

Regulation section 18662-8 is amended to read:

§ 18662-8. Time and Place for Filing Returns of Tax Withheld Reporting and Remitting Amounts Withheld.

~~If a Notice to Withhold has been issued for a particular engagement, tax withheld shall be remitted by the 20th day of the month following the month of the close of that engagement. In such cases, the original copy of the Notice to Withhold will serve as a Return of Tax Withheld at Source (Form 592) as well as the Statement of Tax Withheld at source (Form 591). Remittance shall then be made to the office of the Franchise Tax Board which issued the notice to Withhold at Source.~~

~~When a Notice to Withhold is not issued, a Return of Tax Withheld at Source (Form 592) is due on the 20th day of the month following the month in which the total amount withheld during the calendar year and not remitted exceeds \$2,500. Any amounts withheld and not previously remitted because the total did not exceed \$2,500 must be submitted by January 31 following the close of the calendar year. In all cases when a Notice to Withhold has not been issued, Returns of Tax Withheld at Source (Form 592) together with Copy A of the Statement of Tax Withheld at Source (Form 591) shall be remitted to the Franchise Tax Board, Sacramento, CA 95867.~~

(a) General. The Franchise Tax Board shall prescribe annual forms and instructions for the reporting and remitting of withholding amounts.

(b) Real Estate Withholding.

(1) Payment Due Dates and Form. Real estate withholding is due by the 20th day of the calendar month following the month escrow closes. For example, if escrow closes on January 3d, payment is due on or before February 20th. If February 20th falls on a weekend or holiday, the payment may be remitted on the next business day without penalty. Payment or withholding on Section 1031 like-kind exchanges is due on the 20th day of the calendar month following the month in which the exchange was completed or failed. For simultaneous exchanges, the exchange is completed in the month escrow closed. For deferred exchanges, the exchange is completed in the month the last leg of the exchange is completed. For failed exchanges, the exchange failed in the month when the proceeds were distributed to the seller after a determination that that the exchange would not meet the IRC section 1031 exchange requirements. Remittance shall be in the form and manner as the Franchise Tax Board may annually prescribe in forms and instructions.

(2) Reporting.

(A) In General. Real estate withholding should be reported to the Franchise Tax Board either by paper form for paper payments (where allowable) or electronically along with the remittance, according to procedures annually announced by the Franchise Tax Board for information returns.

(B) Information Returns. An information return shall be provided to the payee aggregating all withholding for the calendar year by January 31st of the year following the calendar year, and may be required to be filed with the

Franchise Tax Board, in the form and manner that the Franchise Tax Board may prescribe in forms and instructions. The payee may be required to attach a copy of the information return to the appropriate tax return to be filed with the Franchise Tax Board in order to claim a credit for the withheld amount.

(c) Withholding From Payments.

(1) Payment Due Dates. Withholding on payments is due under the same schedule as required for calendar year estimated tax. Withholding from payments made January 1st through March 31st is due April 15th. For payments made April 1st through May 31st, June 15th; June 1st through August 31st, September 15th; and September 1st through December 31st, January 15th of the next year. Remittance shall be in the form and manner as the Franchise Tax Board may annually prescribe in forms and instructions, either electronically or by paper check.

(2) Foreign Partners – Due Dates. California follows federal procedures for foreign partners. (See Regulation section 18662-2.) Therefore, the due dates for payments are the same as the federal due dates, as prescribed in federal regulations, forms and instructions.

(3) Reporting.

(A) In General. Withholding on payments should be reported to the Franchise Tax Board either by paper form for paper payments (where allowable) or electronically along with the remittance according to procedures annually announced by the Franchise Tax Board for information returns. The name and Taxpayer Identification Number (TIN) of each payee should be provided so that the payment can be properly posted to the payee's account. The Franchise Tax Board may by forms and instructions prescribe how to report withholding where the payee fails to provide a TIN, or has applied for a TIN and has not yet received it at the time the withholding must be remitted.

