

**INITIAL STATEMENT OF REASONS FOR THE AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 18, SECTIONS 18662-0 THROUGH
18662-6, AND SECTION 18662-8,
RELATING TO NONRESIDENT AND REAL ESTATE WITHHOLDING**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR
CIRCUMSTANCE THAT THE PROPOSED AMENDMENTS ARE INTENDED TO ADDRESS**

Revenue and Taxation Code ("RTC") Section 18662 sets forth the general withholding requirement structure for nonresident and real estate withholding. Withholding at source is an essential part of the Franchise Tax Board's ("FTB") Tax Gap Compliance Initiative. The ultimate goal of withholding is to facilitate fair and efficient tax compliance and administration by requiring payers to remit a portion of payments due to payees directly to FTB and to pay amounts approximating the tax due with respect to the income from the payment. Thus, withholding at source benefits the state by reducing the risk that the income and resulting tax will not be reported and paid, and encourages the filing of returns to report taxable income and claim credit for the withheld amounts.

RTC Section 18662, at subdivision (a) requires the FTB to issue regulations to implement the withholding at source statutory requirements. The corresponding regulations at California Code of Regulations, Title 18 ("18 CCR"), Sections 18662-0 through 18662-6, and Section 18662-8 ("Withholding Regulations") provide more specific guidelines with respect to California's nonresident and real estate withholding procedures.

The Withholding Regulations were last amended in 2014, operative on July 1, 2014. Subsequent to these amendments, the FTB determined that the Withholding Regulations may require additional updates based on feedback from industry, taxpayers and taxpayer representatives.

FTB held a first Interested Parties Meeting ("IPM") on October 12, 2015. The purpose of the meeting was to provide the public with an opportunity to discuss and provide comments on possible amendments to the Withholding Regulations, and to suggest various technical changes to the Withholding Regulations, including changes to terminology in the current regulatory language. In addition, the purpose was to discuss possible amendments to the Withholding Regulations related to domestic pass-through entity ("PTE") withholding filing requirements. A summary of the first IPM was thereafter made available to the public. As set forth in the summary, numerous topics were discussed at this first IPM and staff took that input to produce draft proposed regulatory language.

FTB held a second IPM on July 11, 2016. The purpose of the meeting was to provide participants with an opportunity to discuss and provide comments on the draft proposed language amending the Withholding Regulations, which would make various substantive and technical changes. The summary of the second IPM was thereafter made available to the public. In addition, a background and explanations of the proposed draft language document was also made available to the public. After the second IPM, staff considered public comments and made further changes to the proposed regulatory language,

incorporating and adopting some of the suggestions made by the public and other changes as a result of further staff review of the Withholding Regulations.

SPECIFIC PURPOSE OF THE REGULATIONS

The purpose of the proposed amendments to the Withholding Regulations is to provide additional clarity and transparency for taxpayers, tax practitioners, withholding agents, and the public on the treatment of specified income subject to state withholding requirements. The proposed amendments to the Withholding Regulations will facilitate effective state tax administration by providing definitions and additional clarification regarding income subject to state withholding. The changes made by the proposed amendments to the Withholding Regulations are intended to make the nonresident and real estate withholding process simpler and less burdensome by combining and consolidating certain real estate forms to reduce the burden on the escrow industry, as it will reduce the number of forms for real estate transactions from four to one. In addition, the proposed amendments will result in a creation of new forms for certain pass-through entities that, as withholding agents, withhold tax at source on lower tier pass-through entities. Finally, the proposed amendments to the Withholding Regulations revise certain forms to make the requirements contained within those forms clearer in order to ensure that the forms are used for their intended purpose.

NECESSITY

The proposed amendments to the Withholding Regulations are set forth immediately below, with explanations describing the necessity for the suggested changes within each description.

- Section 18662-0, *Table of Contents*. The table of contents is intended to assist withholding agents, taxpayers, and the public to quickly locate the appropriate regulations for their specific need.
 - The Table of Contents has been amended by reflecting the proposed changes occurring to section and subsection titles of the Withholding Regulations. These amendments are necessary to avoid confusion in locating the applicable portion of the Withholding Regulations.
- Section 18662-1, *Withholding—Generally*. This section provides a general overview of the regulations.
 - Subsections (a)(1) and (a)(1)(C) have been revised to note that the Withholding Regulations do not cover withholding on foreign (non-U.S.) partners and members, "except with respect to the reporting on and filing of information returns and remittance of payments as set forth in Regulation sections 18662-4 and 18662-8." Previously, 18 CCR Sections 18662-4 and 18662-8 did not cover issues relating to withholding on foreign (non-U.S.) partners and members, but since both of these sections have been amended with respect to filing of information returns and remittance of payments (as set forth below), subsections (a)(1) and (a)(1)(C) have been revised to reflect

these new changes. Accordingly, these changes are necessary to identify the specific applicability of the Withholding Regulations on foreign partners and members.

- Subsection (b)(2)—which pertains to real estate withholding—has been revised by changing the phrase "California resident and nonresident individuals and non-California business entities" to "a seller/transferor," because RTC Section 18662, subdivision (e) uses the term "transferor" when referring to the seller of a California real property interest, and the term "transferor" is defined in 18 CCR Section 18662-2, subsection (y) as the "seller of the real property." Because the terms "seller" and "transferor" are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid confusion about the meaning of the previously utilized term. The reason for the interchangeable use of the terms is based on feedback from stakeholders as most taxpayers refer to the person selling a property as the "seller," whereas in statutes and regulations, sellers are typically referred to as "transferors."
- Subsection (c) in the "Example" section, has been revised by inserting the term "nonresident" in front of the term "entertainer" because the example is applicable only to "nonresident entertainers" since there is no withholding requirement for resident entertainers. This amendment is necessary to avoid confusion about the applicability of the Withholding Regulations on California resident entertainers.
- Section 18662-2. *Definitions*. This section provides definitions of the terms used in the regulations.
 - Subsection (c) has been revised by changing the term "transferor" to the term "seller/transferor" because RTC Section 18662, subdivision (e) uses the term "transferor" when referring to the seller of a California real property interest, and the term "transferor" is defined in 18 CCR Section 18662-2, subsection (y) as the "seller of the real property." Because the terms "seller" and "transferor," as noted above, are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid confusion about the meaning of the previously utilized term.
 - Subsection (v) has been revised to include a definition for the term "remitter", and prior subsections (v), (w), (x) and (y) have been renumbered as subsections (w), (x), (y) and (z), respectively. The FTB has used the term "withholding agent" broadly to refer to persons who withhold. However, in real estate transactions, the person who is responsible for withholding is the buyer, and the person who actually performs the withholding is often the real estate escrow person. Thus, a change is necessary to clarify that the remitter (typically, the escrow officer)—not the buyer/transferee—is the person responsible for sending the payment to the FTB. This proposed amendment

avoids the possibility of incorrectly imposing upon a buyer/transferee in a real estate transaction the responsibility of sending payments to the FTB, when in fact that responsibility in real estate transactions falls on the remitter (who will often be the escrow officer). The amendment also avoids confusion by renumbering subsections to reflect the proposed changes occurring to section and subsection titles of the Withholding Regulations

- Section 18662-3. *Real Estate Withholding*. This section explains the real estate withholding requirements and summarizes existing statutory requirements and administrative practice, as well as identifies the specific contents of relevant forms relating to real estate withholding.
 - FTB Form 593, Real Estate Withholding Statement, which is contained in subsection (h) has been changed to now include elements of the following forms, which will no longer exist: FTB Form 593-C, Real Estate Withholding Certificate, FTB Form 593-E, Real Estate Withholding Computation of Estimated Gain or Loss, and FTB Form 593-I, Real Estate Withholding Installment Sale Acknowledgement. This change will be effectuated by deleting previously numbered subsection (h) (FTB Form 593-E), subsection (i) (FTB Form 593-C), and subsection (l) (FTB Form 593-I), and by renumbering previously numbered subsection (j) to subsection (h) (FTB Form 593). Revised subsection (h) will now include information that was previously included in previous subsection (h) (FTB Form 593-E), subsection (i) (FTB Form 593-C), subsection (j) (FTB Form 593) and subsection (l) (FTB Form 593-I), as the FTB Form 593-C, FTB Form 593-E and FTB Form 593-I will now all be consolidated into the FTB Form 593. In addition, revised subsection (h) (FTB Form 593) will also include information pertaining to "Remitter," as defined in proposed Regulation section 18662-2, subsection (v) and as explained above under changes for Regulation Section 18662-2. Moreover, additional information will be included in the Form 593, including "ownership percentage" and "sales price," as set forth and explained herein. Finally, all references (including all corresponding or associated language accompanying such references) in Regulation Section 18662-3 to FTB Form 593-C, FTB Form 593-E, and FTB Form 593-I, have been revised and now refer to FTB Form 593 (since all of those forms were consolidated into the FTB Form 593). Without these proposed amendments, taxpayers may be confused about what form to use and file with the FTB in connection with the disposition from the sale or exchange of California real estate by California resident and nonresident individuals and non-California business entities. The decision to merge FTB Form 593-C, FTB Form 593-E and FTB Form 593-I into FTB Form 593 is for consolidation purposes as there is a significant amount of information repeated throughout these forms. This will reduce the burden on the escrow industry, as it will reduce the number of forms for real estate transactions from four to one. Moreover, this consolidation of forms will assist sellers/transferors in their real property transactions, as there will now be one form for all real estate transactions, and one voucher—rather than having four different forms depending on the type of real estate transaction. In addition,

