

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

Regulation Section 18662-8 is amended to read:

§ 18662-8. Reporting and Remitting Amounts Withheld, Penalties, and Interest; Other Procedures.

(a) General. The Franchise Tax Board shall prescribe necessary forms identified in Regulation sections 18662-0 through 18662-8, or any successor forms designated by the Franchise Tax Board on its website at www.ftb.ca.gov, for the reporting and remitting of withholding of tax amounts.

(b) Real Estate Sales – Information Returns.

(1) Payment Due Dates and Form. Real estate withholding is due by the 20th day of the calendar month following the month escrow closes. For example, if escrow closes on January 3rd, payment is due on or before February 20th. If February 20th falls on a weekend or holiday, the payment may be remitted pursuant to FTB Form 593, Real Estate Withholding Tax Statement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 593") and FTB Form 593-V, Payment Voucher for Real Estate Withholding, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 593-V") on the next business day without penalty. The required information specified in FTB Form 593 and FTB Form 593-V is set forth in subsection (g) and subsection (h), respectively, below. Payment of withholding on Section 1031 like-kind exchanges is due on the 20th day of the calendar month following the month in which the exchange was completed or failed. For simultaneous exchanges, the exchange is completed in the month escrow closes. For deferred exchanges, the exchange is completed in the month the last requirement of the exchange is completed. For failed exchanges, the exchange fails in the month when the proceeds were distributed to the seller/transferor after a determination that the exchange would not meet the Internal Revenue Code section 1031 exchange requirements. Remittance shall be in the form and manner as the Franchise Tax Board may prescribe in FTB Form 593.

(2) Reporting.

(A) In General. Real estate sales/transfers and withholding is are reportable to the Franchise Tax Board either by paper on FTB Form 593, which can be filed on paper or electronically (where allowable). Withholding payments made via check or money order must be remitted with FTB Form 593-V. for paper payments (where allowable) or electronically here along with the remittance on FTB Form 593-V. Withholding payments made electronically do not require FTB Form 593-V.

(B) Information Returns. An FTB Form 593 stating the amount of the real estate withholding shall be provided to the payee either at the time of sale or not later than January 31st of the following calendar year, and may be required to be filed with the Franchise Tax Board, in the form and manner that the Franchise Tax Board may prescribe in FTB Form 593 and FTB Form 593-V. The payee may be

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required to attach a copy of the FTB Form 593 to the appropriate tax return to be filed with the Franchise Tax Board in order to claim a credit for the withheld amount.

(c) Withholding From Payments Other Than Real Estate Sales.

(1) Payment Due Dates.

(A) In General. Withholding on nonresident payments is due on the same dates ~~under the same schedule~~ as required for calendar year federal estimated tax. Withholding from payments made January 1st through March 31st is due April 15th, April 1st through May 31st is due June 15th, June 1st through August 31st is due September 15th, and September 1st through December 31st is due January 15th of the following year. Remittance Reporting shall be completed by paper or electronically pursuant to FTB Form 592, Resident and Nonresident Withholding Tax Statement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592"). Payments shall be remitted using ~~and~~ FTB Form 592-V, Payment Voucher for Resident or Nonresident or Resident Withholding, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-V"), ~~either electronically or by for paper checks or money orders.~~ Withholding payments made electronically do not require FTB Form 592-V. The required information specified in FTB Form 592 and FTB Form 592-V is set forth in subsection (i) and subsection (j), respectively, below.

(B) Domestic Pass-through Entity. Withholding on payments is due on the same dates as required for calendar year federal estimated tax. Withholding from payments made January 1st through March 31st is due April 15th, April 1st through May 31st is due June 15th, June 1st through August 31st is due September 15th, and September 1st through December 31st is due January 15th of the following year. Reporting shall be completed by paper or electronically pursuant to FTB Form 592-PTE, Pass-Through Entity Annual Withholding Return, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-PTE"). Payments shall be remitted using ~~and~~ FTB Form 592-Q, Payment Voucher for Pass-Through Entity Withholding, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-Q"), for paper checks or money orders. Withholding payments made electronically do not require FTB Form 592-Q. The required information specified in FTB Form 592-PTE and FTB Form 592-Q is set forth in subsection (k) and subsection (l), respectively, below.

