

**Summary of Second Interested Parties Meeting
Proposed Regulation § 18662-0 Through -6 and -8,
First Topic: Nonwage and Real Estate Withholding
Second Topic: Pass-through Entity Withholding Filing Requirements**

I. Administration:

On July 11, 2016 at approximately 10:00 a.m., interested members of the public (participants) attended the second Interested Parties Meeting (IPM) at the Franchise Tax Board (FTB) central office in Sacramento. Participants attended in person and by telephone. Those physically present were asked to register at the entrance and those on the telephone were asked to fax a business card to Jennifer Johnson for later correspondence. Phone participants introduced themselves. The session was audio recorded for reference, but participants were informed there would be no attribution of comments and no transcript would be made.

IPM Facilitators, David Muradyan and Bruce Langston, listed the three documents made available as handouts: (1) notice of the meeting; (2) the explanation of discussion draft language, and (3) the proposed draft amended regulatory language for discussion purposes. Participants were told they had until August 12, 2016 to submit written comments.

The purpose of the meeting was to provide participants with an opportunity to discuss and provide comments on the proposed language amending California Code of Regulations (CCR), title 18, sections 18662-0 through 18662-6, and section 18662-8 (Withholding Regulations), which would make various substantive and technical changes to the Withholding Regulations, including changes to terminology in the current regulatory language. In addition, the purpose was to discuss the proposed language related to domestic pass-through entity (PTE) withholding filing requirements.

II. Discussion:

The discussion was organized topically. The first part of the discussion covered nonwage and real estate withholding, while the second part of the discussion covered PTE withholding filing requirements. The numbering of the comments in this summary is for ease of reference and thus, readers should not assign any importance to one comment over any other comment.

a. Part 1: The first part of discussion covered nonwage and real estate withholding.

The first part of discussion covered nonwage and real estate withholding. The facilitator opened up the discussion by noting the changes being proposed to clarify the process to request a waiver using FTB Form 588, Nonresident Withholding Waiver Request. Specifically, the facilitator noted that the proposed language would amend 18 CCR Section 18662-4, subsection (e)(1) to allow payees, their representatives, or withholding agents on behalf of payees to request a waiver using FTB Form 588, whereas previously, only the payees could request this waiver. The facilitator then opened up discussion about proposed language amending the Withholding Regulations to clarify the threshold requirements for FTB Form 589, Nonresident Reduced Withholding Request, to ensure that this form would only be used for reduced withholding. The facilitator explained that the amendment to 18 CCR Section 18662-4, subsection (e)(2) would require that reduced

withholding requests pursuant to FTB Form 589 must have the total amount of expenses be at or below 50 percent of the gross California source payment, to ensure that the form is used for its intended purpose. The facilitator explained that this form has been used to effectively 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, Nonresident Withholding Waiver Request.

Next, the facilitator opened up discussion about proposed language amending the definition section of the regulations (18 C.C.R. section 18662-2), by adding the term "Remitter," which would be defined as a person who would be responsible to remit any tax withheld on any disposition from the sale or exchange of California real estate by California resident and nonresident individuals and non-California Business entities. The facilitator explained that 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 the real estate escrow person. Thus, the facilitator stated that this amendment was necessary to clarify that the remitter (typically, the escrow officer)—not the buyer—is the person responsible for sending the payment to the FTB. The facilitator also stated that the remitter would not be subject to the failure to withhold liability that withholding agents are subject to, but that a remitter would be subject to information return penalties if the remitter failed to file a correct FTB Form 593, Real Estate Withholding Tax Statement.

The facilitator then opened up discussion about proposed language amending 18 CCR Section 18662-6 by adding subsection (a)(2)(B), to clarify that if the entertainer's agent or promoter is incorporated in California or qualified to do business in California with the California Secretary of State (SOS), the entertainment venue is not required to withhold if the entertainer's agent or promoter certifies to an exemption on FTB Form 590. The facilitator noted that the entertainment venue may rely on a printout from the SOS's public website as further set forth in 18 CCR Section 18662-6, subsection (a)(2)(B), 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.

Next, the facilitator opened up discussion about proposed language amending relevant portions of 18 CCR Section 18662-3 by adding certain fields to FTB Form 593, including "ownership percentage," which would make the audit process more accurate. The facilitator explained that when the FTB is dealing with multiple sellers, FTB has a difficult time ascertaining the ownership percentages of each respective seller, as databases containing publicly available information do not always yield results in the most efficient manner. The facilitator explained that as a result, FTB must now contact the appropriate party involved to obtain such information and that by adding a field covering "ownership percentage" to FTB Form 593, the form will capture information that FTB would otherwise receive by less efficient means.