consolidating all of the real estate forms removes the possibility that a taxpayer inadvertently fails to claim either a full or partial exemption as contemplated in Regulation Section 18662-3, subsection (d). For example, under the current Withholding Regulations, a taxpayer who otherwise may qualify under either a partial or full exemption from withholding may file the Form 593, which is the Real Estate Withholding Statement, to report the real estate transaction, but inadvertently fail to file the Form 593-C, which is the Real Estate Withholding Certificate, to be able to claim a partial or full exemption from withholding. Under the proposed amendments to the Withholding Regulations that scenario would be unlikely given that one form—the Form 593—would be used for both documenting the real estate transaction, as well as claiming an exemption from withholding under one of the specified criteria found in Regulation Section 18662-3, subsection (d). Similarly, under the current Withholding Regulations, a taxpayer is required to complete the Form 593-E, which is the Real Estate Withholding – Computation of Estimated Gain or Loss form, if they claim an exemption due to a loss or zero gain or if they elect an optional gain on sale withholding amount. A taxpayer who otherwise would qualify for an exemption based on a loss or zero gain, or who elected an optional gain on sale withholding amount, could lose exemption qualification if they only filed the Form 593, and inadvertently failed also to file the Form 593-E. The consolidation of all of these real estate withholding forms ensures taxpayers who otherwise may qualify for certain full or partial exemption from withholding will not inadvertently miss out on those exemptions. Moreover, the consolidation of these forms will reduce the burden on the escrow industry, as it will reduce the number of forms for real estate transactions from four to one, and make it more efficient for FTB to ascertain the correct withholding amounts in connection with real estate transactions, and also to determine whether any exemptions from withholding may apply. Finally, the proposed amendments to the Withholding Regulations are necessary to avoid confusion about the correct FTB Form to use in connection with the disposition from the sale or exchange of California real estate.

- Subsection (a) has been revised by changing the phrase "California resident and nonresident individuals and non-California business entities" to "a seller/transferor," because RTC Section 18662, subdivision (e) uses the term "transferor" when referring to the seller of a California real property interest, and the term "transferor" is defined in 18 CCR Section 18662-2, subsection (y) as the "seller of the real property." Given that the terms "seller" and "transferor," as noted above, are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid confusion about the meaning of the previously utilized term.
- Throughout Regulation Section 18662-3 (subsection (a), subsection (d), subsection (e), subsection (f), subsection (g), and subsection (h)), the term "seller" or "transferor" has been changed to the term "seller/transferor"

because RTC Section 18662, subdivision (e) uses the term "transferor" when referring to the seller of a California real property interest, and the term "transferor" is defined in 18 CCR Section 18662-2, subsection (y) as the "seller of the real property." Given that the terms "seller" and "transferor," as noted above, are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid confusion about the meaning of the previously utilized term..

- Throughout Regulation Section 18662-3 (subsection (a), subsection (f)(3)), the phrase "alternate withholding calculation" has been changed to the phrase "alternative withholding calculation" for consistency and clarity, as other subsections, including subsections (b) and (d)(3) already use the phrase "alternative withholding calculation." This change will avoid confusion about the meaning of the previously utilized term. Without this change, taxpayers may inadvertently be led to believe that "alternate withholding calculation" has a different legal meanings than "alternative withholding calculation" when in fact the proper phrase should be "alternative withholding calculation" throughout to ensure consistency and remove any ambiguity with respect to the meaning of the term.
- Subsection (a) and subsection (f) are being amended to clarify that in addition to completing the Form 593 (previously, the Form 593-C) to claim an exemption from real estate withholding, the seller/transferor must also "sign" the Form 593 "and submit it to the real estate escrow person prior to the close of escrow." By revising the sentence and affirmatively stating in the beginning of subsection (f)(1) that the seller/transferor must complete, "sign, and submit to the real estate escrow person" the withholding exemption certificate on FTB Form 593, the proposed amendment removes any ambiguity as to whether a signature is necessary and to whom the Form 593 should be submitted. This requirement was implied before, as the language in subsection (f)(1) stated that "Failure to provide a completed and signed real estate withholding exemption certificate on FTB Form 593-C by the close of the real estate transactions will result in withholding." Moreover, the amended language also clarifies that in order to claim an exemption under Form 593, the seller/transferor should submit the signed and completed Form 593 to the real estate escrow person prior to the close of "escrow"—rather than the close of the "real estate transaction"—because the phrase "real estate transaction" is too broad and is ambiguous as to precisely when the form should be submitted. In contrast, the phrase "prior to the close of escrow" is a necessary change because it is a more definite and precise, as it signifies the point at which ownership and possession of real property is transferred from the seller/transferor to the buyer/transferee.
- Throughout Regulation Section 18662-3 (subsection (a), subsection (c), subsection (d)(1)(D), subsection (d)(3)(B), subsection (f)(2), and subsection (h)), the term "buyer" or "transferee" has been changed to the term

"buyer/transferee" because RTC section 18662, subdivision (e) uses the term "transferee" when referring to the buyer of a California real property interest, and the term "transferee" is defined in Regulation Section 18662-2, subsection (x) as the "buyer of the real property." Given that the terms "buyer" and "transferee" are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid confusion about the meaning of the previously utilized term. The reason for the interchangeable use of the terms is based on feedback from stakeholders as most taxpayers refer to the person buying a property as the "buyer," whereas in statutes and regulations, sellers are typically referred to as "transferees."

- Subsection (d)(1)(B) has been revised by changing the term "Total sales price" to the term "sales price" because RTC Section 18662, subdivision (e)(3)(A) refers to this term as the "sales price"—not the "Total sales price." This change will also be effectuated in revised subsection (h) (FTB Form 593). Throughout Regulation Section 18662-3 (subsections (d)(1)(B), (g)(1), (g)(2), (g)(4) and (h)), all references to "Total sales price" are changed to "sales price." These changes to the Withholding Regulations are necessary to conform both with RTC Section 18662, subdivision (e)(3)(A), and to be consistent with the term used in the applicable federal forms. The corresponding term that is used to denote the "sales price" in the federal Form 1099-S, Proceeds from Real Estate Transactions, as well as in Treasury Regulation Section 1.6045-4) is "gross proceeds"—not "Total sales price," and the Instructions to the Form 1099-S state that "gross proceeds" from a real estate transaction is generally the "sales price"—not "Total sales price." Thus, this change clarifies that the threshold amount pertains to the "sales price"—which is the same as the "gross proceeds" in the corresponding federal Form 1099-S.
- Subsection (d)(1)(C) has been revised to clarify that with respect to "deferred exchanges," intermediaries and accommodators must withhold, even if written notice is not given by the "real estate escrow person." proposed revision is necessary to ensure that the language is consistent with the applicable language at RTC Section 18662, subdivision (e)(3)(B), because without this change, this subsection could be construed to relieve intermediaries and accommodators from withholding when they have received written notice from a real estate escrow person, which is incorrect.
- Subsection (d)(2)(G) has been revised to clarify that in a real estate transaction where the seller is a partnership, the exemption from withholding applies only to a California partnership or an LLC that is classified as a partnership for federal and California income tax purposes—and does not apply to a single member LLC that is disregarded for federal and California income tax purposes. Without this change, this subsection could improperly be construed in a real estate transaction where the seller is a partnership to provide an exemption from withholding to a single member LLC that is disregarded for federal and California income tax purposes. This amendment

is necessary because subsection (d)(2)(G) pertains to real estate transactions where the seller is a "Partnership"—a term that is defined in Regulation section 18662-2, subsection (o) to mean a "syndicate, group, pool, joint venture . . ." and also includes "limited liability companies classified as partnerships." As such, this definition of a "Partnership" excludes "single-member" LLCs (which clearly would not fit the definition set forth in Regulation section 18662-2, subsection (o)) that are disregarded for federal and California income tax purposes because they are not taxed as partnerships. Accordingly, the addition of the phrase "single member LLC" makes it clear that the exemption under subsection (d)(2)(G) will apply only with respect to a California LLC that is classified as a partnership for federal and California income tax purposes, as Regulation section 18662-2(o) defines the term "partnership"—which subsection (d)(2)(G) applies to—for purposes of withholding as "limited liability companies classified as partnership." Notably, this definition does not apply to single-member limited liability companies that are disregarded for federal and California income tax purposes.

- Subsection (d)(3)(A)(2) has been revised to clarify that in a deferred like-kind exchange, where the seller/transferor receives any proceeds from the sale in excess of \$1,500, the intermediary or the accommodator must withhold (as required by RTC Section 18662, subdivision (e)(3)(B)), unless an election was made to use the Alternative Withholding Calculation on FTB Form 593. Currently, this subsection states that "withholding is required" without specifying who would be responsible for the withholding, which leads to confusion with respect to who would be responsible for the withholding. In addition, this subsection removes the phrase "including excess debt relief" after the word "proceeds" as that phrase is not contained in RTC Section 18662. These proposed amendments are necessary to avoid any confusion as to the withholding obligations in a deferred like-kind exchange, making it clear that the party responsible for withholding would be the intermediary or the accommodator. Moreover, changing the phrase "withholding is required" to "the intermediary or accommodator must withhold" makes the language more consistent with Regulation Section 18662-3(d)(3)(A)(3).
- Subsections (d)(3)(B)(1) and (d)(3)(B)(3) have been revised by changing the phrase "real estate escrow person" to the word "buyer/transferee" in proposed subsections (d)(3)(B)(1) and (d)(3)(B)(3) such that the withholding obligation remains with the buyer/transferee—not the real estate escrow person. This change is necessary to remove an inadvertent imposition of a withholding requirement for installment sales on the real estate escrow person—rather than the buyer/transferee. Under RTC Section 18662, subdivision (e)(3), RTC Section 18668, subdivision (e)(1), and Regulation Section 18662-3, subsection (a), once the real estate escrow person provides the buyer/transferee with written notice of the buyer's/transferee's withholding requirements, the requirement to withhold is on the buyer/transferee—not on the real estate escrow person. Thus, the real estate escrow person has a

requirement to notify the buyer/transferee of the buyer's/transferee's withholding obligations, but it has no requirement to withhold.

