

FRANCHISE TAX BOARD

California Code of Regulations Title 18 Division 3, Chapter 2.6, Subchapter 2, Article 5, Withholding, Amend Sections 18662-0, 18662-1, 18662-2, 18662-3, 18662- 4, 18662-5, 18662-6, and 18662-8, Add Section 18662-7

Text of Proposed Amendments to Withholding Regulations and Proposed Regulation

For Proposed Amendments to Regulation Sections 18662-0 through 18662-6 and 18662-8, proposed additions to text are shown in underline and proposed deletions to text are shown in ~~striketrough~~. Proposed additions to regulatory text from the previous version noticed on June 8, 2021 are shown in **bolded underline**. Proposed deletions to regulatory text that was a proposed addition in the previous version noticed on June 8, 2021 (and indicated in underline in that version) are shown in **~~bolded striketrough and underline~~** here. Proposed deletions to current regulatory text that was not a proposed deletion in the previous version noticed on June 8, 2021 are shown in **~~bolded striketrough~~**.

For Proposed Regulation, Section 18662-7, proposed additions to text is shown in underline. Proposed additions from the previous version noticed on June 8, 2021 are shown in **bolded underline**. Proposed deletions from the previous version noticed on June 8, 2021 are shown in **~~bolded striketrough and underline~~**.

Regulation Section 18662-0 is amended to read:

§ 18662-0. Table of Contents – Regulation Sections 18662-1 through 18662-8.

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- ~~(j)(k)~~ **(i)(k)** FTB Form 592, ~~PTE, Pass-Through Entity Annual Resident and Nonresident~~ **Withholding Statement** ~~Return~~.
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Note: Authority cited: Section 19503, Revenue and Taxation Code. Reference: Section 18662, Revenue and Taxation Code

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 if a partnership has effectively connected taxable income that represents income from California sources for any taxable year, and any portion of such income is allocable to a foreign partner ~~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.
- (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 or income 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, 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,~~ non-California trusts and estates, nonresident owners of pass-through entities, and foreign partners. 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 or Income. 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 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 a 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.

Regulation Section 18662-2 is amended to read:

§ 18662-2. Definitions. For purposes of Regulation sections 18662-0 through 18662-8, inclusive, the following definitions shall apply:

- (a) Buyer. The term "buyer" includes the buyer or any other transferee of property.
- (b) California Business Entity. For purposes of withholding, the term "California business entity" is a business entity as defined in Regulation section 23038(b)-2, subsection (a), that is incorporated, organized, or formed, and existing under the laws of California, or is qualified through the Office of the Secretary of State to transact intrastate business. A business entity that has not qualified to transact intrastate business (such as a corporation engaged ~~exclusively~~ in interstate commerce) will be considered as having a permanent place of business in California only if it maintains an office in California that is permanently staffed by its employees.
- (c) California Real Estate. The term "California real estate" has the same meaning as the term "California real property interest" as defined in Revenue and Taxation Code section 18662, subdivision (e)(5). For purposes of Regulation sections 18662-0 through 18662-8, an ownership interest does not include an option to acquire real estate, unless the option is exercised by the seller/transferor and the real property is transferred.
- (d) California Resident. The term "California resident" includes every individual who is in California for other than a temporary or transitory purpose, and any individual domiciled in California who is absent for a temporary or transitory purpose. (See Revenue and Taxation Code section 17014 and Regulation section 17014.)
- (e) California Trust or Estate. For purposes of withholding, a ~~simple trust or complex~~ trust is considered a California trust if at least one the fiduciary or beneficiary (other than a beneficiary whose interest in such trust is contingent)

is a California resident or a California business entity, regardless of the residence of the settlor. The residence of a corporate fiduciary of a trust means the place where the corporation transacts the major portion of its administration of the trust. ~~or if the decedent was a California resident on the date of death.~~ A grantor trust is considered a California trust if the grantor is a California resident. An estate is considered a California estate for withholding purposes when the decedent was a California resident on the date of death.

(f) Distributive Share of Income. A nonresident owner's distributive share of a pass-through entity's California source income shall be computed under Chapters 10 and 11 of Part 10 of the Revenue and Taxation Code; or Chapters 4.5 and 17 of Part 11 of the Revenue and Taxation Code. The amount subject to withholding by a pass-through entity is calculated based upon the pass-through entity's California source income and as reported on California Schedule K-1, disregarding any limitations on those items that may apply at the pass-through entity owner's level.

~~(g) **Distributable Net Income. A nonresident owner's share of a simple trust's California source income shall be as computed under Chapter 9 of Part 10 of the Revenue and Taxation Code and Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code. Any reference to a nonresident owner's distributive share of a pass-through entity's California source income in Regulation sections 18662-0 through 18662-8 includes a simple trust's distributable net income includible in the gross income of the nonresident owner. A simple trust's distributable net income includible in the gross income of the nonresident owner is calculated based upon the simple trust's California source income and as reported on California Schedule K-1 (Form 541).**~~

(gf) Exempt Organization. The term "exempt organization" means an organization that meets the requirements of Chapter 4 of Part 11 of the Revenue and Taxation Code (commencing with section 23701) or Subchapter F of the Internal Revenue Code (commencing with section 501), that is exempt from withholding under this regulation.

(hg) Individual. The term "individual" means a natural person. (See Revenue and Taxation Code section 17005.)

(ih) Items of Income. For purposes of withholding, the term "income" includes items of income that are included in the information return reporting requirements of Article 5 of Chapter 2 of Part 10.2, Division 2 of the Revenue and Taxation Code (section 18631 et seq.) and federal provisions incorporated by reference. The items of income include, but are not limited to, interest, dividends, rents, royalties, prizes and winnings, premiums, annuities, emoluments, compensation for personal services including bonuses, partnership income, or gains, and other fixed or determinable annual or periodical gains, profits, and income.

- (jk)** Lower Tier Pass-Through Entity. A lower tier pass-through entity is a pass-through entity with California source income that has a pass-through entity owner, as defined in subsection **(u)(t)**, herein.
- (l)** ~~Nonresident Estate or Trust~~ For purposes of withholding, the term “nonresident estate or trust” means an estate or trust that does not meet the requirements to be a California estate or trust as set forth in subsection (e), herein.
- (ki)** Non-California Business Entity. For purposes of withholding, a non-California business entity means any business entity that does not meet the requirements of a California business entity as set forth in subsection (b), herein.
- (lm)** ~~[Reserved.]~~ Non-California Trust or Estate. For purposes of withholding, the terms “Non-California trust” and “Non-California estate” ~~“nonresident estate or trust”~~ means an estate or a trust or estate that does not meet the requirements to be a California trust or estate or trust as set forth in subsection (e), herein.
- (mn)** Non-California Upper Tier Pass-Through Entity. A non-California upper tier pass-through entity is a non-California business entity that is a pass-through entity other than an S corporation and an upper tier pass-through entity.
- (ne)** Non-California Upper-Tier S Corporation. A non-California upper tier S corporation is a non-California business entity that is an S corporation and an upper tier pass-through entity.
- (p)** ~~[Reserved].~~
- (oj)** Nonresident. A “nonresident” or “nonresident individual” is an individual who does not meet the requirements of a California resident as set forth in subsection (d), herein.
- (pk)** Nonresident Alien. “Nonresident Alien” has the same meaning as defined in Internal Revenue Code section 7701(b)(1)(B).
- (qr)** Nonresident Owner. For purposes of domestic pass-through entity withholding, a nonresident owner includes owners that are nonresident individuals and owners that are non-California business entities, including, but not limited to, pass-through entities, publicly traded partnerships, master limited partnerships, corporations, and suspended or forfeited corporations. A nonresident owner also includes non-California **complex trusts, grantor trusts, simple trusts,** or estates, partners and shareholders that are nonresidents of California, ~~and beneficiaries of a simple trust that are nonresidents of California.~~
- (rn)** Partner. The term “partner” has the same meaning as defined in Revenue and Taxation Code section 17008. For purposes of withholding, members of limited liability companies classified as partnerships for income tax purposes and ~~owners of multiple owner entities~~ are included in the term “partner” under Regulation sections 18662-0 through 18662-8.
- (se)** Partnership. The term “partnership” has the same meaning as defined in Revenue and Taxation Code section 17008. This includes a syndicate, group,

pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust, estate, or corporation. For purposes of withholding, limited liability companies classified as partnerships for income tax purposes, limited partnerships, and limited liability partnerships are included in the term partnership and are treated as partnerships under Regulation sections 18662-0 through 18662-8.

- (tu)** Pass-Through Entity. A pass-through entity includes a partnership (as defined by Regulation section 18662-2, subsection (so)), ~~a simple trust~~, and an S corporation.
- (uv)** Pass-Through Entity Owner. A pass-through entity owner includes partners or S corporation shareholders that own an interest in a pass-through entity, ~~and beneficiaries of a simple trust~~. A pass-through entity owner also includes individuals and business entities, including, but not limited to, such entities as pass-through entities, publicly traded partnerships, master limited partnerships, corporations, and suspended or forfeited corporations. A pass-through entity owner also includes ~~complex trusts, grantor trusts, simple trusts, or estates.~~
- (vq)** Payee. The term "payee" includes, but is not limited to, any person, partner, member, corporation, limited liability company, partnership, fiduciary, business entity, association, joint venture (whether or not classified as a disregarded entity for tax purposes), estate, trust, foreign partner entity, agency, or political subdivision that receives payment is required to be withheld upon from a payer. The term "payee" includes a nonresident owner required to be withheld upon under Regulation section 18662-7. The term "payee" also includes any person who receives payments or distributions from a ~~complex trust or~~ pass-through entity, estate, or trust.
- (wf)** Payer. The term "payer" means the person who makes a payment or a distribution to a payee and includes a pass-through entity required to withhold on nonresident owner's distributive share under Regulation section 18662-7. The payer includes a withholding agent. The term also includes any person making a payment to an intermediary, ~~pass-through entity~~, or person to the extent the intermediary, ~~pass-through~~, or person provides a Form W-9 or other appropriate information relating to a payee so that the payment can be reported under Chapter 61 of the Internal Revenue Code.
- (xs)** Permanent Place of Business. A business entity has a "permanent place of business" in California if it is organized and existing under the laws of California or, if a foreign corporation, it has qualified through the Office of Secretary of State to transact intrastate business. A business entity that has not qualified to transact intrastate business, for example, a corporation engaged exclusively in interstate commerce, will be considered as having a permanent place of business in California only if it maintains a permanent office in California permanently staffed by its employees.

