

Regulation section 18662-4 is amended to read:

§ 18662-4. Withholding of Delinquent Taxes Due from Both Resident and Nonresident Taxpayers. Withholding on Payments (Nonresident Withholding) – General.

~~In addition to withholding from payments of income to nonresident taxpayers in accordance with the requirements of Regs. 18662-1 to 18662-4, the individuals, firms and companies mentioned in Reg. 18662-1 must, upon notice and demand from the Franchise Tax Board or its authorized representatives, withhold from any credits or other personal property or other things of value due any individual, estate or trust, the amount of any tax due under the law from such individual, estate or trust. Furthermore, effective May 30, 1957, firms and companies mentioned in Reg. 18662-1 must, upon notice and demand, withhold from any credits or other things of value the amount of any liability incurred by any person for his failure to withhold upon notice and demand amounts due under the law from a taxpayer. The amounts so withheld must be transmitted to the Franchise Tax Board immediately.~~

(a) Nonresident Individuals and Non-California Business Entities, Rates and De Minimis Amounts.

(1) Nonresident Individuals and Non-California Business Entities. With the exception of withholding on the proceeds of the sale of certain real estate, (see section 18662-3), and backup withholding for unidentified payees, withholding at source is required only with respect to payments to nonresident individuals and non-California business entities. Withholding on payments to resident individuals and California business entities is optional, but if withholding at source is done, it must be done according to the rules applicable to mandatory withholding.

(2) De Minimis Amounts. Withholding is optional, at the discretion of the withholding agent, on the first \$1,500 paid for the tax year.

(3) Rate. The withholding rate is seven percent of the gross payment or distribution amount.

(4) Cross-references. See Regulation sections 18662-5 (non-wage payments), 18662-6 (entertainers and athletes), and 18662-7 (pass-through entities) for specific requirements.

(b) Exceptions. Generally, withholding at source is optional on payments:

(1) To California Resident Individuals, as defined in Regulation section 18662-2. Withholding agents may use reasonable methods to determine the California residency of payees.

Example #1: Withholding agents may send their payees a Withholding Exemption Certificate. Payees may use this form to certify their residency status, but a certificate is only valid if payees include their taxpayer identification number.

Example #2: Withholding agents can rely on a California street address as an indication of a payee's residency status. If the payee has a California street address, no withholding is required and an exemption certificate is not needed to verify residency status, if the withholding agent reasonably believes such address is not merely a forwarding address. A valid California street address does not include a California Post Office Box, or an "in care of" address. If a change of address occurs, the withholding agent must reevaluate the payee's residency status.

(2) To California Business Entities, as defined in Regulation section 18862-2, that are in good standing.

If a non-California business entity payee is doing business in California, and is earning California source income, withholding is required unless the payee meets an exemption to withholding.

If a corporate payee is not qualified with the Office of the Secretary of State and does not have a permanent place of business in this state, but is a member of a combined report filed under Regulation section 25106.5 and included in a group return filed pursuant to that regulation, the key corporation is treated as a guarantor and surety for the other members, so that the corporate payee is deemed to be a California Business Entity.

The following are examples of methods the Franchise Tax Board will consider reasonable for withholding agents to rely on in determining if a corporation has a permanent place of business in California or is qualified to do business in this state for purposes of these withholding regulations:

Example #1: Withholding agents may rely on a completed Withholding Exemption Certificate. A completed certificate, showing the payee's taxpayer identification number and stating that the corporation has a permanent place of business in California (or is included in a group return with a California key corporation), protects the withholding agent from penalties for failure to withhold, unless the withholding agent has actual knowledge that the statement is false.

Example #2: If a corporation is currently incorporated in California or qualified to do business in California with the Office of the Secretary of State, it is a California Business Entity for withholding purposes. Withholding agents can determine if a corporate payee is a California corporation in good standing or qualified to do business in this state by contacting the Office of the Secretary of State.

(3) To Tax Exempt Organizations that are exempt either under California or federal law.

An organization is an exempt organization for withholding purposes if it meets the requirements of Chapter 4 of Part 11 of the Revenue and Taxation Code (commencing with section 23701) or Subchapter F of Chapter 1 of Subtitle A of the Internal Revenue Code (commencing with section 501).

(4) To California Estates and Trusts, as defined in Regulation section 18662-2.

(5) Where the payee is a bank or banking association.

(6) Payments for goods.

(7) Payment for services provided by a nonresident that were not performed in California.

(8) From intangible personal property, such as interest or dividends, unless the property has acquired a business situs in California or the payee has failed or refused to provide a valid taxpayer identification number. See Regulation section 18662-5 for a discussion of business situs.

(9) Compensation from a motor carrier providing transportation in two or more states, subject to section 11504(b) of Title 49 of the United States Code.