- Subsection (d)(3)(B)(1) has been revised by removing the phrase "or first installment payment" after the phrase "down payment" to clarify that withholding on an installment sale is required on the down payment. This change was necessary because some individuals in the escrow industry were inadvertently misconstruing the language in this subsection ("down payment or first installment payment") to mean the first installment payment *after* the down payment, resulting in no withholding on the down payment itself—which would not be in accordance with RTC Section 18662, subdivision (e)(3)(E), which requires withholding on "each principal payment"—which includes the "down payment."
- Subsection (d)(3)(B)(2) has been revised by changing the term "subsequent payments" to "installment payments". This change was necessary to avoid confusion about the meaning of the previously utilized term since the term "installment payments" more closely mirrors the statutory language found in RTC Section 18662, subdivision (e)(3)(E). This proposed amendment will also ensure that all installment payments following the close of escrow are subject to withholding, in accordance with RTC Section 18662, subdivision (e)(3)(E), which requires withholding on "each principal payment."
- Subsection (e)(6) has been revised to change the word "has" to the word "is" in the examples of the subsection. This is a grammatical change which is necessary to ensure clarity and remove any ambiguity with respect to whether or not the entity currently "is" qualified to do business in California. The word "has" doesn't ensure that the entity may have previously qualified to do business in California, and leaves open the possibility that it currently may not be qualified. Thus, changing the phrase to "is qualified" is necessary to remove all ambiguity.
- Subsection (f)(1) clarifies that in order to claim an exemption from real estate withholding, the seller/transferor must sign the Form 593 (previously, the Form 593-C), and "submit it to the real estate escrow person prior to the close of escrow." Previously, this requirement was implied, as the language in subsection (f)(1) stated that "Failure to provide a completed and signed real estate withholding exemption certificate on FTB Form 593-C by the close of the real estate transactions will result in withholding." Nevertheless, by revising the sentence and affirmatively stating in the beginning of subsection (f)(1) that the seller/transferor must complete, "sign, and submit to the real estate escrow person" the withholding exemption certificate on FTB Form 593, it removes any ambiguity as to whether a signature is necessary and to whom the Form 593 should be submitted. Moreover, the amended language is necessary to clarify that in order to claim an exemption under Form 593, the seller/transferor should submit the signed and completed Form 593 to the real estate escrow person prior to the close of "escrow"—rather than the close

of the "real estate transaction"—because the phrase "real estate transaction" is too broad and ambiguous as to precisely when the form would need to be submitted. In contrast, the phrase "prior to the close of escrow" is more definite and precise, as it signifies the point at which ownership and possession of real property is transferred from the seller/transferor to the buyer/transferee.

- Subsection (f)(1) has been amended by adding the following sentence: "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)." This change is necessary to clarify that an FTB Form 593 must be filed with the FTB for any real estate sale/transfer that qualifies for an exemption from withholding.
- Subsection (f)(2), outlining procedures relating to retention of FTB Form 593-C, is proposed to be removed because there no longer will be FTB Form 593-C after the proposed updates to the Withholding Regulations. This change is necessary to reflect the updated Form changes and to avoid confusion. As detailed above, Form 593-C is proposed to be combined into and merged with FTB Form 593, FTB Form 593-E and FTB Form 593-I as new FTB Form 593. With the proposed updates to the forms, procedures related to Form 593-C would be obsolete.
- Subsection (f)(3) has been renumbered to subsection (f)(2), and the phrase "verify certifications" has been revised to "verify exemption certifications" because the certifications relate to exemptions (e.g., whether or not a particular transaction is exempt from withholding) and to avoid confusion for a reader with the changes in ordering
- Subsection (f)(3), at Example 1, has been revised by changing the phrase "completes a worksheet calculating the estimated gain or loss" to "calculates the estimated gain or loss." This change is necessary because FTB Form 593-E—which was used for computation of the estimated gain or loss—will be merged with and into the Form 593. This change provides more clarity and brevity, since the ultimate manner in which the estimated gain or loss is calculated might not utilize a worksheet. Additionally, within the example, the phrase "shown on the worksheet" is changed to the phrase "used in the calculation" because it is more precise to state the real estate escrow person is not required to verify the amounts "used in the calculation" rather than the amounts "shown on the worksheet." This change is necessary because it is more accurate to describe the ascertaining of the final amounts for estimated gain or loss as a "calculation" rather than to use the phrase "as shown on the worksheet."
- Subsection (f)(3) at Example 2 and Example 3 has been revised by changing the language in the Example to be consistent with the changes made in the proposed amendments to subsection (f)(1) above. Thus, just as in subsection

(f)(1) above, this change in the language in this example is necessary to clarify that in order to claim an exemption from real estate withholding, the seller/transferor must sign the Form 593 (previously, the Form 593-C), and "submit it to the real estate escrow person prior to the close of escrow." Finally, because the Form 593-I will no longer exist, Example 2 as amended, states that the buyer/transferee will now provide the real estate escrow person with the installment agreement terms—in lieu of the FTB Form 593-I (which will be merged with FTB Form 593). This change is necessary because previously, Examples 2 and 3 pertained to Forms 593-C and 593-I, which as a result of the Withholding Regulations, will be merged with and into the Form 593. Accordingly, the language therein is revised to reflect the fact that the prior forms no longer exist so as to conform to current requirements following the consolidation of all of the forms into FTB Form 593.

- Subsection (f)(4), revises the phrase "alternate withholding calculation" to the phrase "alternative withholding calculation" for consistency and clarity, as other subsections, including subsections (b) and (d)(3) already use the phrase "alternative withholding calculation." Without this change, taxpayers may inadvertently be led to believe that "alternate withholding calculation" has a different legal meanings than "alternative withholding calculation" when in fact the proper phrase should be "alternative withholding calculation" throughout to ensure consistency and remove any ambiguity with respect to the meaning of the term. Moreover, this subsection—has been revised by removing the portion of text referring to the retention of FTB Form 593-C and FTB Form 593-E because there will no longer be these separate forms after they are merged into new FTB Form 593 with the proposed updates to the Withholding Regulations. This change is necessary to reflect the updated Form changes to avoid confusion. With the proposed updates to the forms, procedures related to Form 593-C or Form 593-E are obsolete
- Subsection (g)(2), Example 2 has been revised to include the current maximum tax rate of 12.3 percent. This change is necessary because the previous maximum rate of 9.3 percent was increased as a result of the passage of Proposition 30. The update is necessary because it will allow taxpayers to accurately calculate withholding using the Alternative Withholding Calculation method.
- As noted above, FTB Form 593, Real Estate Withholding Statement, has been changed to now include elements of the following forms, which will no longer exist: FTB Form 593-C, Real Estate Withholding Certificate, FTB Form 593-E, Real Estate Withholding Computation of Estimated Gain or Loss, and FTB Form 593-I, Real Estate Withholding Installment Sale Acknowledgement. This change will be effectuated by deleting subsection (h) (FTB Form 593-E), subsection (i) (FTB Form 593-C), and subsection (l) (FTB Form 593-I), and by renumbering previously numbered subsection (j) to subsection (h) (FTB Form 593). Following the enactment of these amendments, subsection (h) will include information that was previously included in subsection (h) (FTB Form

593-E), subsection (i) (FTB Form 593-C), subsection (j) (FTB Form 593) and subsection (l) (FTB Form 593-I), as the FTB Form 593-C, FTB Form 593-E and FTB Form 593-I will now all be consolidated into the FTB Form 593. In addition, following the enactment of these amendments, subsection (h) (FTB Form 593) will also include information pertaining to "Remitter," as defined in proposed Regulation Section 18662-2, subsection (v) and as explained above under changes for Regulation Section 18662-2. Moreover, additional information will be included in the Form 593, including "ownership percentage" and "sales price," as set forth and explained throughout this document. Finally, all references (including all corresponding or associated language accompanying such references) in Regulation Section 18662-3 to FTB Form 593-I, FTB Form 593-C and FTB Form 593-E have been revised and now refer to FTB Form 593 (since all of those forms were consolidated into the FTB Form 593). The decision to merge FTB Form 593-C, FTB Form 593-E and FTB Form 593-I into FTB Form 593 is for consolidation purposes as there is a significant amount of information repeated throughout these forms. This will diminish the burden on the escrow industry by reducing the number of forms for real estate transactions from four to one. Moreover, this consolidation of forms will assist sellers/transferors in their real property transactions, as there will now be one form for all real estate transactions, and one voucher—rather than having four different forms depending on the type of real estate transaction.

