

Regulation Section 18662-1 is amended to read:

§ 18662-1. Persons Subject to Withholding RequirementsWithholding at Source-
Generally.

Every individual who is a resident of or has a place of business in this State, or subject to the jurisdiction of the laws of this state, and every bank located within the limits of this State, and every partnership, corporation, including a nonprofit organization, joint stock company or association, insurance company or Massachusetts trust, organized under the laws of or having a place of business in this State, or subject to the jurisdiction of the laws of this State, in whatever capacity acting, (including leasees or mortgagors of real or personal property, fudiciaries, employers and any officer or department of this State or any political subdivision or agency of this State, or any city organized under a freeholders charter, or any political body not a subdivision or agency of this State) having the control, receipt, custody, disposal, or payment of income of the character described in Reg. 18662-2 derived from sources within this State by individuals who are nonresidents of this State must withhold from such income as provided in Reg. 18662-2 and transmit to the Franchise Tax Board the amount of tax specified in Reg. 18662-3 at the time and place specified in Reg. 18662-8.

(a) Types of Withholding

(1) Generally. California law requires withholding from certain payments and payment of those withheld amounts to the State. This regulation covers only withholding at source, and does not apply to wage withholding, withholding on non-U.S. partners, or withholding orders for delinquent taxes.

(2) Withholding Tax on Wages. Withholding taxes on wages is required by Division 6 of the California Unemployment Insurance Code (Sections 13000, et. seq.) and is administered by the Employment Development Department. See Revenue and Taxation Code section 18632. These regulations do not cover withholding taxes on wages.

(3) Withholding Orders for Delinquent Taxes. Withholding Orders for Delinquent Taxes may be issued pursuant to Revenue and Taxation Code section 18670 and the Code of Civil Procedure relating to involuntary collection, levies and wage garnishments. These regulations do not cover withholding orders for delinquent taxes.

(4) Non-US Partners. California conforms to federal law (Internal Revenue Code section 1466) with respect to withholding on allocable shares of California source income effectively connected to a California trade or business. See Revenue and Taxation Code section 18666. These regulations do not cover non-U.S. partner withholding. See Treasury Regulations sections 1.1446-0, et. seq., and IRS Publication 515.

(5) Interagency Intercept Program. Government Code section 12419.5 authorizes the State Controller's office to collect money that is due to one state agency by an individual by deducting the amount from credits due to such individual by another state agency. This procedure is called an interagency intercept. An amount owed to an individual by the State may be for a refund of tax, license, or fee; payment for services received or materials purchased. These regulations do not cover interagency intercepts.

(b) Withholding at Source.

(1) Generally. Non-wage withholding is administered by the Franchise Tax Board under Article 5 of Chapter 2 of Part 10.2, Revenue and Taxation Code sections 18661, et. seq. Subject to the exceptions and definitions below, withholding of tax at the source is required from payments derived from California sources, in the case of specified payments or distributions to individuals and corporations and other business entities, or where the payee has failed or refused to provide a valid Taxpayer Identification Number, and is also required from the proceeds of sale of any California real property, unless specific exceptions apply, or where the Franchise Tax Board has notified the payor to withhold.

(2) Real Estate Withholding. Withholding at source is required from the proceeds of the sale of California real property by both residents and nonresidents of California, and from business entities without a permanent place of business in California, unless certain exceptions are met. See Revenue and Taxation Code section 18662, subdivision (e), and Regulation section 18662-3.

(3)(A) Withholding on Payments. Withholding at source is required from payments made to nonresident individuals, nonresident estates and trusts, and business entities, including corporations, partnerships and limited liability companies, that do not have a permanent place of business in California and are not registered through the California Secretary of State. Withholding is also required for certain payments where the recipient is unknown or unidentified or fails or refuses to provide a valid Taxpayer Identification Number.

(B) Cross-References. See Regulation section 18662-4 for general rules applicable to withholding on payments, and Regulation section 18662-5 for rules relating to payments made to nonresident independent contractors and payments of rents and royalties to nonresidents. See Regulation section 18662-6 for withholding relating to entertainment payments. See Regulation section 18662-7 for payments made to nonresidents (U.S.) by pass-through entities, including partnerships, S corporations and limited liability companies. See Chapter 11 of Part 10 of the Revenue and Taxation Code (sections 17951-17955) and applicable regulations for rules relating to determination of gross income from sources within this state.

(4) Credits for Tax Withheld. See Revenue and Taxation Code section 19002 and Regulation section 19002 for the timing and application of credits of withheld amounts.

(5) Reporting and Remitting Withholding. Rules applicable to the process of reporting and remitting withholding to the Franchise Tax Board are set forth in Regulation section 18662-8.

(c) Other Withholding Required After Notification. In the case of payments of items of income not specified in this regulation, and in the case of persons not making payments of the items of income specified in this regulation but having the control, receipt, custody or disposal of such income, withholding of tax at source is required when such person or entity is notified by the Franchise Tax Board or a duly authorized representative thereof to withhold tax from such income, including notification by the Franchise Tax Board in annual forms and instructions.

(d) Effective Date. These regulations reflect Franchise Tax Board procedures relating to the form and manner of payment authorized by Revenue and Taxation Code section 19005 for withholding from payments made on and after January 1, 2008. The regulations shall be effective on the 30th day after the date of filing with the Secretary of State as provided in Government Code section 11343.4.

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