(C) ~~(2)~~ Foreign (Non-U.S.) Partners or Members—Due Dates. California follows federal procedures for foreign partners. Therefore, the due dates for payments are the same as the federal due dates, as prescribed in federal regulations, ~~and Remittance shall be~~ pursuant to FTB Form 592-F, Foreign Partner or Member Annual Withholding Return, or any successor form

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designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-F") and Form 592-A, Payment Voucher for Foreign Partner or Member Withholding, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-A"), either electronically or by paper check. The required information specified in FTB Form 592-F and FTB Form 592-A is set forth in subsection ~~(k)~~(m) and subsection (n), respectively, below.

~~(3)~~(2) Reporting.

- (A) In General. Withholding on payments ~~should~~ must be reported to the Franchise Tax Board on FTB Form 592, which can be filed on paper or electronically (where allowable.) Withholding payments made via check or money order must be remitted with FTB Form 592-V. Withholding payments made electronically do not require FTB Form 592-V. ~~either by paper on FTB Form 592 or FTB Form 592-F or electronically for paper payments (where allowable), or electronically along with the remittance pursuant to FTB Form 592-A, Payment Voucher for Foreign Partner or Member Withholding, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-A") for paper checks or money orders~~
- (B) Domestic Pass-through Entity Withholding. If the withholding agent is a domestic pass-through entity, FTB Form 592-Q shall be filed with each quarterly withholding remittance. Total quarterly withholding payments made throughout the year, or total withholding paid by another entity and to be allocated to partners or members, shall be reported to the Franchise Tax Board 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 Franchise Tax Board.
- (C) Foreign (Non-U.S.) Partner or Member. California conforms to federal regulations and procedures for foreign partner withholding, so the due dates for reporting such withholding are the same as the federal due dates, as prescribed in federal regulations, and pursuant to FTB Form 592-F and Form 592-A. FTB Form 592-A, shall be filed with each quarterly remittance. 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 partnership's or LLC's taxable year.
- (D) FTB Form 592-A contains five payment vouchers, one for each reporting period plus a supplemental voucher if there is a balance due on FTB Form 592-F. The supplemental voucher is due on the original due date of FTB Form 592-F, regardless of an extension. The required information specified in FTB Form 592-A is set forth in subsection ~~(h)~~(n), below. The name and Taxpayer Identification Number (TIN) of each payee should be provided so that the payment can be properly posted to the payee's account.

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- (E) ~~Information Returns.~~ Payee Statement. Pursuant to FTB Form 592-B, Resident and Nonresident Withholding Tax Statement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-B"), ~~an information return a~~ payee statement shall be provided to the payee aggregating all withholding for the tax year by January 31st of the following year, and may be required to be filed with the Franchise Tax Board, in the form and manner that the Franchise Tax Board may prescribe in FTB Form 592-B and instructions. The required information specified in FTB Form 592-B is set forth in subsection ~~(m)(o)~~, below. The payee ~~may be~~ is required to attach a copy of FTB Form 592-B to the appropriate tax return to be filed with the Franchise Tax Board in order to claim a credit for the withheld amount.

~~(4)(3)~~ Electronic and Magnetic Media. Any reference to FTB Form 592, FTB Form 592-PTE, or FTB Form 592-F or payments on FTB Form 592-A, FTB Form 592-Q, or Form 592-V in these regulations shall also refer to corresponding electronic filings and payments.