- Subsection (h)(3) has been amended to add the phrase "ownership percentage" in the last sentence. As previously drafted, this particular subsection inadvertently omitted the phrase "ownership percentage," although it should be noted that other parts of Regulation section 18662-3 contained this phrase. (See Regulation Section 18662-3, subsection (i)(1).) This change is necessary in order to allow the FTB to efficiently ascertain the ownership percentages of sellers when dealing with multiple sellers for a transaction. When the FTB is dealing with multiple sellers, it is difficult to ascertain the ownership percentages of each respective seller. As a result, FTB must contact the appropriate party involved to obtain such information. For these reasons, this subsection is revised by inserting the phrase "ownership percentage" to capture information that FTB would otherwise receive by less efficient means.
- The proposed amendments to the Withholding Regulations would relocate subsection (k)(3) to subsection (i)(3), and therein change the term withholding agent to the term "remitter," insert the phrase "or ITIN" after "SSN" and change the term "business name" to "business or individual name (not both)." This subsection is proposed to be relocated due to the consolidation of FTB Form 593, FTB Form 593-C, FTB Form 593-E and FTB Form 593-I as previously explained above. Existing subsections (h) and (i) pertain to FTB Forms 593-E and 593-C, respectively. The proposed amendments to the Withholding Regulations will effectuate the merger of these forms into new Form 593, and thereafter subsections (h) or (j) would pertain to the obsolete

forms. As a result, what is currently subsection (j)—related to the Form 593—will be subsection (h) following the amendment of these regulations. With respect to the addition of the term "remitter," the FTB has used the term withholding agent broadly to refer to persons who withhold. However, in real estate transactions, the person who is responsible for withholding is the buyer, and the person who actually performs the withholding is often the real estate escrow person. Thus, a change is necessary to clarify that the remitter (typically, the escrow officer)—not the buyer/transferee—is the person responsible for sending the payment to the FTB, which is effectuated through the use of FTB Form 593-V, Payment Voucher for Real Estate Withholding. With respect to the changes to add "or ITIN" after the word "SSN," and to change "business name" to "business or individual name (not both)", these proposed additions are necessary to make all of the applicable fields on FTB Form 593-V more generic such that they could apply to both resident and nonresident individuals, as well as business entities, since a nonresident individual or a business entity may have an ITIN, and to match what is currently on FTB's withholding forms which provide greater flexibility to allow for a business or individual to fill out the form .

- Section 18662-4. *Withholding on Payments (Nonresident Individuals and Non-California Business Entities) – General*. This section provides general rules applicable to withholding on payments (nonresident individuals and non-California business entities), as well as identifying the specific contents of relevant forms relating to withholding on such payments.
 - Subsection (b)(2), Example 2, has been revised to clarify that withholding agents may rely on a printout from the Secretary of State (SOS) website showing that the payee is a California corporation or qualified to do business in California. Currently, the regulation is ambiguous with respect to how a withholding agent could verify whether a payee was a California corporation or qualified to do business in California, as the regulation merely mentions that the withholding agent would have to "contact" the SOS, which could be construed to mean by letter, email or telephone only, but not through verifying the information from the SOS's website. The changes to allow an SOS website printout are necessary to provide withholding agents more flexibility in determining whether a corporate payee is a California corporation. This is necessary because FTB concluded withholding agents were having a problem making these determinations following the previous regulatory provisions. Following the adoption of these amendments, a withholding agent can contact the SOS and verify the information by utilizing the SOS's public website, which includes all the necessary information to ascertain whether or not the payee is a California corporation or qualified to do business in California. In addition, the last sentence in Example 2 states that withholding agents who rely on the SOS's website will not be subject to penalties for failure to withhold, unless they have actual knowledge that the information received from the SOS's website is false. The change in the language regarding penalties is necessary to make Example 2 consistent with the protection language afforded to

withholding agents in Example 1 (which is reliant on FTB Form 590) and is done for consistency purposes such that withholding agents who rely on either the Form 590 or on the SOS's website will not be subject to penalties for failure to withhold.

- Subsection (d) has been revised to reflect the creation of new FTB Form, 592-PTE, Pass-Through Entity Annual Withholding Return, to be used specifically by pass-through entities, which, as withholding agents, withhold tax at source on lower tier pass-through entities. The creation of the new Annual Reconciliation Form (Form 592-PTE) is necessary to effectuate FTB's changing of its filing structure—from a quarterly filing withholding structure to an annual one—and which will be used specifically by domestic pass-through entities, who, as withholding agents, withhold tax at source on lower tier pass-through entities. Pass-through entities, and tiered structures in particular, have difficulty in timely filing Form 592 to allocate withholding to the ultimate owner, as it appears that an upper tier pass-through entity may not receive its withholding information from the lower tier pass-through entity (typically through Form 592-B) until after the Form 592 quarterly due date. This in turn can cause a second problem in which the ultimate individual owner is denied a claimed withholding credit due to the untimely filing of Form 592 and subsequent untimely allocation of withholding to that owner. To ameliorate this problem, the proposed amendments to the Withholding Regulations will create a new form (Form 592-PTE) that will apply only to domestic pass through entities to be filed on January 31 of the year following the year for which such withholding was required to be remitted to FTB. This date is also the due date for federal Form W-2, Wage and Tax Statement, and Form 1099. Annual reporting in general allows the upper tier pass-through entity more time to receive withholding information from their lower tier pass-through entity, which then helps them timely file their withholding return. These changes may also help prevent the individual partners from having their claimed withholding credit denied when they file their income tax returns since there is now more time for the withholding credit to be allocated to the individual.
- Subsection (e)(1) has been revised to expand by regulation the eligible universe of filers who could request a waiver using FTB Form 588, Nonresident Withholding Waiver Request. This change is necessary because as currently drafted, the regulation could possibly be construed to allow only a "payee" to file the request, as the regulation states "the payee must show . . . " indicating that the payee is the only one that could demonstrate a waiver is necessary, despite the fact that (1) in the current FTB Form 588, the form can be filed by the payee, the withholding agent, the authorized representative for the withholding agent, and the authorized representative for the payee, and (2) subsection (l)(2)—which sets forth the information necessary for the Form 588—already allows other requesters—including the withholding agents, and the representatives for the withholding agent and payee, to file the form. Thus, while FTB Form 588 already allows such filing, the change is

nevertheless necessary to ensure the regulatory language contained in subsection (e)(1) is consistent with both Form 588 as well as subsection (l)(2), and is not construed to be limit the universe of filers who could request a waiver using FTB Form.

- Subsection (e)(2) has been revised to change the Withholding Computation formula contained in FTB Form 589, Nonresident Reduced Withholding Request, a form that is used to obtain a "reduced" withholding. Specifically, the proposed amendments to the Withholding Regulations in this subsection will revise the Withholding Computation formula to make sure that a person or entity claiming "reduced" withholding can only claim expenses of 50 percent of the gross California source payments. This change is necessary because, FTB Form 589 is currently being used not only for reduced withholding—which is the purpose of the form—but to also obtain full waiver from withholding by claiming expenses equal to 100 percent of the gross California source payments, thereby obtaining a waiver without satisfying the more stringent requirements of the waiver form, FTB Form 588, Nonresident Withholding Waiver Request. FTB Form 588 is used for full waiver from withholding, and has more stringent requirements (for example, payee may need to have California tax returns on file for the two most current taxable years in which the payee had a filing requirement) than FTB Form 589, which is simply used for "reduced" withholding, and does not have such requirements. Thus, without a threshold requirement for the Withholding Computation formula, it is expected that taxpayers will continue to use FTB Form 589 to obtain a waiver from withholding (due to the expenses/deductions being sufficiently high enough to ensure there is no net income) without following the requirements of FTB Form 588.
- Subsections (h)(2), (i)(4), (i)(16), (j)(16), (k)(18), (l)(1), (l)(2), (l)(4), (m)(1), and (m)(2) have been revised by inserting the phrase "or ITIN" after the word "SSN." These changes are being proposed and are necessary to make all of the applicable fields on the corresponding FTB forms more generic such that they could apply to both resident and nonresident individuals, as well as business entities, since a nonresident individual or a business entity may have an ITIN. It is also necessary to match what is currently already on FTB's withholding forms which provide greater flexibility to allow for a greater possible universe of filers.
- Subsection (i) has been revised to remove the requirement to provide the withholding agent's phone number in the signature block of the Form 592 and to require the phone number be entered into a new field that can be keyed in on the Form 592. These changes are proposed to be made in both subsection (i)(4) and (i)(14) and will improve the efficiency of the review process, and allow searches to be done by keying in the telephone number. This change is necessary because the telephone number in the signature block, does not have a specific keyable field section assigned to it, causing searches to be manually performed, which is labor intensive. Following these amendments,

searches can be done by simply entering the telephone number, thereby improving efficiency in administration.

- Subsection (j) has been revised to include information regarding a new Form, FTB Form 592-PTE, Pass-Through Entity Resident and Nonresident Annual Withholding Return. Specifically, subsection (j)(3) has been revised to be similar to its counterpart found in FTB Form 592, and to modify the check box to indicate the total withholding paid "at the end of the year" rather than one of four due dates for the tax withheld. Subsection (j)(5) has been added to include withholding agent information for lower tier pass-through entities. In addition, subsection (j)(9) has been proposed to be amended to be analogous to current subsection (j)(10), for foreign pass-through entity withholding distribution. As set forth in subsection (d) above, the creation of FTB Form 592-PTE is necessary to effectuate FTB's changing of its filing structure—from a quarterly filing withholding structure to an annual one—and which will be used specifically by domestic pass-through entities, who, as withholding agents, withhold tax at source on lower tier pass-through entities. As it currently stands, pass-through entities, and tiered structures in particular, have difficulty in timely filing Form 592 to allocate withholding to the ultimate owner, as it appears that an upper tier pass-through entity may not receive its withholding information from the lower tier pass-through entity (typically through Form 592-B) until after the Form 592 quarterly due date. This can cause issues in which the ultimate individual owner is denied a claimed withholding credit due to the untimely filing of Form 592 and subsequent untimely allocation of withholding to that owner. To ameliorate this problem, the proposed amendments will create a new form (Form 592-PTE) that will apply only to domestic pass through entities. The proposed amendment to subsection (j)(3) is necessary to effectuate the change for domestic PTEs from a quarterly filing scheme to an annual one. The proposed amendment to subsection (j)(5) is necessary for domestic PTEs because it will allow the upper-tier pass through entity filing the FTB Form 592-PTE to properly account for the withholding to identify who the lower-tier pass-through entity is, or the original withholding agent was. Finally, the proposed amendment to subsection (j)(9) is necessary because it will identify the amount that was withheld by the lower-tier pass-through entity.
- Subsection (k)(6), which contains the required information for FTB Form 592-F, Foreign Partner or Member Annual Withholding Return, has been modified to include withholding agent information for lower tier pass-through entities. This change is necessary to allow the upper tier pass-through entity filing the FTB Form 592-PTE to properly account for the withholding and identify the lower tier pass-through entity, or the original withholding agent.
- Subsection (l)(2) has been revised by allowing the requester of FTB Form 588 to check a box to identify themselves as either the withholding agent, the payee, or an authorized third party of either the withholding agent or payee. Previously, this subsection specifically stated that a requester could be the

withholding agent, the payee, or an authorized third party of either the withholding agent or payee, but did not state that the Form 588 could have a check box allowing the requester to properly identify themselves. This change is necessary as it will help FTB in administering and processing the withholding forms by identifying who the requester is, and it will also assist taxpayers by providing them various options from which to select the person that will be completing the form.

