

**THIRTY-DAY NOTICE OF PROPOSED AMENDMENTS
CALIFORNIA CODE OF REGULATIONS,
TITLE 18, SECTIONS 18662-0 THROUGH 18662-8
DECEMBER 30, 2022**

Background

On June 8, 2021, Franchise Tax Board (FTB) staff issued a 45-day notice of revisions to draft regulatory text for proposed California Code of Regulations (CCR), Title 18, Section 18662-7, Domestic Pass-Through Entity Withholding Regulation (Proposed Regulation), and proposed amendments to CCR, Title 18, Section 18662-0 through 18662-6 and 18662-8, General Withholding Regulations (Regulations). The FTB posted the notice and proposed draft regulatory text online on the FTB's website at the [Regulatory Activity](#) page.

At the September 9, 2021 FTB meeting, in open session, FTB staff obtained permission from the FTB to proceed with the formal Administrative Procedures Act (APA) regulatory process to adopt the Proposed Regulation and to amend the Regulations. After FTB staff obtained permission to proceed with the formal regulatory process, FTB staff determined additional revisions to the draft regulatory text were necessary.

Purpose

The purpose of this 30-day notice is to elicit comments on the proposed revisions to the draft regulatory text, as described below. Please submit written comments regarding the proposed revisions to the draft regulatory text by 5:00 p.m. on **January 31, 2023**.

Following the close of this 30-day comment period, FTB staff intends to present the draft regulatory text, including the revisions proposed in this 30-day notice, to the FTB, in open session, to bring the revisions to the attention of the FTB, and again request permission to proceed with the formal APA regulatory process to adopt the Proposed Regulation and to amend the Regulations. However, if there are comments received as a result of this 30-day notice requiring additional discussion, FTB staff may schedule an additional Interested Parties Meeting (IPM) prior to bringing the matter to the FTB.

Discussion

The main proposed revisions to the draft regulatory text are summarized below:

- (1) **Remove simple trusts from pass-through entity treatment to ensure all trusts and estates withhold tax in the same way and file the same withholding form with the same due date.**

Issue: The previous draft regulatory text treated a simple trust as a pass-through entity, which meant that a simple trust would be required to withhold tax on behalf of a nonresident beneficiary's share of the simple trust's distributable net income and file a Form 592-PTE to report such withholding on an annual basis. However, all other trusts and estates would continue to withhold tax on behalf of payments or distributions paid to a nonresident beneficiary and file a Form 592 on a quarterly basis. FTB staff noted the possibility of confusion caused by the differing withholding requirements and filing of different withholding forms with differing due dates, all dependent on type of trust.

Proposed Revision: FTB staff proposes the removal of simple trusts from pass-through entity treatment to ensure all trusts and estates follow the same withholding requirements and file the same withholding form due on an annual basis, thereby decreasing potential for confusion. With these proposed revisions, all trusts and estates, including simple trusts, that are required to withhold tax will be required to withhold tax on payments or distributions paid to nonresident beneficiaries (which is the current requirement) and will be required to file a Form 592 (See Discussion topic #2).

(2) Delete Form 592-PTE (and associated voucher, Form 592-Q) and change Form 592 (and associated voucher, Form 592-V) to allow all domestic non-real estate withholding, including domestic pass-through entity withholding, to be reported on a single form, Form 592, filed on an annual basis.

Issue: Currently, pass-through entity withholding is reported on a Form 592-PTE on an annual basis, and all other domestic non-real estate withholding is reported on a Form 592 on a quarterly basis. The differing requirements between the two forms caused taxpayer confusion and resulted in unnecessary forms submitted to FTB. Additionally, with the revisions to regulatory draft language proposed in this notice, a non-California trust or estate that has tax withheld pursuant to the Proposed Regulation or Regulations and has paid a distribution of that income or payment received that was withheld upon, or a non-California pass-through entity that has tax withheld pursuant to the Regulations, will be required to file a Form 592 to allocate withholding paid on behalf of the non-California trust or estate or non-California pass-through entity (See Discussion topics #3 and #4). This resulted in the same issue that arose with upper tier pass-through entities in the Proposed Regulation because a non-California trust or estate, or non-California pass-through entity, that has tax withheld pursuant to the Regulations (as opposed to an upper tier pass-through entity that has tax withheld pursuant to the Proposed Regulation), may be required to file a Form 592 by the same quarterly due date as the withholding agent, often before receiving notification of withholding paid, which is due on a Form 592-B by January 31st of the following year.