~~(5)(4)~~ Withholding Adjustments. If a withholding agent discovers that an amount was withheld in error, the withholding agent may file an amended FTB Form 592, FTB Form 592-PTE, or FTB Form 592-F showing the proper amount of withholding on the payment and either make an additional remittance using FTB Form 592-A, FTB Form 592-Q, or FTB Form 592-V, or request a refund or credit of the erroneously withheld amount to be refunded or credited either to the withholding agent or to the payee, as appropriate. If the withholding agent requests that the erroneously withheld amount be retained as a credit against the withholding agent's future withholding obligations (in cases where the withholding agent has repaid the erroneously withheld funds to the payee), the Franchise Tax Board will retain the withholding amount in the name of the withholding agent who can then apply the excess withholding on a later period remittance as a prior payment.

(d) Interest and Penalties.

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

(2) Penalties and Liabilities.

(A) Information Return Penalties. Revenue and Taxation Code section 19183 incorporates federal information return and payee statement penalties by reference. FTB Form 592, FTB Form 592-PTE, FTB Form 592-F, and FTB Form 593 ~~and FTB Form 592-B~~ are information returns, FTB Form 592-B is a payee statement. ~~and~~ Failure to file these these returns may subject the withholding

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agent or remitter to information return penalties as specified in Regulation sections 18662-0 through 18662-8.

(B) Real Estate Information Return Penalties. A penalty may be assessed if the remitter fails to file a correct FTB Form 593 between the due date and 30 days after the due date. The penalty increases if a correct FTB Form 593 is filed more than 30 days following the due date, and again more than 6 months following the due date, or if a correct FTB Form 593 is never filed.

If the noncompliance is due to an intentional disregard of the requirements of Regulation sections 18662-0 through 18662-8, the penalty increases to the greater of ~~\$100~~250 or 10 percent of the required withholding. The penalty is for each FTB Form 593 that the ~~withholding agent~~remitter does not file correctly by the due date.

(C) Liability of Withholding Agent for Required Withholding. Revenue and Taxation Code section 18668, subdivision (a), provides that a withholding agent is liable for the amount that was required to be withheld, and applicable penalties and interest, unless it is shown that the failure was due to reasonable cause.

When the withholding agent pays the liability under subsection (d)(2)(C) for required withholding and information return penalties and interest, and the nonresident payee subsequently files a return and pays the tax, Franchise Tax Board may reverse the liability for required withholding upon written request by the withholding agent; however, the withholding agent remains liable for any information return penalties and interest.

(D) Special Rules for Real Estate Withholding.

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

2. Real Estate Information Returns and False Exemption Certificates. The remitter may be subject to a \$50 penalty if the withholding agent does not provide the sellers/transferors with correct copies of FTB Form 593 by the due date. If the noncompliance is due to an intentional disregard of the requirements set forth in Regulation sections 18662-0 through 18662-8, the penalty increases to the greater of \$100 or 10 percent of the required withholding. The penalty is for each FTB Form 593 that is not furnished. FTB Form 593 is considered correct when all applicable fields are completed, the information is correct, and the correct version of the form is used. The Franchise Tax Board will make available on its website at www.ftb.ca.gov and will designate the proper version of FTB Form 593 for

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each year. The pre-printed year on FTB Form 593 must match the year the transaction occurred. For sales, this is the year escrow closed. For installment payments, this is the year of the installment payment. For exchanges, this is the year the last requirement of the exchange was completed or when it was determined that the exchange would not meet the Internal Revenue Code section 1031 requirements and any cash or cash equivalent was distributed to the seller/transferor. If the seller/transferor knowingly certifies to ~~executes~~ a false exemption on FTB Form 593, the seller/transferor may be subject to a penalty of the greater of \$1,000 or 20 percent of the required withholding. ~~The required information specified in FTB Form 593-C is set forth in subsection (n)(p), below.~~

(e) Other Information Returns. The Franchise Tax Board may prescribe in writing when other information returns and withholding statements must be provided to the payee and/or to the Franchise Tax Board.