- Subsection (I)(4) has been revised to provide that if the payee is a grantor trust or a sole proprietorship, then the payee information should include both the business and individual name. This revision is necessary to distinguish grantor trusts and sole proprietorships—where both the trusts/sole proprietorships business name, as well as the grantor's or sole proprietor's individual name and SSN/ITIN are required for proper identification—from other entities, including a non-grantor trust, where only the name of the trust is necessary.
- Subsection (I)(5)(C) has been revised to require certain payees to attach a copy of the Schedule R-7, Election to File a Unitary Taxpayers' Group Return, from the combined report. This is information the FTB currently requests for verification purposes for approval of FTB Form 588, and requiring this information to be submitted at the same time as FTB Form 588 eliminates the extra step of requesting such documentation after the submission of FTB Form 588. This is necessary because FTB Form 588 is a very time sensitive and current form. As a result, this proposed change allows the FTB to require that the payee attach a copy of the Schedule R-7—a form that is not due until October 15 (extension due date) or may have been filed so close to the date the Form 588 was filed that it has not been processed by FTB yet—so that FTB can timely process the Form 588 waiver. Without this information, there can be a considerable delay between the time the Form 588 is submitted and the time the waiver is finally approved.
- Subsection (I)(5)(D), has been revised to add new text providing payees with an additional possible waiver period. Existing subsection (I)(5)(D) allows a waiver from withholding under Form 588 for payees that are newly admitted S corporation shareholders, partners of a partnership, or members of a limited liability company, which expires at the end of the calendar year in which the waiver is granted. The proposed amendments revise this subsection to allow for a process by which a new waiver can be granted following the expiration of the first waiver. Specifically, this subsection provides a mechanism to request additional waiver, requiring that when the first waiver expires at the end of the calendar year succeeding the date the payee was newly admitted, the payee must have the most current California tax return due on file, or have made estimated tax payments for the current taxable year. Previously, this subsection covered the waiver's expiration, but did not provide the process for requesting another waiver after the expiration of the first waiver. Including information about this process is necessary because it informs payees what

steps to take—namely, to provide the most current California return or to have estimated tax payments for the most current taxable year—in order to renew an expired waiver, which will prevent taxpayers who are otherwise entitled to a waiver from withholding from having to withhold.

- Subsection (l)(5)(E) has been revised to require certain payees to attach a copy of Schedule 1067A, Nonresident Group Return Schedule, to their Form 588. This proposed amendment is necessary because requiring this information to be submitted with the FTB Form 588 eliminates the extra step of FTB requesting such documentation after the submission of FTB Form 588. The newly required information is currently used for verification purposes for approval of FTB Form 588, which is a very time sensitive form. As a result of this proposed change FTB will be able to eliminate considerable delay between the time the Form 588 is submitted and the time any waiver is finally approved.
- Subsection (m)(1) has been revised to add a field requiring property address information for property management reduced withholding requests on FTB Form 589. Without the property address information, FTB's systems in some cases automatically assume that the request is a duplicate and deny the request. This proposed change will increase the likelihood that the request is approved thereby avoiding the extra time and effort by the requester to seek further review of an erroneous denial.
- Subsection (m)(6) has been revised by changing the term "withholding agent" to the term "payee." This change is necessary because in a request for reduced withholding under FTB Form 589, it is the payee's expenses—not the withholding agent's expenses—that are relevant for such a request given that the Form 589 is for the benefit of the payee. As a result of this change, this subsection will correctly identify that the withholding computation formula in FTB Form 589 concerns the payees'—not the withholding agent's—expenses, so that the FTB can properly process an accurate Form 589.
- Section 18662-5. *Other Types of Payments and Withholding Obligations.* This section identifies other types of payments and the withholding obligations applicable to such other payments.
 - Subsection (k)(2) has been revised by inserting the phrase "or ITIN" after the word "SSN." This proposed addition is necessary to make all of the applicable fields on FTB Form 587 more generic such that they could apply to both resident and nonresident individuals, as well as business entities, since a nonresident individual or a business entity may have an ITIN instead of a SSN. The change is also necessary to match what is currently on FTB's forms.
- Section 18662-6. *Nonresident Withholding, Entertainers, Athletes and Speakers.* This section provides general rules applicable to withholding on payments to nonresident entertainers, athletes, and speakers for services performed in California.

- Subsection (a)(1) has been revised by adding a provision to the text, requiring that payments made to "non-California business entities" for services performed in California, will be subject to withholding, in accordance with Regulation Section 18662-4, subsection (a)(1). This change is necessary because payments made to non-California business entities are also subject to withholding, as also noted in Regulation section 18662-4, subsection (a)(1), and the inclusion of this phrase removes any ambiguity with respect to whether payments made to non-California business entities are subject to withholding.
- Subsection (a)(C) has been amended by adding an Example to demonstrate when a withholding agent is required to withhold on the reimbursement payment to the nonresident entertainer. This change is necessary to provide practitioners with a hypothetical example demonstrating the circumstances under which a withholding agent is not required to withhold on payments to reimburse a nonresident entertainer for expenses related to services.
- Throughout subsection (a), the term "Performer's Agent" has been revised to the term "Entertainer's Agent" as the withholding regulations apply to all "entertainers," not just "performers." This change is necessary to eliminate an ambiguity in the applicability of the withholding regulations to Entertainer's Agents. As noted in subsection (a)(2)(A), "Withholding is required on California source income paid to the nonresident entertainer . . ." Thus, this subsection already notes it applies to all nonresident entertainers and this revision, makes the language consistent throughout and avoids ambiguity
- Subsection (a)(2)(A), including the Examples therein, has been revised by inserting the term "nonresident" in front of the term "entertainer" because withholding is required on California source income paid to "nonresident" entertainers,. This change is necessary to avoid an ambiguity in the applicability of the withholding Regulations to resident entertainers, as resident entertainers are exempt from withholding.
- Subsection (a)(2)(A) has been revised to clarify withholding is not required when the nonresident entertainer's agent or promoter is a California resident or a California business entity, as those terms are defined in Regulation Section 18662-2, subsections (d) and (b), respectively. Without this change, taxpayers may think withholding is required when the nonresident entertainer's agent or promoter is a California resident or a California business entity, despite the fact that Regulation Section 18662-4, subsection (a)(1) states otherwise.
- Subsection (a)(2)(A) has been amended by adding Example 2 to remove any ambiguity on whether a nonresident entertainer must meet an exemption on Form 590 to avoid withholding. The example is necessary to demonstrate this subsection's applicability in a particular circumstance.

- Subsection (a)(2)(B) has been added to provide that if the entertainer's agent or promoter is either a California resident or a California business entity, the entertainment venue is not required to withhold under the specified regulation sections where the entertainer's agent or promoter certifies to an exemption on FTB Form 590, or the venue verifies the entertainer's agent or promoter is a California corporation or qualified to do business in this state by contacting the SOS. The added subsection also notes the entertainment venue may rely on a printout from the SOS, as previously set forth in the proposed amendments to Subsection (b)(2), Example 2, of Regulation Section 18662-4 as explained above. In addition, consistent with Regulation Section 18662-4, this newly added subsection states the entertainer's agent or promoter, as the withholding agent, must withhold and remit tax on the gross payments made to the nonresident entertainer, unless the nonresident entertainer meets one of the exceptions listed in Regulation Section 18662-4, subsection (c), set forth in FTB Form 590. These changes are made to clarify the exemptions that are available for California residents and California business entities as outlined in Regulation Section 18662-4. While Regulation Section 18662-4 applies more broadly to nonresident individuals and non-California Business entities, the amendments to this subsection are being made to clarify how those principles apply to withholding requirements for entertainer's agents or promoters who happen to be California residents or California business entities. In addition, under the proposed additions to this subsection, a withholding agent can contact the SOS and verify the information by utilizing the SOS's public website, which includes all the necessary information to ascertain whether or not the party in question is a California business entity or qualified to do business in California. Finally, consistent with the proposed amendment to Regulation Section 18662-4, subsection (b)(2), Example 2, the amended language clarifies that an entertainment venue may rely on a printout from the SOS's public website showing the entertainer's agent or promoter's business entity number, that the business entity has a permanent place of business in California and that the business entity is in good standing. These changes are necessary to remove any ambiguity as to whether withholding agents or entertainment venues can use the SOS's public website to determine whether the party in question is a California business entity or qualified to do business in California.
- Subsection (b) has been revised to clarify the process to request a waiver using FTB Form 588, and allow persons other than the payee to request a waiver under FTB Form 588, including the payee's representatives or withholding agents. As noted in the explanation section for Regulation Section 18662-4, subsection (e)(1) above, this change is necessary because as currently drafted, the regulation could possibly be construed to allow only a "payee" to file the request since the regulation states "the payee must show . . ." indicating that the payee is the only one that could demonstrate a waiver is necessary. Thus, FTB is proposing a change to this to remove any ambiguity

about who can file the form, especially considering that (1) in the current FTB Form 588, the form can already be filed by the payee, the withholding agent, the authorized representative for the withholding agent, and the authorized representative for the payee, and (2) Regulation section 18662-4, subsection (l)(2)—which sets forth the information necessary for the Form 588—already allows other requesters—including the withholding agents, and the representatives for the withholding agent and payee, to file the form. Thus, while FTB Form 588 already allows such filing, it is nevertheless necessary to ensure that the regulatory language contained in subsection (e)(1) is consistent with both Form 588 as well as Regulation Section 18662-4, subsection (l)(2), and is not construed to be limiting the universe of filers who could request a waiver using FTB Form 588.