(10) Wages paid to employees. However, wages are subject to wage withholding. Employee wage withholding is covered by the Unemployment Insurance Code and administered by the Employment Development Department.

(11) Payments made to a nonresident corporate director for director's services. However, information returns for nonresident corporate directors for director's services must be filed in accordance with Revenue and Taxation Code section 18622, subdivision (h)(1). Nonresident directors must file California tax returns if they otherwise meet return filing requirements, or may elect to be included in a group return pursuant to Revenue and Taxation Code section 18536.

(12) From income from qualified investment securities excluded from taxable income of a nonresident or part-year resident under RTC section 17955.

(13) From income from intangibles, including stocks, bonds notes or other intangibles excluded from taxable income of a nonresident or part-year resident under RTC section 17952 and the regulations thereunder.

(c) Individuals and Entities Specifically Subject to Withholding.

(1) Nonresident individuals.

(2) Non-California Business Entities as defined in Regulation section 18662-2.

(3) Nonresident Estates and Trusts.

(4) Individuals and entities that fail or refuse to provide identifying information, generally where backup withholding is required under the provisions of Internal Revenue Code section 3406, et. seq.

(5) Suspended or forfeited corporations.

(d) Withholding Exemption Certificates.

(1) General. Where the payee otherwise properly certifies that it meets the requirements for an exemption under a Withholding Exemption Certificate, or the nonresident or withholding agent has received written authorization from the Franchise Tax Board waiving the withholding requirement, no withholding is required.

(2) Incomplete or Invalid Exemption Certificates. An incomplete certificate is invalid and the withholding agent should not accept it. If the withholding agent receives an incomplete certificate, the withholding agent is required to withhold tax on payments made to the payee until a valid certificate is received. In lieu of a completed certificate on the preprinted form, the withholding agent may accept as a substitute certificate a letter from the payee explaining why the payee is not subject to withholding. The letter must contain all the information required on the certificate in similar language, including the under penalty of perjury statement and the payee's taxpayer identification number. The withholding agent may accept facsimiles or photocopies of the withholding forms.

(3) California Address. Withholding agents may accept a complete certificate when an individual certifies residency but does not show a California address, unless the withholding agent believes the certification is fraudulent. The Franchise Tax Board may provide procedures for retaining and/or filing certificates by forms and instructions. Whether or not a copy of the certificate is required to be filed, the withholding agent must retain a copy of the certificate or substitute for at least five years after the last payment to which the certificate applies, and provide it upon request to the Franchise Tax Board.

(4) False Certificate. A withholding agent who knowingly accepts a false certificate and fails to withhold is subject to the liabilities and penalties relating to failure to withhold. The certification does not need to be renewed annually. The certification remains valid until the payee's status changes. The withholding agent should evaluate the need for securing a new certificate when any indication of a change in residency status occurs, such as a change of address, etc.

(e) Information Returns Also Required. Even though withholding at source may be required, any information return required under any other provision of law is also required. The Franchise Tax Board may provide the form and manner of filing withholding statements and information returns by forms and instructions, including circumstances where they may be filed together on a single document or may be filed electronically.

(f) Waivers and Reduced Amounts. In some cases, the Franchise Tax Board will authorize a waiver or reduced withholding amount.

(1) Waivers. In general, the payee must show either that a specific exemption to withholding applies or that the payee has a history of timely filing and payment. Waivers may also be requested in the manner provided in forms and instructions where the payee is a newly-admitted partner, member or S Corporation shareholder, a member of a combined report electing to be included in a California group return with a key corporation within the meaning of Regulation section 25106.6(b)(13) and (14), or in unique circumstances where withholding would not be administratively practical. Requests for waivers must be submitted before the payment is made so the Franchise Tax Board can issue a determination letter before the withholding is due. Requests shall be made in the form and manner that the Franchise Tax Board shall provide by forms and instructions. Withholding is required unless the Franchise Tax Board issues a determination letter authorizing a waiver.

(2) Request for Reduced Withholding Amount. Payees in some circumstances can request a reduced withholding amount to reflect expenses and costs or other special circumstances that would justify a reduced amount. Requests shall be made in the form and manner that the Franchise Tax Board shall provide by forms and instructions.

(g) Requirement to File a California Return. Withholding does not relieve the taxpayer of the obligation to file a California return. For individuals, a California return is required if a nonresident individual has any income from California sources and has any California tax liability. (See Revenue and Taxation Code section 18501.) Business entities must file returns if they are subject to franchise or income tax, are doing business in California, or have any California source income for the year. No refund or credit of withholding can be made to an individual or entity that fails to file a tax return for the year. (See Revenue and Taxation Code section 19307.)

(h) Suspended and Forfeited Corporations. Withholding is required from any payment to a suspended or forfeited corporation, if the payee has knowledge of, or has reason to know of, the suspension or forfeiture.

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