The facilitator then opened up discussion about proposed language amending relevant portions of 18 CCR Section 18662-3 to effectuate the consolidation of the following forms into FTB Form 593 (which would thereafter include elements of the following forms which would no longer exist): FTB Form 593-I, Real Estate Withholding Installment Sale Acknowledgement, FTB Form 593-C, Real Estate Withholding Certificate, and FTB Form 593-E, and Real Estate Withholding Computation of Estimated Gain or Loss. The facilitator explained that the proposal to merge FTB Form 593-C, FTB Form 593-E and FTB Form 593-I into FTB Form 593 was for consolidation purposes as there was a significant amount of information repeated throughout these forms.

The facilitator further noted that the consolidation 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/transferees 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.

The facilitator next discussed the proposed language amending 18 CCR Section 18662-3, subsection (d)(3)(B)(1), to clarify that the person responsible for withholding during an installment sale is the buyer/transferee—not the real estate escrow person. The facilitator explained that as drafted, 18 CCR Section 18662-3, subsection (d)(3)(B)(1) inadvertently imposed a withholding requirement for installment sales on the real estate escrow person—rather than the buyer/transferee. However, under both RTC sections 18662, subdivision (e)(3) and 18668, subdivision (e)(1), and 18 CCR Section 18662-3, subsection (a), once the real estate escrow person provides the transferee/buyer with written notice of the transferee's/buyer's withholding requirements, the requirement to withhold is on the buyer/transferee—not on the real estate escrow person. Thus, this proposed amended subsection changes the phrase "real estate escrow person" to the word "buyer/transferee."

Some participants made comments with respect to the Withholding Regulations. A participant suggested that the term "payee" in 18 CCR Section 18662-8, subsection (b)(2)(B), should be changed to the term "seller/transferor" for consistency with 18 CCR 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." As a result of that comment, FTB proposed changing the term "payee" in 18 CCR 18662-8, subdivision (b)(2)(B) to the term "seller/transferor" to make this subsection consistent with 18 CCR Section 18662-8, subsection (d)(2)(D)(2). A participant also noted that revised 18 CCR Section 18662-3, subsection (h)(10), which requires the dated signature of the seller's/transferor's spouse/RDP, should clarify that the signature of the seller's/transferor's spouse/RDP is only necessary if the spouse/RDP is also a record title holder of the real property in question. Given the space limitations on the forms, the FTB will explain in the Instructions to the new FTB Form 593 that the signature of the seller's/transferor's spouse/RDP will be required only if the spouse/RDP is a record title holder of the real property in question. Another participant proposed a number of technical comments making certain revisions to 18 CCR Section 18662-6, and FTB incorporated and adopted some of the proposed changes in the draft language.

Finally, the facilitator noted that in addition to all of the discussed changes, there were a number of other technical revisions to the Withholding Regulations set forth in the proposed language for discussion purposes document, as well as the explanation of discussion draft language document, and which were also posted to FTB's public website prior to the second IPM.

b. Part 2: The second part of discussion covered PTE withholding.

The facilitator opened up discussion about domestic PTEs, specifically, about proposed language amending 18 CCR Sections 18662-4, subdivision (d), 18662-8, subdivision (c)(1)(B) and 18662-8, subdivision (c)(2)(B) — which would change the filing scheme from a quarterly filing withholding scheme to an annual filing withholding scheme. The facilitator explained that consistent with the proposed regulatory changes, FTB has devised a new Annual Reconciliation Form and a new PTE voucher form to effectuate this move from the quarterly filing withholding scheme to an annual one. The new form would be FTB Form 592-PTE, Pass-Through Entity Annual Withholding Return, which will be used specifically by domestic pass-through entities, who, as withholding agents,

withhold tax at source on lower tier pass-through entities. The facilitator also noted that the new voucher would be FTB Form 592-Q (Voucher) for quarterly payments. The facilitator explained that withholding from payments (using FTB Form 592-Q voucher) will still be quarterly, similar to the Form 592, but that the new PTE Form (FTB Form 592-PTE) will be filed on January 31 of the year following the year for which such withholding was required to be remitted to FTB, noting that this date is also the due date for federal Form W-2, Wage and Tax Statement, and Form 1099.

III. Closing:

The IPM closed with the facilitator noting that the FTB would accept written comments on the topics discussed at the meeting until August 12, 2016, and that FTB staff intends to consider all comments received on the day of the IPM through the comment deadline. Finally, the facilitator also mentioned that a summary of the IPM would be published online in the future.