- Subsection (e)(2) has been revised to modify the threshold requirements for FTB Form 589. This change is necessary, to ensure that this form would only be used for reduced withholding—instead of effectively obtaining a waiver without satisfying the requirements of the waiver form, FTB Form 588. Without a threshold requirement, the FTB Form 589 has been used to obtain a waiver from withholding (due to the expenses/deductions being sufficiently high enough to ensure there is no net income) without following the requirements of FTB Form 588. This change will resolve this issue as the total amount of expenses cannot exceed 50 percent of the gross California source payment, as these adjustments to the Withholding Computation formula have been made to ensure that FTB Form 589 is used for its intended purpose.
- Section 18662-8. *Reporting and Remitting Amounts Withheld; Penalties and Interest.* This section specifies the reporting procedures for information returns, remitting procedures, quarterly withholding procedures, payment due dates, withholding adjustments, penalties, withholding liabilities, and interest for Regulation Sections 18662-1 through 18662-8.
 - At subsection (b) and subsection (d), the term "seller" or "transferor" has been changed to the term "seller/transferor" because RTC Section 18662, subdivision (e) uses the term "transferor" when referring to the seller of a California real property interest, and the term "transferor" is defined in the Withholding Regulations at Section 18662-2, subsection (y) as the "seller of the real property." Given that the terms "seller" and "transferor" are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid possible ambiguity with respect to the terminology as further explained above with respect to the proposed changes made to the Withholding Regulations at Section 18662-1.
 - Subsection (d)(2)(D)(1) has been revised by changing the term "buyer" or "transferee" to the term "buyer/transferee" because RTC Section 18662, subdivision (e) uses the term "transferee" when referring to the buyer of a California real property interest, and the term "transferee" is defined in the

Withholding Regulations at Section 18662-2, subsection (x) as the "buyer of the real property." Given that the terms "buyer" and "transferee" are used interchangeably both in the Withholding Regulations and in the withholding forms, this change is necessary for consistency and clarity and to avoid possible ambiguity with respect to the terminology as further explained above with respect to the proposed changes made to the Withholding Regulations at Section 18662-3.

- Subsection (b)(1) has been amended to include the payment due date for Section 1031 like-kind exchanges, with respect to payment of withholding on non-like-kind property from the sale (boot) in excess of \$1,500 disbursed to the seller/transferor. This new addition makes it clear that the due date for Section 1031 like-kind exchanges with respect to non-like-kind property from the sale (boot) in excess of \$1,500 disbursed to the seller/transferor is on the 20th day of the calendar month following the month in which the boot was disbursed. This amendment is necessary to remove any ambiguity with respect to the due date for 1031 like-kind exchanges with respect to non-like-kind property from the sale (boot) in excess of \$1,500.
- Subsection (b)(2)(A) has been revised by changing "Real estate withholding" to "Real estate sales/transfers and withholding" because FTB Form 593, requires a filer to provide further details of the real estate transaction in addition to the withholding amount. This change is necessary to ensure the regulatory language matches the requirements on FTB Form 593 of providing details about the sales and transfers, and to properly characterize FTB Form 593, which applies to real estate sales/transfers and withholding—not just withholding. Moreover, this subsection clarifies how to report and remit withholding, making it clear that FTB Form 593-V is only submitted with paper payments (i.e., withholding payments made via check or money order), and that withholding payments made electronically do not require FTB Form 593-V. This difference was already apparent from FTB Form 593-V and its instructions, but this revision is necessary to remove any ambiguity about whether payments made electronically also require filing of FTB Form 593-V (they do not).
- Subsection (b)(2)(B) has been revised by changing the term "payee" to the term "seller/transferor" in both the phrase "An FTB Form 593 . . . shall be provided to the payee" and the phrase "The payee may be required to attach a copy of the FTB Form 593 . . . ". This change is made to allow for consistency with the Withholding Regulations at Section 18662-8, subsection (d)(2)(D)(2), which states that the withholding agent is to provide the FTB Form 593 to the "seller/transferor." These changes are necessary for consistency and clarity and to avoid possible ambiguity with respect to the terminology.
- Subsection (b)(2)(B) has been revised to indicate that FTB Form 593 shall be provided to the seller/transferor either at the time of sale or not later than "the 20th day following the month in which escrow closes." Previously, this

subsection noted that the FTB Form 593 shall be provided either at the time of sale or not later than January 31st of the following calendar year." This change is necessary to make subsection (b)(2)(B) consistent with subsection (b)(1)—which provides that real estate withholding is due by the 20th day of the calendar month following the month escrow closes. This change is necessary because it is imperative that taxpayers know the proper deadlines and dates by which to file these forms (in this case, FTB Form 593) to avoid forms being sent in later than their actual deadline.

- Subsection (c)(1) has been changed into subsections (c)(1)(A) and (c)(1)(B), with subsection (c)(1)(A) containing general information about the FTB Form 592, and subsection (c)(1)(B) containing information about the new form FTB Form 592-PTE. The structural changes of this subsection were done to provide clarity and to make this subsection more organized, such that the payment due dates would be separately stated for nonresident withholding, domestic PTE withholding, and foreign withholding. Subsection (c)(1)(A) clarifies that the withholding is only on "nonresident" payments, which is consistent with Regulation Section 18662-4(a)(1). The change also removes any ambiguity that withholding is required on payments to residents of California. Subsection (c)(1)(A) also notes that withholding on nonresident payments are due "on the same dates"—rather than "under the same schedule"—as required for calendar year federal estimated tax, because the phrase "on the same dates" is more specific with respect to the payment dates. Subsection (c)(1)(A) also separates the "reporting" of withholding (done on FTB Form 592) from the "remittance of payments" (done through the use of FTB Form 592-V) by (1) changing the term "Remittance" to the term "Reporting" as the FTB Form 592 pertains to "reporting" of resident and nonresident withholding, and by noting that "Payments shall be remitted using" FTB Form 592-V (which is the payment voucher). Finally, subsection (c)(1)(A) clarifies how to report and remit withholding, making it clear that FTB Form 592 can be completed by paper or electronically, but that FTB Form 592-V is only submitted with paper payments (i.e., withholding payments made via check or money order). The change also makes it clear that withholding payments made electronically do not require FTB Form 592-V. This was already apparent from FTB Form 592-V and its instructions, but this revision is necessary to remove any ambiguity about whether payments made electronically also require filing of FTB Form 592-V (they do not).
- Subsection (c)(1)(B) has been added to provide information with respect to reporting and payment due dates for domestic PTEs. Specifically, this subsection provides the manner in which domestic pass-through entities will report their annual withholding (i.e., by using FTB Form 592-PTE, Pass-Through Entity Annual Withholding Return). It also addresses how to effectuate the payment (i.e., by using new FTB Form 592-Q, payment voucher). As set forth in subsection (c)(1)(B), with respect to the newly added payment voucher form, FTB Form 592-Q, is modeled after FTB Form 592-V but there are two differences. Those differences are that FTB Form 592-Q is

used: (1) to report total withholding payments made throughout the year; and (2) to allocate withholding paid on the Form 592-PTE on the filer's behalf. Subsection (c)(1)(B) is nearly identical to subsection (c)(1)(A) above. As such, the changes and the reasoning for those changes provided in subsection (c)(1)(A) immediately preceding this subsection here apply equally for subsection (c)(1)(B).

- Subsection (c)(2)) has been relocated to subsection (c)(1)(C) (and has been revised to provide the manner in which payments will be remitted for foreign partner or member withholding (i.e., using FTB Form 592-A, payment voucher). This subsection was relocated to be consistent with the proposed edits to subsection (c)(1), and the revisions are necessary to clearly identify the payment voucher that would be used for foreign partner or member withholding. The relocation was simply an organizational change setting forth the payment due dates for general situations (subsection (c)(1)(A)), domestic PTEs (subsection (c)(1)(B) and foreign partners/members (subsection (c)(1)(C).) Without this change, the payment due dates for the various types of withholding groups would all be in one subsection, making it more confusing and convoluted, whereas with this organizational restructure, payment due dates will be separately categorized based on the type of withholding (i.e., general, domestic PTEs, foreign partners/members).
- Subsection (c)(3) has been relocated to subsection (c)(2)(A) and has been revised simply for reorganization purposes to separate the different types of withholding and place them in separate sections (i.e., separate sections for general withholding, domestic PTE withholding and foreign withholding). This reorganization makes it more reader friendly, such that it avoids having all of the various different types of withholding requirements in one large paragraph. This subsection again clarifies how to report and remit withholding, making it clear that FTB Form 592 can be completed by paper or electronically, but that FTB Form 592-V is only submitted with paper payments (i.e., withholding payments made via check or money order). The change is also necessary to explain that withholding payments made electronically do not require FTB Form 592-V. This was already apparent from FTB Form 592-V and its instructions, but this revision removes any ambiguity about whether payments made electronically also require filing of FTB Form 592-V (they do not).
- Subsection (c)(2)(B) has been added to establish new/different reporting requirements for domestic PTEs. The proposed addition specifies that for domestic PTEs, FTB Form 592-Q shall be filed with the FTB with each quarterly withholding remittance, and these quarterly payments shall also be reported to the FTB pursuant to FTB Form 592-PTE on an annual basis no later than January 31st of the year following the year for which such withholding was required to be remitted to the FTB. This subsection clarifies that the FTB Form 592-PTE will be filed on a yearly basis, with the FTB Form 592-Q being filed on a quarterly basis to show each quarterly withholding remittance. This