- (**yt**) Person. The term "person" has the same meaning as defined in Revenue and Taxation Code section 17007, and includes individuals, fiduciaries, partnerships, limited liability companies, and corporations as well as business entities.
- (**zu**) Real Estate Escrow Person. The term "real estate escrow person" has the same meaning as defined in Revenue and Taxation Code section 18662, subdivision (e)(6), plus Regulation sections 18662-0 through 18662-8, and includes any attorney, escrow company, or title company, responsible for closing the transaction, or any other person who receives and disburses the consideration or value for the interest or property conveyed.
- (**aav**) Remitter. The term "remitter" means any person who is required under Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8 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 to the Franchise Tax Board on or before the due dates required by Regulation sections 18662-0 through 18662-8, and who is required to make the information returns prescribed under forms and instructions by the Franchise Tax Board. The term "remitter" applies to the person who will remit the withheld tax on any disposition from the sale or exchange of California real estate and file the prescribed forms on the buyer's/transferee's behalf.
- (**bbw**) Seller. The term "seller" includes the seller or any other transferor of real property.
- (**ccx**) Transferee. The term "transferee" of real property has the same meaning as in Revenue and Taxation Code section 18662, subdivision (e), and includes the buyer of the real property, and, in a deferred exchange, an intermediary or exchange accommodator as set forth in Revenue and Taxation Code section 18662, subdivision (e).
- (**ddy**) Transferor. The term "transferor" of real property has the same meaning as in Revenue and Taxation Code section 18662, subdivision (e), and includes the seller of the real property, and, in a deferred exchange, an intermediary or exchange accommodator as set forth in Revenue and Taxation Code section 18662, subdivision (e).
- (**eeff**) Upper Tier Pass-Through Entity. An upper tier pass-through entity is a pass-through entity owner that is itself a pass-through entity. An upper tier pass-through entity also includes any owner of an upper tier pass-through entity that is itself a pass-through entity owner.
- (**ffz**) Withholding Agent. The term "withholding agent" means the person that has the control, receipt, custody, disposal, or payment of an item of income of a person subject to withholding. Any person who meets the definition of a withholding agent is required to remit any tax withheld and to make the information returns prescribed under forms and instructions by the Franchise Tax Board. The term "withholding agent" also means the person charged by

the law or by the Franchise Tax Board's order or regulation with the duty to withhold any tax, interest or penalties from payments to the taxpayer and to remit such amounts over to the Franchise Tax Board.

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

Regulation Section 18662-3 is amended to read:

§ 18662-3. Real Estate Withholding.

- (a) General. Withholding of tax at source is required on any disposition from the sale or exchange of California real estate by a seller/transferor. The rate of withholding is 3 1/3 percent of the sales price, but the seller/transferor may elect an alternative withholding calculation based on the gain required to be recognized from the sale as set forth in FTB Form 593, Real Estate Withholding Statement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 593"). The required information specified in FTB Form 593 is set forth in subsection (h), below. The requirement to withhold is the responsibility of the buyer/transferee, but may be performed by the real estate escrow person on the buyer's/transferee's behalf. No withholding is required under the provisions set forth in Revenue and Taxation Code section 18662, subdivision (e)(3), or if an exemption certificate, on FTB Form 593, is completed, signed, and submitted to the real estate escrow person prior to the close of escrow. For example, the seller/transferor may certify on FTB Form 593 that the property was the seller's/transferor's principal residence or that no gain is recognized from the sale. The Franchise Tax Board may audit escrow documents to verify compliance.
- (b) Statutory Basis and Rates. Revenue and Taxation Code section 18662, subdivision (e), requires withholding of tax at source from any disposition, sale or transfer of California real property at an amount equal to 3 1/3 percent of the sales price, unless an election is made to use an alternative withholding calculation based on gain required to be recognized from the sale on FTB Form 593. The alternative withholding calculation shall be based on the maximum applicable tax rate under Revenue and Taxation Code sections 17041, 23151, and 23186.
- (c) Who Must Withhold - Required Notification and Responsibility.
 - (1) Notification. Revenue and Taxation Code section 18668, subdivision (e)(1), requires the real estate escrow person to provide the buyer/transferee with written notice of the withholding requirements, unless the buyer/transferee is an intermediary or accommodator in a deferred exchange.

- (2) Penalties for Failure to Provide Notice. If the real estate escrow person fails to provide the buyer/transferee with written notice, a penalty ~~shall~~may be assessed of \$500 or 10 percent of the amount required to be withheld, whichever is greater, unless it is shown that the failure to notify the buyer/transferee is due to reasonable cause.
- (3) The Real Estate Escrow Person May Assist the Buyer/Transferee With the Buyer's/Transferee's Withholding Obligations. Once the buyer/transferee is notified, it is the buyer's/transferee's responsibility to withhold. However, the real estate escrow person may assist the buyer/transferee in complying with the withholding requirements by performing or assisting in the withholding, remitting the required withholding, and completing 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"). The required information specified in FTB Form 593 and FTB Form 593-V is set forth in subsections (h) and ~~subsection (i)~~, respectively, below. The real estate escrow person may charge a fee for this assistance not to exceed the amount set forth in Revenue and Taxation Code section 18662, subdivision (e).
- (d) Exemption and Withholding Requirements. No withholding is required if the seller/transferor establishes one of the following under subsection (d)(1) or (d)(2):
- (1) Full Exemption Under FTB Form 593. The Franchise Tax Board on FTB Form 593 may establish that no withholding is required in the following instances:
- (A) Seller/Transferor is a Corporation or Partnership. No withholding is required for a corporation or partnership incorporated or qualified to do business in California (or where the entity continues to have a permanent place of business and maintains a permanent staff within California after the sale.) Where the seller/transferor is a disregarded entity for tax purposes, no withholding is required if the owner of the disregarded entity is incorporated or qualified to do business in California or continues to have a permanent place of business and maintains a permanent staff within California after the sale.
- (B) Sales Price of \$100,000 or Less. No withholding is required unless the sales price of the real property conveyed exceeds \$100,000. The "sales price" is normally the same amount as the "gross proceeds" required for information reporting purposes as shown on the federal form 1099-S. (See Treasury Regulation section 1.6045-4.)
- (C) Deferred Exchange. No withholding is required other than by an intermediary or an accommodator in a deferred exchange. An intermediary or an accommodator in a deferred exchange is required to

withhold, even if the real estate escrow person fails to provide written notice.

(D) Foreclosure. No withholding is required as part of a foreclosure when the buyer/transferee acquires California real property under one of the following circumstances:

(i)4. At a sale pursuant to a power of sale under a mortgage or deed of trust.

(ii)2. At a sale pursuant to a decree of foreclosure.

(iii)3. By a deed in lieu of foreclosure.

(E) Bank Acting as a Trustee. No withholding is required when the seller/transferor is a bank acting as a trustee, other than a trustee of a deed of trust.

(2) Transfers Requiring an Exemption Certificate to Exempt the Sale From Withholding on FTB Form 593. No withholding is required if the seller/transferor completes and signs an exemption certificate on FTB Form 593 stating, under penalty of perjury, that one of the following applies:

(A) Principal Residence. No withholding is required if the seller certifies that the property conveyed was his or her principal residence within the meaning of Internal Revenue Code section 121, as incorporated and modified by the Revenue and Taxation Code, or that the last use of the property was as the seller's/transferor's principal residence.

(i)4. Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of sale, the seller/transferor owned and used the property as his or her main home for at least two years.

(ii)2. There are exceptions to the two-year rule if the primary reason the seller/transferor is selling the home is due to a change in the place of employment, health, or other unforeseen circumstance, such as death, divorce, or loss of job. (See Internal Revenue Code section 121 and Treasury Regulation sections 1.121-1 through 1.121-5.)

(iii)3. If the property does not qualify for an exclusion under Internal Revenue Code section 121, the seller/transferor may claim the exclusion from withholding if the property was last used as the seller's/transferor's principal residence within the meaning of Internal Revenue Code section 121, without regard to the two-year time period.

(iv)4. Where California law differs from federal law, California law applies.

- (B) Involuntary Conversions. No withholding is required if the seller/transferor certifies on FTB Form 593 that the transfer is the result of an involuntary conversion that qualifies for deferral of gain under Internal Revenue Code section 1033, and that he or she intends to replace the property with qualified property within the required time period under Internal Revenue Code section 1033.
- (C) Loss or Zero Gain. No withholding is required if the seller/transferor certifies on FTB Form 593 that there is either a loss or zero gain for California income tax purposes from the sale, which results when the seller's/transferor's adjusted basis in the property is more than or equal to the selling price (less selling expenses). In computing gain, the seller/transferor may use previously deferred passive activity losses that directly relate to the property being sold. He or she may not use losses that are not directly related to the property, such as passive activity losses or carry forwards from a different property, capital loss carry forwards, stock losses, or net operating losses.
- (D) Contributed Capital Transfers to a Controlled Corporation or Partnership. No withholding is required where the seller/transferor certifies on FTB Form 593 that the transfer qualifies for nonrecognition treatment under Internal Revenue Code section 351 (property transferred to a corporation controlled by the transferor) or Internal Revenue Code section 721 (property contributed to a partnership in exchange for a partnership interest).
- (E) Seller/Transferor is a Corporation. No withholding is required if the seller/transferor certifies on FTB Form 593 that it has either qualified with the California Secretary of State or has a permanent place of business in California. This includes a limited liability company (LLC) taxable as a corporation for federal and California income tax purposes.
- (F) Real Estate Investment Trusts (REITs). No withholding is required if the seller/transferor certifies on FTB Form 593 that it is a REIT that is treated as a corporation and that the REIT has a permanent place of business in California.
- (G) Seller/Transferor is a Partnership. No withholding is required if the seller/transferor certifies on FTB Form 593 it is a California partnership, or qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes that is not a single member LLC that is disregarded for federal and California income tax purposes).