(f) Coordination With Group Returns. Except as set forth in Revenue and Taxation Code sections 18534 and 18536, withholding of tax is allowed as a credit against the tax shown on a group nonresident return.

(g) FTB Form 593, Real Estate Withholding Tax Statement. See Regulation section 18662-3, subsection ~~(j)~~(h).

(h) FTB Form 593-V, Payment Voucher for Real Estate Withholding. See Regulation section 18662-3, subsection ~~(k)~~(i).

(i) FTB Form 592, Resident and Nonresident Withholding ~~Tax~~ Statement. See Regulation section 18662-4, subsection (i).

(j) FTB Form 592-V, Payment Voucher for Resident or Nonresident or Resident Withholding. FTB Form 592-V shall contain the following information:

(1) A check box to indicate how FTB Form 592 was submitted, by one of two methods (electronic or paper).

(2) Total number of payees reported on FTB Form 592-V.

(3) Withholding Agent information, which includes the business and/or individual name, identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), ~~contact name at the business~~, telephone number, and withholding agent's address.

(4) Amount of payment submitted with FTB Form 592-V.

(5) A check box to indicate the types of income being reported: Payment to Independent Contractor; Trust Distributions; Rents or Royalties; Estate Distributions;

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Elective Withholding; Elective Withholding/Indian Tribe; or Other. For "Other," an explanation must be provided.

(k) FTB Form 592-PTE, Pass-Through Entity Annual Withholding Return. See Regulation section 18662-4, subsection (j).

(l) FTB Form 592-Q, Payment Voucher for Pass-Through Entity Withholding. FTB Form 592-Q shall contain the following information:

(1) A check box to indicate how FTB Form 592-PTE was submitted, by one of two methods (electronic or paper).

(2) Total number of payees reported on FTB Form 592-Q.

(3) Withholding Agent information, which includes the business and/or individual name, identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), telephone number, and withholding agent's address.

(4) Amount of payment submitted with FTB Form 592-Q.

~~(k)~~(m) FTB Form 592-F, Foreign Partner or Member Annual Withholding Return. See Regulation section 18662-4, subsection (j)(k).

~~(j)~~(n) FTB Form 592-A, Payment Voucher for Foreign Partner or Member Withholding. FTB Form 592-A shall contain the following information:

On the supplemental voucher, a check box to indicate how FTB Form 592-F was submitted, by one of two methods (electronic or paper).

(1) A space to indicate the month, day, and year of the start of the partnership's or LLC's calendar or fiscal year.

(2) A space to indicate the month, day, and year of the end of the partnership's or LLC's calendar or fiscal year.

(3) Withholding Agent information, which includes the business name, business identification number (FEIN, California corporation number, or California Secretary of State file number), contact name at the business, telephone number, and address.

(4) Amount of payment submitted with FTB Form 592-A.

~~(m)~~(o) FTB Form 592-B, Resident and Nonresident Withholding Tax Statement. FTB Form 592-B shall contain the following information:

(1) A check box indicating whether the form is filed as an amended FTB Form 592-B.

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(2) Withholding Agent information, which includes name, identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), address, and telephone number.

(3) Payee information, which includes name, identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), and address.

(4) A check box to indicate the types of income being reported: Payment to Independent Contractors; Trust Distributions; Rents or Royalties; Distributions to Domestic Nonresident Partners, Members, Beneficiaries, or S Corporation Shareholders; Estate Distributions; Elective Withholding; Elective Withholding/Indian Tribe; Allocations to Foreign (non-U.S.) Nonresident Partners/Members; or Other. For "Other," an explanation must be provided.

(5) Total amount subject to withholding.

(6) Total California resident and/or nonresident tax withheld (excluding backup withholding).

(7) Total backup withholding.

~~(n) — FTB Form 593-C, Real Estate Withholding Exemption Certificate. See Regulation section 18662-3, subsection (i).~~

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