:  
A = 20%, B = 30%, C = 50%

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Withholding per seller/transferor:

A  $\$200,000 \times 20\% \times .0333 = \$1,332$

B  $200,000 \times 30\% \times .0333 = \$1,998$

C  $200,000 \times 50\% \times .0333 = \$3,330$

Example 2: Alternative withholding calculation, assuming a maximum tax rate of 912.3 percent in the year of sale:\*

Gain on sale \$200,000

Sellers'/Transferors' ownership percentages:

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

Withholding for individual seller/transferor:

A  $\$200,000 \times 20\% \times .09123 = ~~\$3,720~~\$4,920$

B  $\$200,000 \times 30\% \times .09123 = ~~5,580~~\$7,380$

C  $\$200,000 \times 50\% \times .09123 = ~~9,300~~\$12,300$

\*Note: The applicable tax rate is subject to change.

(3) Sellers/Transferors on Title for Incidental Purposes. If the incidental sellers/transferors have no financial ownership, then their ownership percentage is zero and there is no withholding required for them.

Examples of sellers/transferors who are on title for incidental purposes are:

Example 1: A father is on title only because he cosigned to help his daughter qualify for a loan. The first name on the loan is that of the daughter who pays the loan payments. If father completes FTB Form 593-G showing zero percentage of ownership, no withholding is required on the proceeds due to the father's ownership interest. The daughter is the beneficial owner of all of the property and is subject to the withholding requirements.

Example 2: A son is on title only to receive the real property as a beneficiary upon his mother's death. The real property is sold while the mother is alive. If the son completes FTB Form 593-G showing zero percentage of current ownership, no withholding is required on the proceeds due to the son's ownership interest. The mother is the owner of all of the property and is subject to the withholding requirements.

(4) Sale of Multiple Parcels. Sales of multiple parcels within the same escrow agreement constitute one transaction for purposes of determining the withholding requirements under this regulation. Withholding is required where the total sale price of all properties exceeds \$100,000 even though the sale price of each separate parcel in the transaction is under \$100,000.

Example: Parcel A is sold for \$50,000. Parcel B and Parcel C are sold for \$10,000 and \$60,000, respectively. All three parcels are sold within the same escrow agreement. Because the ~~total~~ sales price equals \$120,000, withholding is required.

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(5) Leaseholds/Options. The sale of a leasehold is considered a sale of a real property interest and withholding is required. Withholding is required on an option to buy real property that has been exercised where the property has been transferred by the owner.

(6) Personal Property Included in Real Estate Transaction. If personal property is included in the sales price of the real property, withholding is computed on the full amount. If the price of the personal property is stated separately in the sales contract, withholding on the personal property amount is not required.

(7) Short Sale Transactions. Real property sold for less than the amount owed on the mortgage is not excluded from withholding, unless the seller/transferor qualifies under the requirements of FTB Form 593-G. The parties must arrange to cover payment of the withholding.

~~(h) FTB Form 593 E, Real Estate Withholding Computation of Estimated Gain or Loss. FTB Form 593 E shall contain the following information:~~

~~(1) Seller/Transferor or Transferor information, which includes the person's name and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business identification number (FEIN, California corporation number, or California Secretary of State file number) (if applicable), seller's/transferor's address, and property address.~~

~~(2) Selling price.~~

~~(3) Selling expenses.~~

~~(4) Net amount realized (selling price less selling expenses).~~

~~(5) Basis in property.~~

~~(6) Seller/transferor or transferor points paid.~~

~~(7) Depreciation.~~

~~(8) Other decreases in basis.~~

~~(9) Total decreases to basis (total of points paid, depreciation, and other decreases in basis).~~

~~(10) Total decreases to basis, less basis in property.~~

~~(11) Cost of additions and improvements.~~

~~(12) Other increases to basis.~~

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~~(13) Total increases to basis (total of additions/improvements and other increases to basis).~~

~~(14) Adjusted basis (total increases to basis plus total decreases to basis).~~

~~(15) Suspended passive activity losses from the property.~~

~~(16) Total of adjusted basis and suspended passive activity losses from the property.~~

~~(17) Estimated gain or loss on sale (total of adjusted basis and suspended passive activity losses from the property, less the net amount realized (selling price less selling expenses)).~~

~~(18) A check box to indicate one of the following withholding calculations for the optional gain on sale alternative withholding calculation election: an individual, non-California partnership, corporation, bank and financial corporation, S corporation, or financial S corporation.~~

