

NOTE: This handout is intended only for purposes of facilitating discussion at the interested parties meeting on July 11, 2016.

Regulation Section 18662-1 is amended to read:

§ 18662-1. Withholding-Generally.

(a) Types of Withholding--Application of Regulation sections 18662-0 through 18662-8.

(1) Overview. California law requires withholding of tax by persons having the control, receipt, custody, disposal, or payment of items of income, commonly termed "withhold at source." Regulation sections 18662-0 through 18662-8 apply to withholding of tax at source and do not apply to wage withholding, withholding orders for delinquent taxes, 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), backup withholding, or tax collection through the interagency intercept program.

(A) Withholding Tax on Wages. Withholding tax on wages is required by Division 6 of the California Unemployment Insurance Code (section 13000 et seq.) and is administered by the Employment Development Department. (See Revenue and Taxation Code section 18632.) Regulation sections 18662-0 through 18662-8 do not cover withholding tax on wages.

(B) Withholding Orders for Delinquent Taxes. Withholding orders for delinquent taxes may be issued pursuant to Revenue and Taxation Code section 18670 and other statutes relating to involuntary collection, levies, and wage garnishments. Regulation sections 18662-0 through 18662-8 do not cover withholding orders for delinquent taxes.

(C) Foreign (Non-U.S.) Partners and Members. Revenue and Taxation Code section 18666 and federal provisions incorporated by reference apply to withholding on foreign (non-U.S.) partners and members who have allocable amounts of effectively connected income to a California trade or business. Regulation sections 18662-0 through 18662-8 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. (See Treasury Regulation section 1.1446-0 et seq. and Internal Revenue Service (IRS) publications.)

(D) Backup Withholding. With certain limited exceptions (which include payment of interest and dividends, and any release of loan funds made by a financial institution in the normal course of business as stated in Revenue and Taxation Code section 18664, subdivision (a)(3)), backup withholding is required by Revenue and Taxation Code section 18664 on payments where federal backup withholding is required. Regulation sections 18662-0 through 18662-8 do not cover withholding taxes on backup withholding.

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- (E) Interagency Intercept Program. Government Code section 12419.5 authorizes the State Controller's Office to collect money owed to one state agency by a person or entity by deducting the amount owed from any money to be paid to such person or entity by another state agency. This procedure is called an interagency intercept. Payments to a person or entity by the State include but are not limited to a refund of a tax, license, or fee, or a payment for services rendered. Regulation sections 18662-0 through 18662-8 do not cover interagency intercepts.
- (b) Withholding of Tax at Source.
- (1) General. Non-wage withholding is administered by the Franchise Tax Board under Article 5 of Chapter 2 of Part 10.2 of Division 2 of the Revenue and Taxation Code, section 18661, et. seq., and federal provisions incorporated by reference. Subject to certain exceptions specified in Revenue and Taxation Code section 18662, subdivision (e)(3), withholding of tax at source is required from payments derived from California sources and from the sale of any California real property. Withholding is also required when the Franchise Tax Board has notified the payer to withhold.
- (2) Real Estate Withholding. Withholding of tax at source is required from the sale or exchange of California real estate by a seller/transferor, California resident and nonresident individuals and non-California business entities, unless certain exceptions specified in Revenue and Taxation Code section 18662, subdivision (e)(3), are met. (See Revenue and Taxation Code section 18662, subdivision (e), and Regulation section 18662-3.)
- (3) Withholding by Withholding Agent.
- (A) Withholding of tax at source is required by persons having the control, receipt, custody, disposal, or payment of items of income made to nonresident individuals and non-California business entities. Withholding is also required where the payee is unknown or unidentified, or fails or refuses to provide the payer with the information to be provided by Regulation sections 18662-0 through 18662-8 to determine if withholding is required.
- (B) Cross-References. Withholding on Payments. See Regulation section 18662-2 for definitions. See Regulation section 18662-3 for rules relating to real estate withholding. See Regulation section 18662-4 for rules applicable to withholding on payments to nonresidents. See Regulation section 18662-5 for rules relating to other types of payments and withholding obligations. See Regulation section 18662-6 for nonresident withholding relating to entertainers, athletes, and speakers. See Regulation section 18662-7 as to withholding rules for domestic (U.S.) pass-through entities [Reserved]. See Regulation section 18662-8 as to rules relating to reporting and remitting amounts withheld, penalties, and interest. See Chapter 11 of Part 10 of Division 2 of the Revenue

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and Taxation Code (sections 17951-17955) and applicable regulations for rules relating to determination of gross income from sources within California.

(c) **Withholding Required After Notification.** Withholding of tax at source is required when a withholding agent is notified in writing by the Franchise Tax Board to withhold tax from California source income.

Example: A promoter of an nonresident entertainer is renting a venue in California for a performance to be held next June. The Franchise Tax Board contacts the promoter in writing and informs the promoter that withholding is required for amounts received for the June performance. The promoter has not complied with the Franchise Tax Board's notices to withhold on previous performances. The Franchise Tax Board also notifies the venue owner/operator in writing that withholding is required for amounts paid for the June performance. The venue owner/operator must withhold 7 percent on all payments, including ticket sales and commissions, for this performance. In this situation, both the promoter and the venue owner/operator are withholding agents.

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