

Regulation Section 18662-2 is amended to read:

§ 18662-2. Income Subject to Withholding and Requirements for Withholding Definitions.

(a) Items of Income. The items of income subject to withholding are interest, dividends, rent, prizes and winnings, premiums, annuities, emoluments, compensation for personal services, and other fixed or determinable annual or periodical gains, profits and income. For purposes of withholding, the term "income" includes all payments or receipts that are included in the information return reporting requirements of Article 4 of Chapter 2 (sections 18631, et. seq., and federal provisions incorporated by reference) of the Revenue and Taxation Code. ~~Withholding of tax at the source is required in the case of payments to nonresidents of compensation for personal services rendered in this State, except for wages subject to withholding under Section 13020 of the Unemployment Insurance Code or exempt therefrom under Section 13009 of the Unemployment Insurance Code or exempt from state withholding under federal law. Withholding at source is also required in the case of rentals or royalties for the use of, or for the privilege of using in this State, patents, copyrights, secret processes and formulas, good will, trademarks, brands, franchises, and other like property of such intangible property having a business or taxable situs as defined in Regs. 17951-4 through 17951-5, 17952 and 17953 in this State, and payments of prizes, premiums, rewards, winnings, etc., to nonresidents participating, or entering cars, horses, etc. in races and other contests in this State.~~

~~In the case of payments to nonresidents of items of income not specified in the second paragraph of this regulation and in the case of persons not making payments to nonresidents of the items of income specified in the first paragraph of this regulation but having the control, receipt, custody or disposal of such income, withholding of tax at source is required when the person subject to withholding as specified in Reg. 18662-1 is notified by the Franchise Tax Board or a duly authorized representative to withhold tax from such income.~~

~~Compensation for personal services includes wages, salaries and any other remuneration such as, for example, payment of expenses of nonresident employees for services rendered in this State, commissions paid to nonresident salesmen or agents for orders received on sales made in this State, fees for professional services rendered here by nonresidents, and payments to nonresident actors, singers, performers, entertainers, wrestlers, boxers, etc., for performances in this State. Compensation for personal services includes payments to independent contractors, such as leaders, managers, or owners of bands, orchestras, dance teams, circuses, and similar groups of artists, entertainers or performers pursuant to contracts under which such leaders, managers or owners agree to furnish the services of their bands, orchestras, teams, circuses, or other groups within this State.~~

~~Withholding pursuant to this regulation is not required unless and until income payments with respect to each payee by the same payor either exceed \$1,500 during the calendar year or the payor is directed to withhold by the Franchise Tax Board.~~

(b) Payee. The term "payee" means the person, including for this purpose corporations, partnerships, fiduciaries and state officers, agencies or political subdivisions, that receives items of income from a payor. It also includes partners, beneficiaries, shareholders or members that receive payments or distributions from a pass-through entity, estate or trust.

(c) Payor. The term "payor" means the person, including for this purpose corporations, partnerships, fiduciaries and state officers, agencies or political subdivisions, that pays an item of income or makes a distribution to a payee.

(d) Withholding Agent. The term "withholding agent" means the person, including for this purpose corporations, partnerships, fiduciaries and state officers, agencies or political subdivisions, 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 pay such amounts over to the Franchise Tax Board.

(e) Partnership. The term "partnership" has the same meaning as defined in Revenue and Taxation Code section 17008. For purposes of withholding, both limited liability companies classified as partnerships and limited liability partnerships are treated as partnerships under Regulation sections 18662-0 through 18662-8.

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

(g) Transferee. The term "transferee" of real property includes the buyer of the property, within the meaning of Revenue and Taxation Code section 18662, subdivision (e), and the escrow person or agent, title agent or exchange accommodator where the context so requires.

(h) Transferor. The term "transferor" of real property includes the seller of the property, within the meaning of Revenue and Taxation Code section 18662, subdivision (e), and the escrow person or agent, title agent or exchange accommodator where the context so requires.

(i) Real Estate Escrow Person. The term "real estate escrow person" is defined in Revenue and Taxation Code section 18662, subdivision (e)(6), as the person, including 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.

(j) Buyer. A buyer includes the buyer or any other transferee of property.

(k) Seller. A seller includes the seller or any other transferor of property.

(l) California Business Entity. A California business entity is any business entity (as defined in Revenue and Taxation Code section 23038 and applicable regulations, including general corporations, S corporations, limited liability companies, partnerships, associations, joint ventures, disregarded entities, estates, trusts and various foreign entities) that is incorporated, organized, or formed, and existing, under the laws of this state or is qualified through the Office of the Secretary of State to transact intrastate business. A corporation which 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 this state only if it maintains an office in this state that is permanently staffed by its employees.

(m) Non-California Business Entity. A non-California business entity is a business entity (as defined in Revenue and Taxation Code section 23038 and applicable regulations, including general corporations, S corporations, limited liability companies, partnerships, associations, joint ventures, disregarded entities, estates, trusts and various foreign entities) that is not incorporated, organized, or formed in California, not qualified to do business in California, not registered with the California Secretary of State, or does not continue to have a permanent place of business in California throughout the tax year.

(n) California Resident. The term "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. Generally, an individual who comes to California for a purpose extending over a long or indefinite period will be considered a resident. An individual who comes to perform a particular contract of short duration will be considered a nonresident. See Revenue and Taxation Code section 17014 and Regulation section 17014.

(o) Nonresident Estates and Trusts. For withholding purposes, 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. Estates or trusts not establishing that they meet these requirements are treated as nonresident estates or trusts.

(p) California Real Estate. California real estate is real property located in California and includes ownership interests such as fee simple interests, life estates, reversions, remainders, and perpetual easements. It also includes any previously created rights to possession or use for all or part of any particular year (for example, a leasehold, easement, or timeshare), if such rights have a remaining term of at least 30 years, including any period for which the holder may renew such rights, determined as of the

date of closing. For example, a preexisting leasehold on a building with an original term of 99 years and a remaining term of 35 years on the closing date is an ownership interest; however, if the remaining term is 10 years, it is not an ownership interest. For purposes of Regulation sections 18662-0 through 18662-8, an ownership interest does not include any option to acquire real estate.

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