~~(19) Total amount based on the gain on sale election.~~

~~(20) Total sales price withholding amount.~~

~~(21) The name and dated signature of the seller/transferor.~~

~~(22) The name and dated signature of the seller's/transferor's spouse/RDP.~~

~~(i) FTB Form 593-C, Real Estate Withholding Exemption Certificate. FTB Form 593-C shall contain the following information:~~

~~(1) Seller/Transferor or Transferor information, which includes the person's name (business or individual, as applicable) and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business name (if applicable), business identification number (FEIN, California corporation number, or California Secretary of State file number), seller's/transferor's or transferor's address, ownership percentage, and property address.~~

~~(2) A check box indicating one of the following reasons the seller/transferor or real estate sale transaction is exempt from California withholding requirements:~~

~~(A) The property qualifies as the seller's/transferor's (or decedent's, if sold by the decedent's estate or trust) principal residence within the meaning of Internal Revenue Code section 121.~~

~~(B) The seller/transferor (or decedent, if sold by the decedent's estate or trust) last used the property as the seller's/transferor's (decedent's) principal residence within the meaning of IRC section 121 without regard to the two-year time period.~~

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~~(C) — The seller/transferor has a loss or zero gain for California income tax purposes on this sale.~~

~~(D) — The property is being compulsorily or involuntarily converted, and the seller/transferor or transferor intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC section 1033.~~

~~(E) — The transfer qualifies for nonrecognition treatment under IRC section 351 (transfer to a corporation controlled by the transferor) or IRC section 721 (contribution to a partnership in exchange for a partnership interest).~~

~~(F) — The seller/transferor is a corporation or LLC (classified as a corporation for federal and California income tax purposes) that is either qualified through the Secretary of State or has a permanent place of business in California.~~

~~(G) — The seller/transferor is a California partnership or a partnership qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a single member LLC that is disregarded for federal and California income tax purposes).~~

~~(H) — The seller/transferor is a tax exempt entity under California or federal law.~~

~~(I) — The seller/transferor is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.~~

~~(3) — A check box indicating one of the following reasons the seller/transferor or real estate sale transaction may partially or fully exempt the sale from California withholding requirements:~~

~~(A) — The transfer qualifies as a simultaneous like-kind exchange within the meaning of IRC section 1031.~~

~~(B) — The transfer qualifies as a deferred like-kind exchange within the meaning of IRC section 1031.~~

~~(C) — The transfer of this property is an installment sale where the buyer/transferee is required to withhold on the principal portion of each installment payment.~~

~~(4) — The name and dated signature of the seller/transferor.~~

~~(j)(h)~~ FTB Form 593, Real Estate Withholding Statement. FTB Form 593 shall contain the following information:

(1) A check box indicating whether the form is filed as an amended FTB Form 593.

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(2) Withholding Agent Remitter information, which includes a checkbox to indicate one of the following types of remitters: an escrow/title company, an accommodator/intermediary, a buyer/transferee, or other type of remitter, the business name, business identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), ~~contact individual name (if applicable) at the business, and withholding agent's remitter's address, and telephone number.~~

(3) Seller/Transferor or Transferor information, which includes a checkbox to indicate whether the seller/transferor is a grantor or nongrantor trust (if applicable), the person's name and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business/nongrantor trust name (if applicable), business identification number (FEIN, California corporation number, or California Secretary of State file number), seller's/transferor's or transferor's address, ownership percentage, and property address.

(4) Buyer/transferee information, which includes the person's name and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business name (if applicable), business identification number (FEIN, California corporation number, or California Secretary of State file number), buyer's/transferee's address, and telephone number.

~~(4)~~(5) Escrow or Exchange Information, consisting of the following:

(A) Escrow or exchange number.

(B) Month, day, and year of the transfer, exchange completion, failed exchange, or installment payment.

(C) Sales price, amount of failed exchange.

(D) A check box to indicate one of the following transaction types: conventional sale or transfer; installment sale ~~payment~~; boot; or failed exchange.

(E) Installment Agreement Terms, which includes the principal amount of the promissory note, installment amount, interest rate, and repayment period in number of months.

(F) Deferred Exchange Terms, which includes the exchange amount, and boot amount.

(6) Real Estate Withholding Exemption Information. A check box indicating one of the following reasons the seller/transferor or real estate sale transaction is fully or partially exempt from California withholding requirements, or that no exemptions apply.

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(A) The property qualifies as the seller's/transferor's (or decedent's, if sold by the decedent's estate or trust) principal residence within the meaning of Internal Revenue Code section 121.

(B) The seller/transferor (or decedent, if sold by the decedent's estate or trust) last used the property as the seller's/transferor's (decedent's) principal residence within the meaning of IRC section 121 without regard to the two-year time period.