(B) Information Returns. An information return shall be provided to the payee aggregating all withholding for the calendar year by January 31st of the year following the calendar year, and may be required to be filed with the Franchise Tax Board, in the form and manner that the Franchise Tax Board may prescribe in forms and instructions. The payee may be required to attach a copy of the information return to the appropriate tax return to be filed with the Franchise Tax Board in order to claim a credit for the withheld amount.

(4) Electronic and Magnetic Media Requirements. Payments and reports shall be made electronically as required by the Franchise Tax Board in annual forms and instructions. Any reference to forms or payments in these regulations shall be deemed to refer to corresponding electronic filings and payments where appropriate.

(5) Amended Reports and Payments. If a withholding agent discovers that an amount was withheld in error, for example, if amounts were withheld and remitted even though the payee was properly certified to be exempt from withholding, the withholding agent may file an amended or corrected report showing the proper amount of withholding on the payment and either make an additional remittance or request a refund or credit of the erroneously withheld amount to be refunded or credited either to the withholding agent or to the payee, as appropriate. If the withholding agent requests that the erroneously withheld amount be retained as a credit against the withholding agent's future withholding obligations (in cases where the withholding agent certifies that the withholding agent has repaid the erroneously withheld funds to the payee), FTB will retain the withholding amount in the name of the withholding agent, who can then apply the excess withholding on a later quarterly remittance as a prior payment. FTB shall supply forms and instructions for corrected reports and payments.

(d) Interest and Penalties.

(1) Interest. Revenue and Taxation Code section 18668, subdivision (b), allows the Franchise Tax Board to compute and assess interest on any amount not paid on or before the due date required by regulations, at the rate established pursuant to Revenue and Taxation Code section 19521, computed from the due date to the date paid. This interest is not a penalty, but compensation for the use of the funds from the date the withheld funds were due to the date remitted.

(2) Penalties.

(A) Information Return Penalties. Revenue and Taxation Code section 19183 incorporates numerous federal information return penalties by reference. Withholding remittance statements and payee statements are information returns, and so failures to file those returns may subject the withholding agent to information return penalties.

(B) Liability of Withholding Agent for Unpaid Withholding. Revenue and Taxation Code section 18668, subdivision (a), provides that a withholding agent is liable for the amount that should have been withheld.

(C) Special Rules for Real Estate Withholding.

1. Real Estate Notification and Withholding Penalties. The penalty for not properly notifying buyers is the greater of \$500 or 10 percent of the required withholding. The penalty for failing to withhold is the greater of \$500 or 10 percent of the required withholding. If the failure to withhold was due to reasonable cause, the Franchise Tax Board will withdraw the penalty.

2. Real Estate Information Return Penalties. A \$15 penalty may be imposed if withholding agents file a correct Real Estate Information Return within 30 days after the due date. The penalty is \$50 if a correct

Real Estate Information Return is filed more than 30 days after the due date or if a correct Real Estate Information Return is never filed.

If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding. The penalty is for each Real Estate Information Return Form that the withholding agent does not file correctly before the due date.

A \$50 penalty can be imposed if the withholding agent does not provide the sellers with correct copies of Real Estate Information Returns by the due date. If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding. The penalty is for each Real Estate Information Return that is not furnished. A Real Estate Information Return is considered correct when all applicable fields are completed, the information is correct, and the correct version of the form is used. The pre-printed year must match the calendar year the transaction occurred. For sales, this is the year escrow closed. For installment payments, this is the year of the installment payment. For exchanges, this is the year the last leg of the exchange was completed or when it was determined that the exchange would not meet the Internal Revenue Code section 1031 requirements and any cash or cash equivalent was distributed to the seller. If the seller knowingly executes a false exemption certificate, the penalty is the greater of \$1,000 or 20 percent of the required withholding.

(e) Coordination With Information Returns. Information returns (generally federal Forms 1099) are required to be filed in most cases where payment is sufficient to require California withholding. The Franchise Tax Board may by forms and instructions prescribe when separate information returns and withholding statements must be provided to the recipient and/or to the Franchise Tax Board, and when the withholding information may be provided on the information return.

(f) Coordination With Group Returns. Generally, withholding at source is allowed as a credit against the tax shown on a group nonresident return. See Regulation section 18662-7.

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