subsection also sets the due date for the filing of FTB Form 592-PTE as January 31st of the year following the year for which withholding was required to be remitted to the FTB. FTB Form 592-Q is largely based off of the FTB Form 592-V, with the primary difference being that FTB Form 592-V is used as a voucher for payments with respect to nonresident withholding, whereas FTB Form 592-Q is used as a voucher for domestic PTE withholding. As set forth in the Withholding Regulations at Section 18662, subsection (d), and detailed above, the creation of FTB Form 592-PTE is necessary to effectuate FTB's changing of its filing structure—from a quarterly filing withholding structure to an annual one. The form will be used specifically by domestic pass-through entities, who, as withholding agents, withhold tax at source on lower tier pass-through entities. Currently, pass-through entities, and tiered structures in particular, have difficulty in timely filing Form 592 to allocate withholding to the ultimate owner. This may happen when an upper tier pass-through entity does not receive its withholding information from the lower tier pass-through entity (typically through Form 592-B) until after the Form 592 quarterly due date. This in turn can cause a second problem in which the ultimate individual owner is denied a claimed withholding credit due to the untimely filing of Form 592 and subsequent untimely allocation of withholding to that owner. To ameliorate this problem, the proposed amendments will create a new form (Form 592-PTE) that will apply only to domestic pass through entities. This new form will be filed on January 31 of the year following the year for which such withholding was required to be remitted to FTB. This date is also the due date for federal Form W-2, Wage and Tax Statement, and Form 1099 information returns. Annual reporting in general allows the upper tier pass-through entity more time to receive withholding information from their lower tier pass-through entity, which then helps them timely file their withholding return. This may also help prevent the individual partners from having their claimed withholding credit denied when they file their income tax returns since there is now more time for the withholding credit to be allocated to the individual.

- Subsection (c)(2)(C) has been added to distinguish the reporting requirements for foreign (non-U.S.) partner or member withholding. This new subsection includes text that was previously included in subsection (c)(3)(A) in the "In General" section. Adding a specific subsection for foreign (non-U.S.) partner or member withholding will eliminate any possible ambiguity with respect to reporting requirements for foreign (non-U.S.) partner or member withholding, and provides better organizational clarity for all the various withholding groups (i.e., general, domestic pass-through entities, foreign (non-U.S.) partner or members. This subsection mirrors subsection (c)(1)(C), which discusses payment due dates for foreign (non-U.S.) partners or members, further clarifies that FTB Form 592-A shall be filed with each quarterly remittance, and explains that the quarterly withholding payments shall then be reported on FTB Form 592-F on or before the 15th day of the 4th month following the close of the entity's taxable year. Without this change, the payment due dates for the various types of withholding groups would all be in one subsection,

making it more confusing and convoluted, whereas with this organizational restructure, payment due dates will be separately categorized based on the type of withholding (i.e., general, domestic PTEs, foreign partners/members).

- Subsection (c)(2)(E) has been revised to change the term "Information Returns" to the term "Payee Statement" for purposes of FTB Form 592-B. This change was necessary to correct an erroneous statement in the Withholding Regulations that might have caused confusion and erroneous filing, since FTB Form 592-B is a payee statement, not an information return. An information return is a statement required to be filed with the State while a payee statement is a statement required to be furnished to the recipient (i.e., payee/partner). Because FTB Form 592-B is required to be furnished to the recipient—not filed with the State—the more appropriate term is "payee statement." Because the FTB Form 592-B shows the total amount of withholding, the payee is required to attach a copy of FTB Form 592-B to the appropriate tax return in order to claim a credit for the withheld amount. As such, this subsection has also been revised by changing the phrase "payee may be required to attach a copy of FTB Form 592-B" to the phrase "payee is required to attach a copy of FTB Form 592-B."
- Subsections (c)(4) and (5) have been relocated to subsections (c)(3) and (4), respectively, and these subsections have been revised to include references to the newly included forms for domestic pass-through entities, namely, FTB Form 592-PTE and FTB Form 592-Q. Because subsections (c)(3) and (4) reference all the various withholding and payment forms, and since FTB Form 592-PTE and FTB Form 592-Q are new forms that did not exist before, references to both of these forms have been added to subsections (c)(3) and (4).
- Subsection (d)(2) has been revised throughout to reflect the fact that remitters may be subject to information return penalties in the context of real estate withholding. As was set forth herein for section 18662-2, subsection (v) above, it is important to classify individuals properly, and the addition of remitter avoids the possibility of incorrectly imposing upon a buyer/transferee in a real estate transaction the responsibility of sending payments to the FTB, when in fact that responsibility falls on the remitter (who will often be the escrow officer). In real estate transactions, the person who is responsible for withholding is the buyer, and the person who actually performs the withholding is often the real estate escrow person. Thus, this change clarifies that the remitter (typically, the escrow officer)—not the buyer/transferee—is the person responsible for sending the payment to the FTB, and will be subject to information return penalties. This change is necessary to avoid possible confusion with respect to the persons responsible for remitting the tax.
- Subsection (d)(2)(A) has been revised to properly categorize FTB Form 592-B as a payee statement—rather than an information return. Specifically, this

subsection clarifies that FTB Forms 592, FTB Form 592-PTE (which is newly added), FTB Form 592-F and FTB Form 593 are information returns, whereas FTB Form 592-B is a payee statement. This revision clarifies that an information return is a statement required to be filed with the State while a payee statement is a statement required to be furnished to the recipient (i.e., payee/partner). Because FTB Form 592-B is required to be furnished to the recipient and not filed with the State, the more appropriate term is "payee statement." This change is necessary to avoid possible confusion with respect to the incorrectly used terminology by ensuring that FTB Form 592-B is properly characterized as a payee statement—rather than an information return. Without this change, taxpayers may incorrectly believe that FTB Form 592-B is an information return and will file the form with the State, thereby causing a reduction in the effectiveness of administration of the withholding laws, when in fact it should be furnished to the recipient.

- Subsection (d)(2)(C) has been revised to increase the penalty from \$100 to \$250 for noncompliance that is due to an intentional disregard of the requirements of the Withholding Regulations. This revision makes the penalty amount contained in the Withholding Regulations consistent with the current amount being charged as required by Revenue and Taxation Code section 19183 (effective for information returns required to be filed on or after January 1, 2016.)
- Subsection (d)(2)(D)(2) has been revised to reflect the fact that prior FTB Form 593-C is no longer operative, as it will be merged with and into FTB Form 593. As such, provisions of the subsection that previously required the seller/transferor to make a certification using FTB Form 593-C are updated to reflect that the certification will now be made on FTB Form 593. This change is necessary to reflect the updated Form changes and to avoid confusion and avoid the possibility that filers will submit the incorrect form.
- Subsection (j) has been revised to fix an inadvertent form naming error by changing the name of the FTB Form 592-V from "Payment Voucher for Nonresident or Resident Withholding" to "Payment Voucher for Resident or Nonresident Withholding" to match the correct form name. This change is necessary to reflect the correct naming of the form, and to avoid confusion, thereby avoiding the possibility that filers will submit the incorrect form.
- Subsection (j) has been revised to add a checkbox in Form 592-V to indicate the types of income being reported, and give fillable options of either: payment to independent contractor; trust distributions; rents or royalties; estate distributions; elective withholding; elective withholding/Indian tribe; or Other (for which an explanation must be provided). This change is necessary to avoid confusion, and provide consistency with the checkbox in Form 592-V and in FTB Form 592, as set forth above in the Withholding Regulations at Section 18662-4, subsection (i)(6).

- Subsection (k) has been revised to include a reference to FTB Form 592-PTE, which is contained in Regulation Section 18662-4, subsection (j). This change is necessary because FTB Form 592-PTE is a new form which is now being referenced.
- Subsection (l) has been revised to include the contents of newly created FTB Form 592-Q, which is the payment voucher for Pass-Through Entity Withholding. This form is nearly identical to FTB Form 592-V, which was previously used by domestic PTEs for withholding payments. This change is necessary because as noted above, domestic PTEs will use their own voucher, the Form 592-Q, given that there are certain differences between the vouchers used for domestic PTEs and those using the regular FTB Form 592-V, as set forth in Regulation section 18662-8, subsection (c)(1)(B).
- Subsection (m) has been revised by changing the name of FTB Form 592-F from "Foreign Partner or Member Annual Return" to "Foreign Partner or Member Annual Withholding Return" to clarify that the return pertains to foreign partner withholding. This change is necessary to clarify that the form itself is a "Withholding" Return so as not to be confused with other partnership returns.
- Subsection (n) has been revised by adding a check box on the supplemental voucher which will indicate how FTB Form 592-F was submitted (either electronic or paper). This change is necessary to make the payment voucher for foreign partner or member withholding consistent with the payment voucher for resident or nonresident withholding within FTB Form 592-V.
- Throughout this Regulation subsection, there has been a revision, inserting the phrase "or ITIN" after the word "SSN," These proposed additions are necessary to make all of the applicable fields on various forms referenced in the Withholding Regulations at Section 18662-8 more generic such that they could apply to both resident and nonresident individuals, as well as business entities, since a nonresident individual or a business entity may have an ITIN,. The change is also necessary to match what is currently on those various forms as further explained above with respect to the proposed changes made to the Withholding Regulations at Section 18662-4.
- Throughout this Regulation subsection, the phrase "California Secretary of State" has been changed to "SOS" because subsection (j)(3) notes that "California Secretary of State" will be referred to as "SOS." This change is necessary to reduce complexity, avoid possibility ambiguity with respect to the terminology and ensure consistency in the regulation text as further explained above with respect to the proposed changes made to the Withholding Regulations at Section 18662-4.
- Subsection (o)(6) is revised to change "California tax withheld" to "resident and/or nonresident tax withheld" which will make it easier for taxpayers to

accurately claim their withholding credits because "California tax withheld" might be construed narrowly and only include "resident" tax withheld. This change ensures that the person to whom the credits belong will include both "resident and/or nonresident tax withheld," thereby increasing the likelihood of claiming their credit.