Proposed Revision: FTB staff proposes revising the withholding regulations to denote that all domestic non-real estate withholding paid or to be allocated, including domestic pass-through entity withholding, be reported on a single form, Form 592, filed on an annual basis. To effectuate this proposed revision, FTB staff proposes Form 592-PTE (and associated voucher, Form 592-Q) be deleted and that Form 592 (and associated voucher, Form 592-V) be changed to allow domestic non-real estate withholding, including domestic pass-through entity withholding, to be reported on the single form, Form 592, on annual basis rather than the current quarterly basis.

- (3) Add language clarifying that a non-California trust or estate that has tax withheld pursuant to the Proposed Regulation or Regulations and has paid a distribution of that income or payment received that was withheld upon, or a non-California pass-through entity that has had tax withheld pursuant to the Regulations, will have the same filing, notification, and credit for tax withheld requirements, as well as availability to the self-certification safe harbor, as an upper tier pass-through entity that has had tax withheld pursuant to the Proposed Regulation.**

Issue: The previous draft regulation language provided filing, notification requirements, credit for tax withheld requirements, as well as availability to the self-certification safe harbor to an upper tier pass-through entity that has had tax withheld as a nonresident owner pursuant to the Proposed Regulation. However, there was no such clarifying language for a non-California trust or estate that has had income or payments withheld upon, either as a nonresident owner pursuant to the Proposed Regulation or as a non-California trust or estate in the Regulations. There also was no such clarifying language for a non-California pass-through entity that has had payments withheld upon pursuant to the Regulations.

Additionally, there was no language specifying that the non-California trust or estate has the same filing, notification requirements, credit for tax withheld requirements, as well as availability to the self-certification safe harbor as an upper tier pass-through entity, dependent on the non-California trust or estate paying a distribution of that income or receiving a payment that was withheld upon.

Proposed Revision: FTB staff proposes adding language in the Proposed Regulation and amending the Regulations to provide clarification that a non-California trust or estate that has had tax withheld pursuant to either the Proposed Regulation or Regulations and has paid a distribution of that income or payment received, or a non-California pass-through entity that has had tax withheld pursuant to the Regulations, will have the same filing, notification, and credit for tax withheld requirements, as well as availability to the self-certification

safe harbor, as an upper tier pass-through entity that has had tax withheld pursuant to the Proposed Regulation.

- (4) Add language clarifying that withholding of tax may still be required on behalf of a non-California trust or estate or a non-California pass-through entity that either has not had tax withheld as a nonresident owner of a pass-through entity pursuant to the Proposed Regulation or has had tax withheld as a nonresident owner of a pass-through entity pursuant to the Proposed Regulation and is receiving payments or distributions other than distributions paid that have not already been withheld upon.**

Issue: The previous draft regulation language in the Proposed Regulation provided detailed requirements for when a pass-through entity is required to withhold tax on behalf of a nonresident owner, and provided that the term "nonresident owner" includes a non-California trust or estate or upper tier pass-through entity. However, there was no clarifying language in the rest of the Regulations relating to whether or if withholding of tax will continue to be required on payments or distributions made to a non-California trust or estate or non-California pass-through entity that is either not a nonresident owner of a pass-through entity pursuant to the Proposed Regulation, or is a nonresident owner of a pass-through entity pursuant to the Proposed Regulation and is receiving payments or distributions other than distributions paid that have not already been withheld upon.

Proposed Revision: FTB staff proposes amending CCR, Title 18, Section 18662-4 to add language providing clarification for the continued requirement to withhold tax on payments or distributions made to a non-California trust or estate or non-California pass-through entity that is either not a nonresident owner of a pass-through entity pursuant to the Proposed Regulation, or is a nonresident owner of a pass-through entity pursuant to the Proposed Regulation and is receiving payments or distributions other than distributions paid that have not already been withheld upon.

Written comments regarding the newly revised proposed Regulation language will be accepted until 5:00 p.m. on **January 31, 2023**. All inquiries and written comments concerning this notice should be directed to Leah Thyberg per the below contact information.

Email: FTBRegulations@ftb.ca.gov
Telephone: (916) 845-3617
Facsimile: (916) 843-8820
Mailing Address: Franchise Tax Board
Legal Division (MS A260)
Attn: Leah Thyberg
P.O. Box 1720
Rancho Cordova, CA 95741-1720

This notice and the newly revised proposed draft Regulation language also will be made available at the [Regulatory Activity](#) page of the Franchise Tax Board's website.

COST IMPACTS OF PROPOSED RULEMAKING

The department encourages submission of information from interested parties during the pre-APA process in order to assess the economic impact of a proposed rulemaking action on businesses (including small businesses), employees, jobs or occupations, competitiveness of California businesses, reporting requirements, or individuals.