(H) Tax Exempt Entities. No withholding is required if the seller/transferor certifies on FTB Form 593 that it is a tax-exempt entity under California or federal law (e.g., government agency, Resolution Trust Corporation, or exempt, charitable, religious, or educational organization).

(I) Insurance Companies. No withholding is required if the seller/transferor certifies on FTB Form 593 that it is an insurer within the meaning of Section 28 of Article XIII of the California Constitution that pays the California gross premiums tax.

(J) Other Entities. No withholding is required if the seller/transferor certifies on FTB Form 593 that it is either an individual retirement account (IRA), qualified pension plan, or charitable remainder trust.

(3) Transfers That May Partially or Fully Exempt the Sale From Withholding.

(A) IRC Section 1031 Exchanges. No withholding is required on the initial transfer where the seller/transferor certifies on FTB Form 593 that the transfer will qualify as:

(i)1. Simultaneous Like-Kind Exchange. However, if the seller/transferor receives proceeds (including excess debt relief) or non-like-kind property from the sale (boot) in excess of \$1,500, withholding is required at 3 1/3 percent of that amount, unless an election is made to use the alternative withholding calculation on FTB Form 593.

(ii)2. A Deferred Like-Kind Exchange. If the seller/transferor receives any proceeds (including excess debt relief) or non-like-kind property from the sale (boot) in excess of \$1,500, withholding is required at 3 1/3 percent of that amount, unless an election is made to use the alternative withholding calculation on Form FTB 593.

(iii)3. Failed Exchange. Notwithstanding a seller's/transferor's certification on FTB Form 593, if the exchange fails, does not occur, or does not meet the Internal Revenue Code section 1031 requirements, the intermediary or accommodator must withhold at 3 1/3 percent of the sales price, unless an election is made to use the alternative withholding calculation on FTB Form 593.

(B) Installment Sales.

(i)4. The buyer/transferee must provide the installment agreement terms and give a copy of the promissory note to the real estate escrow person to remit with FTB Form 593 and FTB Form 593-V to the Franchise Tax Board.

(ii)2. The buyer/transferee must withhold and remit 3 1/3 percent or the alternative withholding calculation certified on FTB Form 593 on the principal portion of all installment payments following the close of escrow.

(iii)3-Installment Sale Payoff. The buyer/transferee must withhold 3 1/3 percent or the alternative withholding calculation certified on FTB Form 593 on the principal portion of a seller/transferor-financed installment sale payoff or prepayment in escrow upon closing.

(e) Withholding on Special Entities.

- (1) Grantor Trusts. If the trust is a grantor trust, then the seller/transferor is the grantor and withholding is required, unless an exemption applies under FTB Form 593. A grantor trust is a trust where the grantor retains substantial control and remains the owner (e.g., the right to cancel or revoke the trust). A grantor trust is disregarded for federal and California income tax purposes. Where the seller/transferor is the grantor trust and unless an exemption applies under FTB Form 593, withholding is remitted on FTB Form 593 and FTB Form 593-V and credited to the grantor. Where applicable, FTB Form 593 and FTB Form 593-V, should be completed using the individual's (grantor's) information.
- (2) Trusts. If the trust is other than a disregarded grantor trust, then the seller/transferor is the trust and withholding is required, unless an exemption applies under FTB Form 593. Where applicable, FTB Form 593 and FTB Form 593-V should be completed using the name of the trust and the trust's federal employer identification number (FEIN).
- (3) Bankruptcy Trusts and Estates. Withholding is required when a bankruptcy trust or estate sells the property.
- (4) Estates. Withholding is required when an estate sells real property, unless the property being sold qualifies as the decedent's principal residence or otherwise qualifies under FTB Form 593.
- (5) Conservatorships and Receiverships. Withholding is required unless the conservatee or debtor (in receivership) qualifies under the requirements of FTB Form 593. The conservator or receiver should complete FTB Form 593 using the conservatee's or debtor's information.
- (6) Relocation Companies. Sales to relocation companies are subject to the same rules as other sales, and withholding is required. There is no withholding on the sale if the relocating seller/transferor certifies on FTB Form 593 that the property was the seller's/transferor's principal residence or if the

seller/transferor otherwise qualifies under the requirements contained in FTB Form 593. Relocation companies themselves are subject to the same rules as other non-individuals.

Example 1. A relocation company resells California real property to a third party. There is no withholding on the sale if the relocation company certifies it is a California corporation, is qualified to do business in California, or otherwise qualifies under the requirements of FTB Form 593. If the relocation company is not a California corporation, is not qualified to do business in California, or does not meet the requirements of FTB Form 593, withholding is required.

Example 2. An employer that holds title to California real property gives a relocation company power of attorney to act on its behalf in the sale of the property to a third party. No withholding is required on the sale if the employer certifies on FTB Form 593 that it is a California corporation, is qualified to do business in California, or has a permanent place of business in California, or otherwise qualifies under the requirements of FTB Form 593. If the employer has not met any of the above requirements set forth in this Example 2, withholding is required. Because the relocation company does not hold title, the employer must meet the withholding obligations.

(f) Procedures.

- (1) Exemption Certificate and Estimated Gain or Loss Certificate. If a seller/transferor seeks to qualify for no withholding under the requirements set forth in the real estate withholding exemption certificate on FTB Form 593, the seller/transferor must complete, sign, and submit to the real estate escrow person the withholding exemption certificate on FTB Form 593 prior to the close of the real estate transaction to claim an exemption from withholding. Failure to provide a completed and signed real estate withholding exemption certificate on FTB Form 593 by the close of the real estate transaction will result in withholding. If the seller/transferor seeks to establish a loss or zero gain, the seller/transferor must also complete the real estate withholding--computation of estimated gain or loss on FTB Form 593. 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).
- (2) Verification. Real estate escrow persons are only required to verify exemption certifications on FTB Form 593 to the extent that they have actual knowledge of the facts. If they have no actual knowledge of the facts, then they must only verify that the certificate, FTB Form 593, is complete and signed. The real estate escrow persons will be relieved of the withholding requirements if they rely in good faith on a completed and signed real estate withholding

certificate, FTB Form 593. Real estate escrow persons should not rely upon an incomplete or unsigned certificate, FTB Form 593.

Example 1: A seller/transferor calculates the estimated gain or loss and certifies on FTB Form 593 a loss on the transaction. The real estate escrow person is not required to verify the amounts used in the calculation.

Example 2: A seller/transferor completes, signs, and submits to the real estate escrow person a real estate withholding exemption certificate on FTB Form 593 prior to the close of escrow and certifies that the sale is an installment sale. However, the buyer/transferee has not provided the installment agreement terms or promissory note to the real estate escrow person. The real estate escrow person may not rely on the real estate withholding exemption certificate, FTB Form 593, and is required to withhold on this transaction.

Example 3: A seller/transferor completes, signs, and submits to the real estate escrow person a real estate withholding exemption certificate on FTB Form 593 prior to the close of escrow and certifies therein that a California partnership is selling the property, but the real estate escrow person has actual knowledge that the recorded title of the property is not in the name of the California partnership. The real estate escrow person may not rely on the real estate withholding exemption certificate, FTB Form 593, and is required to withhold on this transaction.

- (3) Electing the Alternative Withholding Calculation. The seller/transferor making the election must complete and sign FTB Form 593. The signature on Form 593 certifies the gain required to be recognized and the alternative withholding calculation.

(g) Special Rules.

- (1) Multiple Family Units. If the property sold is a multiple family unit (duplex, triplex, apartment building, etc.) and the seller/transferor lived in one of the units as his or her principal residence, withholding is required for the portion of the sales price that is not certified on FTB Form 593 as a principal residence. The sales price should be allocated between the principal residence and the remainder of the units using the same method that the seller/transferor used to determine depreciation deductions. Withholding is required when the sales price of the property (all units) exceeds \$100,000, even if the portion of the sales price allocable to the non-principal residence portion of the property does not exceed \$100,000.
- (2) Multiple Sellers/Transferors. When there are multiple sellers/transferors, the withholding amount is calculated by applying the withholding rate to each seller's/transferor's proportionate share of the sales price.

Example 1: Withholding at 1 1/3 percent of sales price:

Sales price \$200,000

Sellers'/Transferors' ownership percentages:

A = 20%, B = 30%, C = 50%

Withholding per seller/transferor:

A $\$200,000 \times 20\% \times .0333 = \$1,332$

B $\$200,000 \times 30\% \times .0333 = \$1,998$

C $\$200,000 \times 50\% \times .0333 = \$3,330$

Example 2: Alternative withholding calculation, assuming a maximum tax rate of 12.3 percent in the year of sale:*

Gain on sale \$200,000

Sellers'/Transferors' ownership percentages:

A = 20%, B = 30%, C = 50%

Withholding for individual seller/transferor:

A $\$200,000 \times 20\% \times .123 = \$4,920$

B $\$200,000 \times 30\% \times .123 = \$7,380$

C $\$200,000 \times 50\% \times .123 = \$12,300$

*Note: The applicable tax rate is subject to change.

- (3) Sellers/Transferors on Title for Incidental Purposes. If the incidental sellers/transferors have no financial ownership, then their ownership percentage is zero and there is no withholding required for them.

Examples of sellers/transferors who are on title for incidental purposes are:

Example 1: A father is on title only because he cosigned to help his daughter qualify for a loan. The first name on the loan is that of the daughter who pays the loan payments. If father completes FTB Form 593 showing zero percentage of ownership, no withholding is required on the proceeds due to the father's ownership interest. The daughter is the beneficial owner of all of the property and is subject to the withholding requirements.

Example 2: A son is on title only to receive the real property as a beneficiary upon his mother's death. The real property is sold while the mother is alive. If the son completes FTB Form 593 showing zero percentage of current ownership, no withholding is required on the proceeds due to the son's ownership interest. The mother is the owner of all of the property and is subject to the withholding requirements.