(C) The seller/transferor has a loss or zero gain for California income tax purposes on this sale.

(D) The property is being compulsorily or involuntarily converted, and the seller/transferor ~~or transferor~~ intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC section 1033.

(E) The transfer qualifies for nonrecognition treatment under IRC section 351 (transfer to a corporation controlled by the transferor) or IRC section 721 (contribution to a partnership in exchange for a partnership interest).

(F) The seller/transferor is a corporation or LLC (classified as a corporation for federal and California income tax purposes) that is either qualified through the Secretary of State or has a permanent place of business in California.

(G) The seller/transferor is a California partnership or a partnership qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a single member LLC that is disregarded for federal and California income tax purposes).

(H) The seller/transferor is a tax-exempt entity under California or federal law.

(I) The seller/transferor is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.

(J) The transfer qualifies as a simultaneous like-kind exchange within the meaning of IRC section 1031.

(K) The transfer qualifies as a deferred like-kind exchange within the meaning of IRC section 1031.

(L) The transfer of this property is an installment sale where the buyer/transferee is required to withhold on the principal portion of each installment payment.

(M) No exemptions apply.

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(7) Computation of Estimated Gain or Loss.

- (A) Selling price.
- (B) Selling expenses.
- (C) Net amount realized (selling price less selling expenses).
- (D) Basis in property.
- (E) Seller/transferor points paid.
- (F) Depreciation.
- (G) Other decreases in basis.
- (H) Total decreases to basis (total of points paid, depreciation, and other decreases in basis).
- (I) Total decreases to basis, less basis in property.
- (J) Cost of additions and improvements.
- (K) Other increases to basis.
- (L) Total increases to basis (total of additions/improvements and other increases to basis).
- (M) Adjusted basis (total increases to basis plus total decreases to basis).
- (N) Suspended passive activity losses from the property.
- (O) Total of adjusted basis and suspended passive activity losses from the property.
- (P) Estimated gain or loss on sale (total of adjusted basis and suspended passive activity losses from the property, less the net amount realized (selling price less selling expenses)).
- (Q) A check box to indicate one of the following withholding calculations for the alternative withholding calculation election: an individual, trust, non-California partnership, corporation, bank and financial corporation, S corporation, or financial S corporation.
- (R) Total amount based on the gain on sale election.
- (S) Sales price withholding amount.

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~~(8) (D)~~ Withholding Calculation and Amount of Withholding. A check box to indicate one of the following withholding calculations: ~~total sales price method~~; or alternative withholding calculation optional gain on sale election (with special check boxes) for an individual, trust, non-California partnership, corporation, bank and financial corporation, S corporation, or financial S corporation, amount of payment (sales price, installment payment, boot, or failed exchange), and the amount withheld from the seller/transferor.

~~(5)~~ Amount withheld from the seller/transferor.

~~(6)~~(9) The dated signature of the seller/transferor.

~~(7)~~(10) The dated signature of the seller's/transferor's spouse/RDP.

~~(8)~~ The name and telephone number of the preparer and title/escrow business.

~~(k)~~(i) FTB Form 593-V, Payment Voucher for Real Estate Withholding. FTB Form 593-V shall contain the following information:

(1) A check box to indicate how FTB Form 593 was submitted, by one of two methods (electronic or paper).

(2) Total number of FTB Forms 593 submitted.

(3) Withholding Agent Remitter information, which includes the business or individual name (not both), business identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), ~~contact name at the business~~, telephone number, and withholding agent's remitter's address.

(4) Amount of payment submitted with FTB Form 593-V.

~~(l)~~ FTB Form 593-I, Real Estate Withholding Installment Sale Acknowledgement. FTB Form 593-I shall contain the following information:

~~(1)~~ Buyer/transferee information, which includes the person's name and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business name (if applicable), business identification number (FEIN, California corporation number, or California Secretary of State file number), buyer's/transferee's address, and telephone number.

~~(2)~~ Seller/Transferor or Transferor information, which includes the person's name and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business name (if applicable), business identification number (FEIN, California corporation number, or California Secretary of State file number), seller's/transferor's or transferor's address, installment withholding percent (applied to all installment payments), and property address.

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~~(3) Installment Agreement Terms, which includes the principal amount of the promissory note, the installment payment amount, the interest rate percentage, and the repayment period (stated in number of months).~~

~~(4) The name and dated signature of the buyer/transferee.~~

~~(5) The name and dated signature of the buyer's/transferee's spouse/RDP.~~

Note: Authority cited: Section 19503, Revenue and Taxation Code.  
Reference: Section 18662, Revenue and Taxation Code.

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