- Subsection (n) is proposed to be removed because it references FTB Form 593-C which will be merged with and into the Form 593, and no longer exist. Therefore this change is necessary to avoid confusion with respect to reference to a form that no longer exists.

BENEFITS OF THE REGULATIONS

The changes made in the proposed amendments to the Withholding Regulations provide additional clarity and transparency for taxpayers, tax practitioners, withholding agents, and the public. The revised Withholding Regulations also retain the flexibility to respond to individual circumstances and new or changed responsibilities. As detailed above, one of the primary changes effectuated through the proposed amendments is the consolidation of the real estate withholding forms, which will reduce the burden on the escrow industry, as it will reduce the number of forms for real estate transactions from four to one. In addition, the consolidation of forms will assist sellers/transferors in their real property transactions, as there will now be one form for all real estate transactions, and one voucher—rather than having four different forms depending on the type of real estate transaction. This will benefit taxpayers by making the withholding process simpler and less burdensome.

The proposed amendments to the Withholding Regulations will also benefit taxpayers, tax practitioners, those required to remit withholding, and the state by making various technical changes that provide clarity, including changes to terminology in the current regulatory language. The proposed amendments are expected to reduce taxpayer compliance costs and confusion, including the direct costs of preparing and reviewing tax documents. In addition, the proposed amendments which impact the withholding remittance by nonresident individuals and non-California businesses due to the reduction in allowed expenses are anticipated to result in a small beneficial change in the timing of payments to the state.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

In drafting the proposed amendments to the Withholding Regulations, the FTB primarily relied on RTC Sections 18662 and 18668 (as well as existing Internal Revenue Code provisions) relating to nonwage and real estate withholding, and also relied on suggestions from members of the public obtained throughout the course of two Interested Parties Meetings. The FTB did not rely upon any other technical, theoretical, or empirical studies, reports or documents in proposing the revisions to the regulations.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR SMALL BUSINESSES

In accordance with the requirement of Government Code Section 11346.2, subdivision (b)(5), that the FTB consider alternatives to the proposed regulatory action, staff of the FTB conducted two IPMs. A preliminary interested parties meeting was held on October 12, 2015 to solicit input from the public. A summary of the first IPM was thereafter made available to the public. As set forth in the summary, numerous topics were discussed at this first IPM and staff took that input to produce draft proposed regulatory language. A second IPM was held on July 11, 2016, at which staff provided proposed language. As noted above, the purpose of the meeting was to provide participants with an opportunity to discuss and provide comments on the proposed language amending the Withholding Regulations, which would make various substantive and technical changes. The summary of the second IPM was thereafter made available to the public. In addition, the Background and Explanations of the Proposed Draft Language was also made available to the public. After the second IPM, staff considered public comments and made further changes to the proposed regulatory language, incorporating and adopting some of the suggestions made by the public and other changes as a result of further staff review of the Withholding Regulations.

The alternative to adopting the proposed amendments to the Withholding Regulations is the status quo, which would not provide taxpayers improved guidance on withholding issues and would result in no benefit or cost changes. The status quo puts at risk the collection of a portion of state tax owed by non-residents filing the FTB Form 589. At most risk are those who are not withheld upon as they have the most incentive not to file a final return. The FTB calculates that of the 2,300 taxpayers filing an FTB Form 589, 500 of these claimed enough expenses to bring their required withholding amount to zero. These exemptions would result in a reduction of withholding of about \$500,000 versus the proposed 50 percent expense rule change as discussed herein with respect to FTB Form 589. This represents an upper bound revenue loss for the status quo versus the proposed amendments to the Withholding Regulations assuming these taxpayers choose not to file a final tax return.

Accordingly, the FTB has determined that there were no alternatives considered which would be more effective in carrying out the purpose of the proposed amendments, or would be less burdensome with respect to affected private persons or small businesses than the proposed regulation amendments.

ECONOMIC IMPACT ASSESSMENT

The Creation or Elimination of Jobs within the State of California:

The proposed amendments to the Withholding Regulations are intended to make various technical changes, to provide clarity to the current withholding regulations, including changes to terminology in the current regulatory language, and to change the rules applicable to domestic pass-through entities. As such, a majority of the proposed amendments would have no measurable economic impact.

Only the proposed regulation amendment provision (as set forth in Regulation Section 18662-4, subsection (e)(2)) for the filing of Form 589 limiting expenses to reduce withholding would have a measurable economic impact. The timing of payments under the proposed regulation would be affected and would accelerate between \$1.2 million and \$1.5 million per fiscal year for those filing the Form 589 and who are impacted by the 50 percent expense limitation. But the changes do not change total tax owed.

It is not expected that new jobs will be created or eliminated within California as a result of the proposed regulation amendments for two reasons: First, the changes impact only nonresidents and non-California business entities; and second, the change in the timing of payments will predominately impact those with higher incomes. The increased withholding would in most cases only be a small share of total income for many of these entities.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California:

The proposed amendments to the Withholding Regulations are intended to make various technical changes, to provide clarity to the current withholding regulations, including changes to terminology in the current regulatory language, and to change the rules applicable to domestic pass-through entities. As such, a majority of the proposed amendments would have no measurable economic impact.

Only the proposed regulation amendment provision for the filing of Form 589 limiting expenses to reduce withholding would have a measurable economic impact. The timing of payments under the proposed regulation would be affected and would accelerate between \$1.2 million and \$1.5 million per fiscal year for those filing the Form 589 and who are impacted by the 50 percent expense limitation. But the changes do not change total tax owed.

It is not expected that new businesses will be created or businesses eliminated within California as a result of the proposed regulation amendments for two reasons: First, the changes impact only nonresidents and non-California business entities and second, the change in the timing of payments will predominately impact those with higher incomes. The increased withholding would in most cases only be a small share of total income for many of these entities.

The Expansion of Businesses Currently Doing Business within the State of California:

The proposed amendments to the regulations are intended to make various technical changes, to provide clarity to the current withholding regulations, including changes to terminology in the current regulatory language, and to change the rules applicable to domestic pass-through entities. As such, a majority of the proposed amendments would have no measurable economic impact.

Only the proposed regulation amendment provision for the filing of Form 589 limiting expenses to reduce withholding would have a measurable economic impact. The timing of payments under the proposed regulation would be affected and would accelerate between

\$1.2 million and \$1.5 million per fiscal year for those filing the Form 589 and who are impacted by the 50 percent expense limitation. But the changes do not change total tax owed.

It is not expected that there will be an expansion of businesses currently doing business in California as a result of the proposed regulation amendments for two reasons: First, the changes impact only nonresidents and non-California business entities and second, the change in the timing of payments will predominately impact those with higher incomes. The increased withholding would in most cases only be a small share of total income for many of these entities.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment.

Since the Withholding Regulations relate to procedures for nonwage and real estate withholding for nonresidents, there is no expected significant direct change to the health and welfare of California residents, worker safety or California's environment as a result of the proposed amendments. However, it is expected that there will be benefits from the proposed regulations for California residents, including the reduction of direct costs of preparing and reviewing tax documents due to a consolidation of tax forms. In addition, the proposed regulations would result in a small change in the timing of payments to the state which would accelerate payments to the State by between \$1.2 million and \$1.5 million per fiscal year and which might benefit California residents through the increase in General Fund dollars available to the State's Budget.

ADVERSE ECONOMIC IMPACT ON BUSINESS

Based on the FTB's economic analysis of the proposed regulations FTB concludes that the adverse economic impact on business will not be significant as discussed below:

As set forth in the Notice of Proposed Rulemaking, the FTB reviewed each of the proposed amendments to sections 18662-0 through 18662-6 and 18662-8 for potential adverse economic impact affecting business and found that only the proposed amendment to 18 CCR, Section 18662-4, subdivision (e) affecting the filing of FTB Form 589 would have a measurable economic impact. This amendment would limit the share of expenses used to reduce withholding to 50 percent of the source payment. Based on discussion with staff in the FTB's Legal and Filing divisions and a review of recent Form 589 data for entities that would be affected by the 50 percent expense limitation, it is estimated there would be an average increase in withholding payment of \$1,700 for those entities affected by the proposed limitation. Data suggests that in most cases the average withholding increase would be a small share of total income for these business entities as they are predominately entities with high incomes. Any withholding increase would simply be a change in the timing of payments. The proposed regulation would result in an increase in the prepayment of tax owed which would result in a reduction of this final return payment. On a revenue basis because the timing of payments under the proposed regulation would be affected, there would be an acceleration of between \$1.2 million and \$1.5 million per fiscal year for both non-California business and non-resident individuals, but this revenue acceleration does not

change total tax owed. Therefore the FTB has determined in an economic impact statement and relies on the conclusions therein, that the adverse economic impact on business will not be significant.