- (4) Sale of Multiple Parcels. Sales of multiple parcels within the same escrow agreement constitute one transaction for purposes of determining the withholding requirements under this regulation. Withholding is required where the sale price of all properties exceeds \$100,000 even though the sale price of each separate parcel in the transaction is under \$100,000.

Example: Parcel A is sold for \$50,000. Parcel B and Parcel C are sold for \$10,000 and \$60,000, respectively. All three parcels are sold within the same escrow agreement. Because the sales price equals \$120,000, withholding is required.

- (5) Leaseholds/Options. The sale of a leasehold is considered a sale of a real property interest and withholding is required. Withholding is required on an option to buy real property that has been exercised where the property has been transferred by the owner.
- (6) Personal Property Included in Real Estate Transaction. If personal property is included in the sales price of the real property, withholding is computed on the full amount. If the price of the personal property is stated separately in the sales contract, withholding on the personal property amount is not required.
- (7) Short Sale Transactions. Real property sold for less than the amount owed on the mortgage is not excluded from withholding, unless the seller/transferor qualifies under the requirements of FTB Form 593. The parties must arrange to cover payment of the withholding.

(h) FTB Form 593, Real Estate Withholding Statement. FTB Form 593 shall contain the following information:

- (1) A check box indicating whether the form is filed as an amended FTB Form 593.
- (2) Remitter information, which includes a check box to indicate one of the following types of remitters: an escrow/title company; an accommodator/intermediary; a buyer/transferee; or other type of remitter. The following information shall also be included: the business name; identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number); individual name (if applicable); remitter's address; and telephone number.
- (3) Seller/Transferor information, which includes a check box to indicate whether the seller/transferor is a grantor or nongrantor trust (if applicable). The following information shall also be included: the person's name and identification number (SSN or ITIN); the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN); business/nongrantor trust name (if applicable); business identification number

(FEIN, California corporation number, or California Secretary of State file number); seller's/transferor's address; ownership percentage; and property address.

- (4) Buyer/transferee information, which includes the person's name and identification number (SSN or ITIN), the spouse's/registered domestic partner's (RDP's) name and identification number (SSN or ITIN), business name (if applicable), business identification number (FEIN, California corporation number, or California Secretary of State file number), buyer's/transferee's address, and telephone number.
- (5) Escrow or Exchange Information, consisting of the following:
 - (A) Escrow or exchange number.
 - (B) Month, day, and year of the transfer, exchange completion, failed exchange, or installment payment.
 - (C) Sales price, and amount of failed exchange.
 - (D) A check box to indicate one of the following transaction types: conventional sale or transfer; installment sale; boot; or failed exchange.
 - (E) Installment Agreement Terms, which includes the principal amount of the promissory note, installment amount, interest rate, and repayment period in number of months.
 - (F) Deferred Exchange Terms, which includes the exchange amount, and boot amount.
- (6) Real Estate Withholding Exemption Information, which includes a check box indicating one of the following reasons the seller/transferor or real estate sale transaction is fully or partially exempt from California withholding requirements, or that no exemptions apply:
 - (A) The property qualifies as the seller's/transferor's (or decedent's, if sold by the decedent's estate or trust) principal residence within the meaning of Internal Revenue Code section 121.
 - (B) The seller/transferor (or decedent, if sold by the decedent's estate or trust) last used the property as the seller's/transferor's (decedent's) principal residence within the meaning of IRC section 121 without regard to the two-year time period.
 - (C) The seller/transferor has a loss or zero gain for California income tax purposes on this sale.

- (D) The property is being compulsorily or involuntarily converted, and the seller/transferor intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC section 1033.
 - (E) The transfer qualifies for nonrecognition treatment under IRC section 351 (transfer to a corporation controlled by the transferor) or IRC section 721 (contribution to a partnership in exchange for a partnership interest).
 - (F) The seller/transferor is a corporation or LLC (classified as a corporation for federal and California income tax purposes) that is either qualified through the Secretary of State or has a permanent place of business in California.
 - (G) The seller/transferor is a California partnership or a partnership qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a single member LLC that is disregarded for federal and California income tax purposes).
 - (H) The seller/transferor is a tax-exempt entity under California or federal law.
 - (I) The seller/transferor is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.
 - (J) The transfer qualifies as a simultaneous like-kind exchange within the meaning of IRC section 1031.
 - (K) The transfer qualifies as a deferred like-kind exchange within the meaning of IRC section 1031.
 - (L) The transfer of this property is an installment sale where the buyer/transferee is required to withhold on the principal portion of each installment payment.
 - (M) No exemptions apply.
- (7) Computation of Estimated Gain or Loss:
- (A) Selling price.
 - (B) Selling expenses.
 - (C) Net amount realized (selling price less selling expenses).
 - (D) Basis in property.

- (E) Seller/transferor points paid.
 - (F) Depreciation.
 - (G) Other decreases in basis.
 - (H) Total decreases to basis (total of points paid, depreciation, and other decreases in basis).
 - (I) Total decreases to basis, less basis in property.
 - (J) Cost of additions and improvements.
 - (K) Other increases to basis.
 - (L) Total increases to basis (total of additions/improvements and other increases to basis).
 - (M) Adjusted basis (total increases to basis plus total decreases to basis).
 - (N) Suspended passive activity losses from the property.
 - (O) Total of adjusted basis and suspended passive activity losses from the property.
 - (P) Estimated gain or loss on sale (total of adjusted basis and suspended passive activity losses from the property, less the net amount realized (selling price less selling expenses)).
 - (Q) A check box to indicate one of the following withholding calculations for the alternative withholding calculation election: an individual; trust; non-California partnership; corporation; bank and financial corporation; S corporation; or financial S corporation.
 - (R) Total amount based on the gain on sale election.
 - (S) Sales price withholding amount.
- (8) Withholding Calculation and Amount of Withholding. A check box to indicate one of the following withholding calculations: sales price method; or alternative withholding calculation optional gain on sale election (with special check boxes) for an individual, trust, non-California partnership, corporation, bank and financial corporation, S corporation, or financial S corporation; amount of payment (sales price, installment payment, boot, or failed exchange); and the amount withheld from the seller/transferor.

- (9) The dated signature of the seller/transferor.
- (10) The dated signature of the seller's/transferor's spouse/RDP.
- (i) FTB Form 593-V, Payment Voucher for Real Estate Withholding. FTB Form 593-V shall contain the following information:
 - (1) A check box to indicate how FTB Form 593 was submitted, by one of two methods (electronic or paper).
 - (2) Total number of FTB Forms 593 submitted.
 - (3) Remitter information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), telephone number, and remitter's address.
 - (4) Amount of payment submitted with FTB Form 593-V.

Note: Authority cited: Section 19503, Revenue and Taxation Code. Reference: Sections 18662 and 18668, Revenue and Taxation Code.

Regulation Section 18662-4 is amended to read:

§ 18662-4. Withholding on Payments or Income (~~Nonresident Individuals and Non-California Business Entities~~) – General.

- (a) Nonresident Individuals and Non-California Business Entities; ~~Non-California Complex Trusts, Grantor Trusts, Simple Trusts, and Estates, and Nonresident Beneficiaries of Complex Trusts and Estates; Nonresident Owners of Pass-Through Entities; Foreign Partners; Nonresident Aliens;~~ De Minimis Amounts; and Rate.
 - (1) Nonresident Individual and Non-California Business Entities. Except as otherwise provided in Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8, withholding of tax at source is required for payments of California source income made to nonresident individuals and non-California business entities, including, but not limited to, such ~~other~~ entities as ~~nonresident estates or trusts, a~~ suspended or forfeited corporations, and foreign (non U.S.) entities a pass-through entity that is not a nonresident owner of a pass-through entity under Regulation section 18662-7, and a pass-through entity that is a nonresident owner of a pass-through entity under Regulation section 18662-7 and also receives payments of California source income, other than distributions paid, that are unrelated to and separate from the pass-through entity income which have not already been withheld upon. If withholding of tax at source is remitted for payments of

California source income made to a non-California pass-through entity under this Regulation, then the non-California pass-through entity has the same filing, notification, and credit for tax withheld requirements, as well as availability to the self-certification safe harbor as described for an upper tier pass-through entity that has income that has been withheld upon under Regulation section 18662-7. Withholding on payments of income to resident individuals and California business entities is optional; however, if withholding and remitting of tax at source is performed, it must be performed according to the rules applicable to mandatory withholding of tax as set forth in Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8.

- (2) Non-California ~~Complex Trusts, Grantor~~ Trusts, and Estates, and Nonresident Beneficiaries of ~~Complex~~ Trusts and Estates. Except as otherwise provided in Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8, withholding of tax at source is required for payments of California source income made to non-California ~~complex trusts, simple trusts, grantor~~ trusts, and estates, including, but not limited to, a trust or estate that is not a nonresident owner of a pass-through entity under Regulation section 18662-7, and a trust or estate that is a nonresident owner of a pass-through entity under Regulation section 18662-7 and also receives payments of California source income, other than distributions paid, which have not already been withheld upon. If withholding of tax at source is remitted for payments of California source income made to a non-California trust or estate under this Regulation, then the non-California trust or estate has the same filing, notification, and credit for tax withheld requirements, as well as availability to the self-certification safe harbor as described for a trust or estate that has income that has been withheld upon under Regulation section 18662-7. Withholding of tax at source is also required for ~~complex~~ trust and estate distributions of California source income paid to nonresident beneficiaries, provided that such withholding of tax at source has not already been paid on behalf of the ~~complex~~ trust and estate. Withholding on payments of income to California ~~complex trusts, simple trusts, grantor~~ trusts, and estates is optional, and withholding on ~~complex~~ trust and estate distributions of California source income paid to resident beneficiaries is optional; however, if withholding and remitting of tax at source is performed, it must be performed according to the rules applicable to mandatory withholding of tax as set forth in Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8.
- (3) Nonr-Resident Owners of Pass-Through Entities. As set forth in Regulation section 18662-7, in lieu of withholding on payments of California source income and solely for pass-through entities with nonresident owners, withholding of tax at source is required for a nonresident owner's distributive share of a pass-through entity's California source income. Withholding on a resident owner's distributive share of the pass-through entity's California source income is optional; however, if withholding and remitting of tax at

source is performed, it must be performed according to the rules applicable to mandatory withholding of tax as set forth in Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8.

- (4) Foreign Partners. As set forth in Revenue and Taxation Code section 18666, Internal Revenue Code section 1446 applies unless otherwise provided. Withholding of tax at source is required if a partnership has effectively connected taxable income that represents income from California sources for any taxable year, and any portion of such income is allocable to a foreign partner.
 - (5) Nonresident Aliens. Withholding of tax at source is required for payments of California source income made to nonresident aliens.
 - (62) De Minimis Amounts. Withholding of tax at source is optional and at the discretion of the withholding agent on the first \$1,500 of income paid for the calendar year to each payee. For purposes of domestic pass-through entity withholding, withholding of tax at source is optional and at the discretion of the withholding agent on the first \$1,500 of a nonresident owner's distributive share of a pass-through entity's California source income for the calendar year to each payee.
 - (73) Rate. The withholding rate is 7 percent of the gross payment or distribution amount. For purposes of domestic pass-through entity withholding, the withholding rate is as set forth in Regulation section 18662-7, subsection (c).
 - (84) Cross-References. See Regulation sections 18662-5 (Other Types of Payments and Withholding), 18662-6 (Nonresident Withholding, Entertainers, Athletes and Speakers), 18662-7 (Domestic Pass-Through Entity Withholding), ~~Withholding Rules for Domestic (U.S.) Pass-through Entities~~ [reserved], and Regulation section 18662-8 (Reporting and Remitting Amounts Withheld, Penalties and Interest; Other Procedures) for specific requirements.
- (b) Optional Withholding or No Withholding Required. Unless otherwise stated in this subsection (b) or any of the forms referenced herein, withholding of tax at source is optional and not required on payments of California source income to the following, or on an owner's distributive share of a pass-through entity's California source income, under the following circumstances:
- (1) California Residents. If a California resident receives California source income or has distributive share of California source income from a pass-through entity, withholding is not required. Withholding agents may use reasonable methods to determine the California residency of payees.

Example 1: Withholding agents may send their payees an exemption certificate, on FTB Form 590, Withholding Exemption Certificate, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 590"). The required information specified in FTB Form 590 is set forth in subsection (h), below. Payees may use this form to certify their residency status, provided that the withholding agent may only

rely upon an exemption certificate, on FTB Form 590, if payees include their taxpayer identification number.

Example 2: Withholding agents may rely on a California street address as an indication of a payee's residency status. If the payee has a California street address, no withholding is required. An exemption certificate, on FTB Form 590, may be used to verify residency status. A valid California street address does not include a California post office box, or an "in care of" address. If a change of address occurs, the withholding agent must reevaluate the payee's residency status.

(2) California Business Entities.

If a California business entity receives California source income or has distributive share of California source income from a pass-through entity, withholding is not required. Withholding agents may use reasonable methods to determine if a business entity has a permanent place of business in California or is qualified to do business in California for the purposes of the withholding regulations.

If a non-California business entity payee is doing business in California within the meaning of Revenue and Taxation Code section 23101 and is receiving California source income, or has distributive share of California source income from a pass-through entity, withholding is required unless the payee qualifies under the requirements of the exemption certificate, on FTB Form 590, or the amount is excluded from amounts subject to withholding.

If a corporate payee has not qualified with the Office of the California Secretary of State (SOS) and does not have a permanent place of business in this State, but is a member of a combined report filed under Regulation section 25106.5 and included in a group return filed pursuant to that regulation, then the key corporation is treated as a guarantor and surety for the other members, so that the corporate payee is deemed to be a California Business Entity.

The following are examples of methods the Franchise Tax Board will consider reasonable for withholding agents to rely upon in determining if a corporation has a permanent place of business in California or is qualified to do business in this State for purposes of the withholding regulations (Regulation sections 18662-0 through 18662-8):

Example 1: Withholding agents may rely on a completed exemption certificate, on FTB Form 590. A completed exemption certificate, on FTB Form 590, showing the payee's taxpayer identification number and stating that the corporation has a permanent place of business in California (or is included in a combined return with a California key corporation) protects the withholding agent from penalties for failure to withhold, unless the withholding agent has actual knowledge that the statement in the exemption certificate, on FTB Form 590, is false.

Example 2: If a corporation is incorporated in California or qualified to do business in California with the SOS, it is a California business entity for withholding purposes. Withholding agents can determine if a corporate payee is a California corporation or qualified to do business in this State by contacting the SOS. Withholding agents may rely on a printout from the SOS's website showing the payee's entity number, that the corporation has a permanent place of business in California (e.g., the "jurisdiction" field shows "California" or the "entity city, state, zip" field shows "CA" for the state), and that the corporation is in good standing (e.g., the "status" field shows "active"). The SOS website printout—which must be printed within 30 days prior to making a payment—protects the withholding agent from penalties for failure to withhold, unless the withholding agent has actual knowledge that the information received from the SOS is false.

- (3) Tax Exempt Organizations. Withholding of tax at source is not required on payments of California source income to tax exempt organizations that are exempt either under California or federal law. Withholding of tax at source is not required on a tax exempt organization's distributive share of a pass-through entity's California source income if the tax exempt organization is exempt either under California or federal law.
- (4) California Trusts and Estates and Trusts. Withholding of tax at source is not required on payments of California source income to California ~~estates,~~ complex trusts, simple trusts, and grantor trusts, and estates. Withholding of tax at source is not required on a California simple trust's distributive share of a pass-through entity's California source income.
- (5) Banks and Banking Associations. Withholding of tax at source is not required on payments of California source income where the payee is a bank or banking association. Withholding of tax at source is not required on a bank or banking association's distributive share of a pass-through entity's California source income.
- (6) Sale of Goods. Withholding of tax at source is not required on payments for the sale of goods.
- (7) Services of a Nonresident Outside of California. Withholding of tax at source is not required on payments for services provided by a nonresident that were performed outside of California.
- (8) Intangible Personal Property. Withholding of tax at source is not required on payments of California source income from intangible personal property, such as interest and dividends, unless the property has acquired a business situs in California. (See Regulation section 18662-5.)
- (9) Motor Carrier Compensation. Withholding of tax at source is not required on payments of California source income to a motor carrier providing transportation in two or more states, subject to section 11504(b) of Title 49 of the United States Code.

- (10) Wages Paid to Employees. Withholding of tax at source is not required on payments of California source wages to employees. However, wages are subject to wage withholding. Employee wage withholding is covered by the Unemployment Insurance Code and administered by the Employment Development Department.
- (11) Nonresident Corporate Directors. Withholding of tax at source is not required on payments of California source income to a nonresident corporate director for director's services. However, information returns for nonresident corporate directors for director's services must be filed in accordance with Revenue and Taxation Code section 18662, subdivision (g). Nonresident directors must file California tax returns if they otherwise meet return filing requirements or may elect to be included in a group return pursuant to Revenue and Taxation Code section 18536.
- (12) Insurance Companies, Individual Retirement Plans, Pension or Profit Sharing Plans. Withholding of tax at source is not required on gross premiums paid to insurance companies. Withholding of tax at source is not required on payments of income made to individual retirement accounts or federally qualified pension or profit sharing plans.
- (13) Income from Qualified Investment Securities. Withholding of tax at source is not required on payments of income from qualified investment securities excluded from taxable income of a nonresident or part-year resident under Revenue and Taxation Code sections 17955 and 23040.1.
- (c) Withholding Exemptions Certificates.
- (1) General. Where the payee otherwise properly certifies that it qualifies under the requirements of an exemption certificate, as set forth in FTB Form 590, no withholding is required. The certification on FTB Form 590 does not need to be renewed annually. The certification on FTB Form 590 remains valid until the payee's status changes. The withholding agent should evaluate the need for securing a new certificate, on FTB Form 590, when any indication of a change in residency status occurs, such as a change of address.
- (2) Incomplete or Invalid Exemption Certificates. An incomplete exemption certificate, on FTB Form 590, is invalid and the withholding agent should not accept it. If the withholding agent receives an incomplete exemption certificate, on FTB Form 590, the withholding agent is required to withhold tax on payments made to the payee, or on a nonresident owner's distributive share of a pass-through entity's California source income, until a valid certificate, on FTB Form 590, is received. In lieu of a completed exemption certificate, on FTB Form 590, on the preprinted form, the withholding agent may accept as a substitute a letter from the payee explaining why the payee is not subject to withholding. The letter must contain all the information required on the certificate, on FTB Form 590, in substantially similar language, including the penalty of perjury statement and the payee's taxpayer identification number. The withholding agent may accept facsimiles or photocopies of the withholding forms.

- (3) California Address. Withholding agents may accept a completed exemption certificate, on FTB Form 590, when an individual certifies residency but does not show a California address, unless the withholding agent reasonably believes the exemption certification, on FTB Form 590, is fraudulent. Regardless of whether a copy of the exemption certificate, on FTB Form 590, is required to be filed, the withholding agent must retain a copy of the exemption certificate, on FTB Form 590, or a substitute, for at least five years after the last payment to which the certificate, on FTB Form 590, or a substitute, applies, and provide it upon request to the Franchise Tax Board. A pass-through entity withholding agent must retain a copy of the exemption certificate, on FTB Form 590, or a substitute, for at least five years after the nonresident owner's distributive share from a pass-through entity to which the certificate, on FTB Form 590, or a substitute, applies, and provide it upon request to the Franchise Tax Board.
- (4) False Certificate. A withholding agent who knowingly accepts a false exemption certificate, on FTB Form 590, or a substitute, is subject to the liabilities and penalties relating to failure to withhold set forth in Revenue and Taxation Code section 18668 and Regulation section 18662-8.
- (d) Information Returns Also Required. A withholding agent who withholds tax at source ~~shall may also~~ be required to file an information return, on FTB Form 592, Resident and Nonresident Withholding Statement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592"), ~~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")~~, or FTB Form 592-F, Foreign Partner or Member Annual Withholding Return, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-F"). The required information specified in FTB Form 592, ~~FTB Form 592-PTE~~, and FTB Form 592-F is set forth in subsections (i), ~~and subsection (j)~~, **and subsection (k)**, respectively, below. The required information specified in FTB Form 592-PTE is set forth in Regulation section 18662-7, subsection (i). The Franchise Tax Board may provide the form and manner of filing information returns, on FTB Form 592, ~~FTB Form 592-PTE~~, or FTB Form 592-F, and withholding statements by forms and instructions on its website at www.ftb.ca.gov, including circumstances where they may be filed together on a single document or filed electronically.
- (e) Waivers and Reduced Amounts. In certain circumstances set forth more specifically in the forms referenced in this subsection (e), the Franchise Tax Board may authorize a waiver with respect to withholding requirements or a reduced withholding amount.
- (1) Waivers. Requests shall be made in the form and manner that the Franchise Tax Board shall provide on FTB Form 588, Nonresident Withholding Waiver Request, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 588"). The required information specified in FTB Form 588 is set forth in subsection (k)~~(4)~~, below. As set forth in FTB Form 588, the payee must have a history of timely filing and payment.

Waivers may also be requested as provided in FTB Form 588, where the payee is a newly-admitted partner, ~~member~~, or S corporation shareholder, a member of a combined report electing to be included in a California combined return with a key corporation within the meaning of Regulation section 25106.5, subsection (b)(13) and (14), or in certain circumstances where withholding would not be administratively practical. Requests for waivers, on FTB Form 588, must be submitted before the payment is made so the Franchise Tax Board can issue a determination notice authorizing a waiver before the withholding is required. Withholding is required unless the Franchise Tax Board issues a determination notice authorizing a waiver.

- (2) Request for Reduced Withholding Amount. Payees in some circumstances, as set forth in FTB Form 589, Nonresident Reduced Withholding Request, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 589"), can request a reduced withholding amount to reflect expenses and costs or other special circumstances that would justify a reduced amount whereby the total amount of expenses as calculated on FTB Form 589, Part IV (Withholding Computation), at line 12, cannot exceed 50 percent of the gross California source payment as calculated on FTB Form 589, Part IV (Withholding Computation) at line 1. The required information specified in FTB Form 589 is set forth in subsection (l) ~~(m)~~, below. Requests shall be made in the form and manner that the Franchise Tax Board shall set forth in FTB Form 589.
- (3) Other Conditions As May Be Required. After considering requests for waiver, on FTB Form 588, or reduced withholding amount, on FTB Form 589, the Franchise Tax Board may, as a further condition, require the payee to assure the Franchise Tax Board by bond, deposit, or other reasonable requirements as necessary, that the payee will comply with the withholding requirements applicable to the payee.
- (f) Requirement to File a California Return. Withholding does not relieve the payee of the obligation to file a California income tax return. For individuals, a California return is required if the nonresident individual has any income from California sources and has a California tax liability. (See Revenue and Taxation Code section 18501.) Business entities must file returns if they are subject to franchise or income tax, are doing business in California, or have any California source income for the taxable year. No refund or credit of withholding may be made to an individual or entity that fails to file a tax return for the year. (See Revenue and Taxation Code section 19307.)
- (g) Suspended and Forfeited Corporations. Withholding of tax at source is required from any payment to a suspended or forfeited corporation, or from a suspended or forfeited corporation's distributive share of a pass-through entity's California source income, if the payer has knowledge of, or has reason to know of, the suspension or forfeiture.
- (h) FTB Form 590, Withholding Exemption Certificate. FTB Form 590 shall contain the following information:

- (1) Withholding Agent's name.
 - (2) Payee information, which includes the payee's name, identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), and address.
 - (3) A check box indicating one of the following reasons the payee is exempt from the California withholding requirements on payments made to the entity or individual, or is exempt from the California withholding requirements on a nonresident owner's distributive share of a pass-through entity's California source income:
 - (A) The payee is a resident of California at the payee address shown on FTB Form 590.
 - (B) The payee is a corporation having a permanent place of business in California at the payee address shown on FTB Form 590, or is qualified through the SOS to do business in California.
 - (C) The payee is a partnership or LLC having a permanent place of business in California at the payee address shown on FTB Form 590, or is registered with the SOS.
 - (D) The payee entity is exempt from tax under Revenue and Taxation Code section 23701 or Internal Revenue Code section 501(c).
 - (E) The payee entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.
 - (F) At least one fiduciary trustee or and one noncontingent beneficiary of the payee trust is a California resident.
 - (G) The person signing FTB Form 590 is the executor of the payee's estate, where the payee-decedent was a California resident at the time of death.
 - (H) The payee is a nonmilitary spouse of a military service member and meets the Military Spouse Residency Relief Act requirements.
 - (4) The name, telephone number and dated signature of the payee.
- ~~(i) FTB Form 592, Resident and Nonresident Withholding Statement. FTB Form 592 shall contain the following information:~~
- ~~(1) A check box indicating whether the form is filed as an amended FTB Form 592.~~
 - ~~(2) A check box indicating whether the form is filed for a prior year's distribution.~~
 - ~~(3) A check box indicating one of four due dates for April, June, or September of the current year, or January of the following year, for the tax withheld.~~
 - ~~(4) Withholding Agent information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN,~~

~~California corporation number, or SOS file number), withholding agent's address, and telephone number.~~

~~(5) Total number of payees reported on the FTB Form 592.~~

~~(6) A check box to indicate the types of income being reported: Payments to Independent Contractors; Payments to Non-California Grantor Trust, Simple Trust, or Complex Trust Distributions; Rents or Royalties; Distributions to Domestic Nonresident Partners, Members, Beneficiaryies, or S Corporation Shareholders; Payments to Non-California Estate Distributions; Elective Withholding; Elective Withholding by Indian Tribe; or Other. For "Other," an explanation must be provided.~~

~~(7) Total tax amount withheld from all payees listed by withholding agent, excluding backup withholding.~~

~~(8) Total backup withholding from all payees listed by withholding agent.~~

~~(9) Total amount of tax withholding and backup withholding (combined).~~

~~(10) Total of prior payments made to the Franchise Tax Board but not previously distributed allocated to the payees on a prior FTB Form 592.~~

~~(11) Total of prior payments not previously allocated distributed on a prior FTB Form 592, plus amounts withheld by another entity and being allocated distributed under this FTB Form 592 (combined).~~

~~(12) Total amount being submitted on FTB Form 592.~~

~~(13) The name and dated signature of the withholding agent.~~

~~(14) The name, PTIN number, address, telephone number, and dated signature of the preparer.~~

~~(15) Payee information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), a check box indicating whether the amount submitted constitutes backup withholding, address, total amount of income, and amount of tax withheld. Multiple payees may be submitted on one form.~~

(ij) FTB Form 592-~~PTE~~, **Pass-Through Entity** Resident and Nonresident **Annual** Withholding **Statement Return**. FTB Form 592-~~PTE~~ shall contain the following information:

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

(2) A check box indicating whether the form is filed for a prior year's distribution.

(3) A check box indicating total withholding paid at end of year.

(4) **Total number of payees reported on the FTB Form 592.**

- (~~5~~4) Withholding Agent information: **Information for withholding agent filing FTB Form 592, including withholding agent information for current FTB Form 592 filer only allocating withholding paid on its behalf. Withholding agent information, which** includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), withholding agent's address, and telephone number.
- (~~5~~) ~~**Pass-Through Entity Information: Withholding agent information for pass-through entity which withheld on behalf of current Form 592-PTE filer. Withholding agent information includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), withholding agent's address, and telephone number.**~~
- (~~6~~) ~~**Total number of payees reported on the FTB Form 592-PTE.**~~
- (~~6~~7) Total tax amount withheld from all payees listed by withholding agent, excluding backup withholding.
- (~~7~~8) Total backup withholding from all payees listed by withholding agent.
- (~~8~~9) Total amount of tax withholding and backup withholding (combined).
- (~~9~~10) Total of prior payments made to the Franchise Tax Board but not previously ~~distributed~~ allocated to the payees on a prior FTB Form 592-PTE.
- (~~10~~11) Amounts withheld by another entity and being ~~distributed~~ allocated ~~to partners or members under this FTB Form 592-PTE.~~
- (~~11~~12) Total of prior payments not previously ~~distributed~~ allocated on a prior FTB Form 592-PTE, plus amounts withheld by another entity and being ~~distributed~~ allocated under this FTB Form 592-PTE (combined).
- (~~12~~13) Total amount being submitted on FTB Form 592-PTE.
- (~~13~~14) The name and dated signature of the withholding agent.
- (~~14~~14) The name, PTIN number, address, telephone number, and dated signature of the preparer.
- (~~15~~18) Payee information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), ~~a check box indicating whether the amount submitted constitutes backup withholding~~, address, total amount of income, and amount of tax withheld. Multiple payees may be submitted on one form. **A check box indicating whether the amount submitted constitutes backup withholding, pass-through entity withholding, independent contractor withholding, or other withholding.**

(16) Other Withholding Agent Information: Information for withholding agent which withheld on behalf of current Form 592 filer. Withholding agent information includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), withholding agent's address, amount of tax withheld and telephone number. Check box to indicate FTB Form 592 filer certifies under penalty of perjury that FTB Form 592-B was received within 30 days of filing FTB Form 592.

(j)(k) FTB Form 592-F, Foreign Partner ~~or Member~~ Annual Withholding Return. FTB Form 592-F shall contain the following information:

- (1) A check box indicating whether the form is filed as an amended FTB Form 592-F.
- (2) A check box indicating whether the form is filed based on the filing of a federal extension.
- (3) A space to indicate the month, day, and year of the start of the partnership's ~~or LLC's~~ calendar or fiscal year.
- (4) A space to indicate the month, day, and year of the end of the partnership's ~~or LLC's~~ calendar or fiscal year.
- (5) Withholding Agent information, which includes the business name, identification number (FEIN, California corporation number, or SOS file number), telephone number, and address.
- (6) Pass-Through Entity Information: Withholding agent information for pass-through entity which withheld on behalf of current Form 592-~~PTEF~~ filer. Withholding agent information includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), withholding agent's address, and telephone number.
- (7) Total number of foreign partners ~~or members~~ reported on the FTB Form 592-F.
- (8) Total tax amount withheld from all payees listed by withholding agent, excluding backup withholding.
- (9) Total backup withholding from all payees listed by withholding agent.
- (10) Total amount of tax withholding and backup withholding (combined).
- (11) Amount withheld by another entity and being allocated to partners ~~or members~~ under this FTB Form 592-F.
- (12) Total of prior payments of foreign partners' ~~or member's~~ withholding for the taxable year.
- (13) Total amount of foreign partner ~~or member~~ credit carried over from the prior withholding year.

- (14) Total of the following: (1) amount withheld by another entity and being allocated to partners ~~or members~~ under this FTB Form 592-F; (2) total of prior payments of foreign partners' ~~or member's~~ withholding for the taxable year; and (3) total amount of foreign partner ~~or member~~ credit carried over from the prior withholding year.
 - (15) Total amount being submitted on FTB Form 592-F; submit withholding amount along with Form 592-A.
 - (16) Overpayment amount (if applicable).
 - (17) Credit to be applied to next year's FTB Form 592-F (if applicable).
 - (18) Refund amount (if applicable).
 - (19) Payee information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), a check box indicating whether the amount submitted constitutes backup withholding, address, total amount of income, and amount of tax withheld. Multiple payees may be submitted on one form.
 - (20) The name and dated signature of the withholding agent.
 - (21) The name, PTIN number, address, telephone number and dated signature of the preparer.
- (k) FTB Form 588, Nonresident Withholding Waiver Request. FTB Form 588 shall contain the following information:
- (1) Withholding Agent information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), daytime telephone number, fax number, and withholding agent's address.
 - (2) Requester information, which includes the business and/or individual name (if applicable), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), individual name or contact name at the business, daytime telephone number, fax number, address, and a check box which requesters must mark to identify themselves as either the withholding agent, the payee, or an authorized third party of either the withholding agent or payee.
 - (3) A check box indicating one of the following types of income subject to withholding: Payments to Independent Contractors; Payments to Non-California Grantor Trust, Simple Trust, or Complex Trust Distributions; Rents or Royalties; Distributions to Domestic Nonresident ~~Partners, Members, Beneficiaries, or S-Corporation Shareholders~~; Distributive Share of Pass-Through Entity California Source Income; Payments to Non-California Estate Distributions; or Other. For "Other," an explanation must be provided.
 - (4) Payee information, which includes the business or individual name (or both for grantor trusts or sole proprietorships), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), and address. If the

payee is a newly admitted business entity or individual, the date of admittance must be provided. If the payee is a grantor trust, the grantor's individual name and SSN/ITIN must be provided. Multiple payees may be submitted on one form along with a check box for each indicating the reason for the waiver request.

(5) A check box indicating one of the following reasons for the waiver request:

(A) Payee has California state tax returns on file for the two most current taxable years in which the payee has a filing requirement. Payee is considered current on any tax obligations with the Franchise Tax Board.

(B) Payee is making timely estimated tax payments for the current taxable year. Payee is considered current on any tax obligations with the Franchise Tax Board.

(C) Payee is a corporation that is not qualified to do business and does not have a permanent place of business in California, but is filing a tax return based on a combined report with a corporation that does have a permanent place of business in California. Attach a copy of California Form 100, Schedule R-7 of Schedule R, Election to File a Unitary Taxpayers' Group Return, from the combined report.

(D) Payee is a newly admitted S corporation shareholder, or partner of a partnership, or member of a limited liability company. In the "Newly Admitted Date" box, provide the date this shareholder, or partner, or member was admitted. The waiver will expire at the end of the calendar year succeeding the date the payee was newly admitted. Once expired, the payee must have the most current California tax return due on file, or estimated tax payments for the current taxable year in order to have a new waiver granted.

(E) For "Other," attach a specific reason and include substantiation that would justify a waiver from withholding. If the payee is a group return participant, attach a copy of California Schedule 1067A, Nonresident Group Return Schedule, from the group return.

(6) The name, telephone number and the dated signature of the requester.

(11) FTB Form 589, Nonresident Reduced Withholding Request. FTB Form 589 shall contain the following information:

- (1) Withholding Agent information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), daytime telephone number, fax number, withholding agent's address, and name of venue or property address (if applicable).
- (2) Payee information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), fictitious business statement name (if applicable), fax number, address, and telephone number.

- (3) A check box indicating one of the following types of income subject to withholding: Payments to Independent Contractor; ~~Trust Distributions~~; Rents or Royalties; ~~Distributions to Domestic Nonresident Partners, Members, Beneficiaries, or S Corporation Shareholders~~; ~~Estate Distributions~~; or Other. For "Other," an explanation must be provided.
- (4) Date(s) of service.
- (5) Gross California source payment.
- (6) Payee expenses, consisting of the following:
 - (A) Advertising;
 - (B) Commissions and fees;
 - (C) Cost of labor (contract labor);
 - (D) Insurance;
 - (E) Legal, professional, and/or management fee;
 - (F) Rent or lease payments;
 - (G) Supplies;
 - (H) Travel, meals, and entertainment; and
 - (I) Other. For "Other," the type of expense and amount must be explained and substantiated.
- (7) Total amount of expenses.
- (8) Net California source payment (gross California source payment, less total amount of expenses).
- (9) Withholding amount (multiply the net source payment by 7 percent).
- (10) The name and dated signature of the payee.
- (11) The name, PTIN number, telephone number and dated signature of the preparer.

Note: Authority cited: Section 19503, Revenue and Taxation Code. Reference: Sections 18662 and 18817, Revenue and Taxation Code.

Regulation Section 18662-5 is amended to read:

§ 18662-5. Other Types of Payments and Withholding Obligations.

(a) ~~Payments to~~ Nonresidents Subject to Withholding.

- (1) General. As explained in Regulation section 18662-4, withholding agents are required to withhold from a payments or distributions of California source income made to a nonresident or a nonresident owner's distributive share of pass-through entity California source income when the ~~payments or distributions or distributive share is~~are greater than \$1,500 for the calendar year, unless the withholding agent receives authorization for a waiver, pursuant to FTB Form 588, Nonresident Withholding Waiver Request, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 588"), or a reduced withholding amount, pursuant to FTB Form 589, Nonresident Reduced Withholding Request, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 589"). The required information specified in FTB Form 588 and FTB Form 589 is set forth in subsections (i) and (j), respectively, below. Payments of income that must be reported on a federal information return, such as form 1099-MISC, may be subject to California withholding at source if the recipient is a nonresident individual or a non-California business entity.
- (2) California Source Income Subject to Withholding. The following types of California source income are examples of income subject to withholding on payments made to nonresidents:
 - (A) Payments made for services performed in California. The source of income from services is the location where the services are performed, and not where the nonresident lives, the location where the contract for services is entered into, or the place of payment.
 - (B) Payments received for a covenant not to compete in California.
 - (C) Payments releasing a contractual obligation to perform services in California.
 - (D) Income from options received as a result of performing personal services in California.
 - (E) Bonuses paid for services performed in California.
 - (F) Income from intangible personal property where the property has acquired a business situs in California.
 - (G) Rent or lease payments where the property is located in California.
 - (H) Royalty payments where the property is located in or has acquired a business situs in California.
 - (I) Prizes, awards, competitions, contests, game shows, or races performed in California.

- (J) Distributions of California source income to nonresidents, including both cash and non-cash distributions.
 - (K) Gambling or gaming winnings won in California.
 - (L) Premiums, annuities, emoluments, compensation for services, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, endorsement income, other types of income, and any other compensation representing California source income.
 - (M) Any other amount of California source income for which a state or federal information return is required to be filed.
- (3) **Business Situs.** Income from intangible personal property such as stocks, bonds, notes, etc., is not income from California sources unless the property has acquired a business situs in California. A California business situs is acquired when the property is employed as capital in California. A California business situs is also acquired when the possession and control of the property has been localized in connection with a business, trade, or profession in California so that its substantial use and value attach to and become an asset of that business. The entire income, including the gain from the sale of such an asset, is income from California sources. Examples include an intangible asset pledged as security for a loan connected to a California business or a bank account maintained to pay expenses related to business activities in California. (For rules governing the determination of business situs, see Regulation section 17952.)
- ~~(4) **Payments to Nonresident Aliens or Foreign Entities.** Payments of California source income made to nonresident aliens or foreign entities are subject to withholding.~~
- (45) **Payments Made to Reimburse Expenses.** If the reimbursement is separately accounted for and is not subject to federal information return (Form 1099 or Form 1042) reporting, withholding is not required on payments to reimburse nonresidents for expenses relating to services performed in California. When the reimbursed expenses do not meet these requirements, withholding agents should withhold on the total payment.
- (56) **Services in Connection With the Sale of Goods.** Withholding is required on the portion of the sale that relates to services provided in California. FTB Form 587, Nonresident Withholding Allocation Worksheet, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 587") may be used to distinguish the portion of payments made for goods from the portion for services. The required information specified in FTB Form 587 is set forth in subsection (k), below.
- (b) **Payments to Independent Contractors.** See California Unemployment Insurance Code sections 13000 et. seq., for the definition of "employee" subject to wage withholding. Individuals other than employees who perform personal services in California are independent contractors subject to withholding for purposes of this regulation. If the independent contractor is a resident and provides FTB Form

590, Withholding Exemption Certificate, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 590"), no withholding is required. The required information specified in FTB Form 590 is set forth in subsection (l), below.

(c) Payments to Nonresident Subcontractors.

- (1) Withholding Requirements. The withholding agent is required to withhold when making payments directly to nonresident subcontractors for services performed in California.
- (2) Payments to California Residents. Withholding is not required on payments to general contractors who are California residents.
- (3) General Contractor Obligations. General contractors must withhold on payments made to nonresident subcontractors for services performed in California.
- (4) Multiple Contractors/Contractor-of-Record. When the withholding agent makes payments to more than one contractor, the withholding agent should provide each contractor with FTB Form 587 and FTB Form 590 to determine if withholding is required. If the withholding agent knows of only one contractor, then the withholding agent should use the information provided by the contractor-of-record. If the contractor is a resident and provides an FTB Form 590, no withholding is required. If the contractor-of-record is a nonresident, withholding is required on the total payment.

(d) Rent or Lease Payments to Nonresidents California Real Estate Owner.

- (1) Rent or Lease Payments Made to Nonresidents California Real Estate Owner. Withholding on rent or lease payments to a nonresidents California real estate owner is required when all of the following criteria are met:
 - (A) The rented or leased property, either personal or real property, or a combination thereof, is located in California for all or part of the year.
 - (B) The payments are made in the course of a trade or a business. Except as provided in subsections (B)(i)4-, (B)(ii)2-, or (B)(iii)3-, a person or business entity making rent or lease payments to a nonresident California real estate owner, as well as a property manager who collects rent or lease payments on behalf of a nonresident California real estate owner, is considered to be making payments in the course of a trade or business and is considered a withholding agent.
 - (i)4- A tenant of residential property who directly makes rent payments to a nonresident California real estate property owner is not making a payment in the course of a trade or business and, thus, is not required to withhold on payments.
 - (ii)2- An employee of a nonresident California real estate property owner who collects rent payments on behalf of the nonresident California real estate property owner is not a withholding agent and, thus, is not required to withhold on payments.

(iii)3. An individual, whether or not a family member of the nonresident California real estate owner, who collects rent payments on behalf of the nonresident California real estate~~property~~ owner, and who receives no compensation from the nonresident California real estate owner, is not considered to be acting "in the course of a trade or business." Thus, the individual is not required to withhold on payments to the nonresident California real estate~~property~~ owner.

(iv)4. A property manager providing services to a nonresident California real estate~~property~~ owner, including but not limited to renting, leasing, or collecting rent or lease payments on behalf of the nonresident California real estate owner, is considered the withholding agent for withholding purposes. Rent or lease payments derived from real property as well as personal property located in California are California source income payments and subject to California withholding requirements as set forth in Revenue and Taxation Code section 18662 and Regulation sections 18662-0 through 18662-8.

(C) The total payments of California source income to the nonresident California real estate owner, excluding property management fees, exceed \$1,500 for the calendar year.

(2) Types of Rental or Leased Property Subject to Withholding. Withholding is required on income derived from renting or leasing real or personal property such as machinery equipment, vehicles, aircraft, land, and buildings.

Example: A property management company collects rents from tenants for a nonresident California real estate~~property~~ owner. The property management company is required to withhold 7 percent of all payments associated with rents paid to a nonresident California real estate owners when the payments are greater than \$1,500 per calendar year. The property management company may deduct its management fees and then calculate the 7 percent withholding based on the amount to be sent to the California real estate~~property~~ owner.

(e) Royalty Payments Made to Nonresidents.

(1) Compensation for the Right to Use Natural Resources. Withholding is required on royalty payments made to nonresidents for the right to use natural resources located in California, including, but not limited to, oil, gas, other minerals, geothermal, and timber.

(2) Compensation for Services Derived from Intangible Property Having a Taxable or Business Situs in California. Withholding is required on royalty payments made to nonresidents for services performed in California and for other compensation derived from a business or activity with a business situs in California. Royalty payments include compensation for such services derived from, but not limited to, patents, copyrights, secret processes and formulas, good will, trademarks, franchises, and other like property having a

taxable or business situs in California. (For rules governing income from sources within California, see Regulation section 17951-2.)

(f) Payments to Corporate Directors.

(1) Withholding Not Required. Withholding is not required for wages, salaries, fees or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting. Each nonresident director must file a California income tax return reporting this California source income, unless he or she elects to be included in a group return under Revenue and Taxation Code section 18536.

(2) Filing of Information Return. An entity paying wages, salaries, fees or other compensation to a nonresident director must file an information return with the Franchise Tax Board and provide the payee with a payee statement. To meet this requirement, a payer who is required to file a federal information return (e.g., Form 1099-MISC) with the Internal Revenue Service must provide a copy of that same return to the payee.

(g) Seminar Speakers and Expert Witnesses. Withholding is required on payments that are compensation for services performed in California by a nonresident, including services performed as a seminar speaker or as an expert witness.

(h) Income Allocation.

(1) Nonresident Contractors. When nonresident contractors perform services within California as well as outside of California, reasonable methods may be used by the withholding agent to determine what portion of the services are provided within California. In addition to the two approved methods below, withholding agents may use other reasonable methods of allocation.

Method 1: Allocation By Payer in Accordance with Contract: If by contract an athlete or entertainer is required to perform services in California on behalf of a sponsor, the payments received on the contract are considered to be personal services income subject to tax by where the services are performed, which is California. The payer may make a reasonable allocation of the California source income based on the contract and in accordance with the actual number of California performances, and should withhold California tax on the California payment.

For instance, where a contract requires an athlete to appear at a California tournament wearing the sponsor's clothing bearing its logo or using a sponsor's golf clubs, that athlete has performed a service on behalf of the sponsor in California, and the income is subject to California tax. If the contract requires appearances in California and other states, a portion of the endorsement income is California source income and subject to California income tax. The payer-sponsor should make a reasonable allocation of the payment based on the facts and circumstances of each contract, and withhold California tax on the California payment.

Method 2. Nonresident Income Allocation Worksheet: The withholding agent may request that the payee complete FTB Form 587 to determine the amount of California source income subject to withholding. The withholding agent uses the information provided by the payee in FTB Form 587 to determine what portion of the payment is subject to withholding.

For instance, a withholding agent sends FTB Form 587 to an out-of-state independent contractor before making a payment for services. The total contract amount is \$100,000. The nonresident contractor returns FTB Form 587, certifying that \$60,000 is for services performed in California and \$40,000 is for services performed in another state. The amount of withholding would be:

$\$60,000 \text{ California source income} \times 7 \text{ percent Withholding rate} = \$ 4,200.$

Note: If the amount subject to withholding (\$60,000 in the example above) is equal to or less than \$1,500 for the calendar year, withholding is optional.

- (2) Reliance on Allocations Provided by Payees. Except as otherwise provided in this subsection (h)(2), withholding agents may generally rely on allocations provided by payees on a properly completed and signed FTB Form 587. The withholding agent will be relieved of the withholding requirements if the withholding agent relies in good faith on a completed and signed FTB Form 587. If the withholding agent has actual knowledge that FTB Form 587 is incorrect, the withholding agent should not rely on it and should withhold at 7 percent on the entire payment. The withholding agent may not rely upon an incomplete, unsigned, or fraudulent FTB Form 587.
- (3) Allocation Based on Time. Compensation for personal services performed by nonresident independent contractors will normally be allocated to California based on working days in California to total working days in and out of California ("duty days" for professional athletes – see Regulation section 18662-6). The number of days covered by the contract can be used to determine the total working days in and out of California only when the payee is:
 - Hired for the exclusive use by the withholding agent for the entire contract period,
 - Required to be available to work each day at the discretion of the withholding agent during the contract period, and
 - Being paid whether or not providing services.Days spent acquiring knowledge, skills, or necessary experience are not considered work days. Professionals and others who bill by the hour should allocate compensation based on the number of billable hours worked in California to the total number of billable hours related to the particular service.
- (4) Reasonable Method of Allocation Based on Goods and Services. Withholding agents must use a reasonable method. One reasonable method is to use the same allocation of goods and services that is used for sales and use tax

purposes in the sales contract. The portion of the payment not subject to sales or use tax is considered payment for services and subject to withholding. If a payment is not subject to California sales or use tax, but is subject to another state's sales or use tax, withholding agents may also use the allocation for the other state to determine the portion relating to services and subject to withholding.

Except as set forth in California Code of Regulations, Title 18, sections 1506, 1521, 1524, 1523, 1546, 1548, 1549, 1550, 1551 and 1553, under California sales and use tax laws, charges for labor or services for installation are not subject to sales or use tax. Payments for installation are subject to withholding. Charges for designing, consulting, performing feasibility studies, evaluating bids, and providing training services are also considered service activities if they are separately stated and not part of the sale of tangible personal property. Payments for repairs are subject to withholding, except for parts that are separately stated on the invoice. As payments for mandatory maintenance contracts or warranties are subject to sales tax, even if the cost of the maintenance contract or warranty is separately stated, the payments are not subject to withholding. Payments for maintenance contracts or warranties not subject to sales tax are subject to withholding.

- (5) Allocation of Complex Trust Distributions. Allocation of distributions between California and non-California source income based on past year's allocations for withholding purposes may be made by the trustee of a complex trust. If the trustee does not know the amount of California source income included in a distribution, the trustee may use the most recently filed year's ratio of California source income to total income to allocate the distribution.
- (i) FTB Form 588, Nonresident Withholding Waiver Request. See Regulation section 18662-4, subsection (k)~~(l)~~.
- (j) FTB Form 589, Nonresident Reduced Withholding Request. See Regulation section 18662-4, subsection (l)~~(m)~~.
- (k) FTB Form 587, Nonresident Withholding Allocation Worksheet. FTB Form 587 shall contain the following information:
 - (1) Withholding Agent's name and address.
 - (2) Nonresident Payee information, which includes the payee's name, identification number (SSN or ITIN, FEIN, California corporation number, or California Secretary of State file number), address, and a check box indicating the payee's entity type (individual/sole proprietor, corporation, partnership, LLC, or estate or trust).
 - (3) A check box indicating one of the following types of payments:
 - (A) Performs services totally outside California (no withholding required);
 - (B) Provides goods and services in California (complete Income Allocation);
 - (C) Provides only goods or materials (no withholding required);

- (D) Provides services within and outside California (complete Income Allocation); or
 - (E) Other—For "Other," an explanation of the service performed must be provided.
- (4) Income Allocation, which includes three categories of payments for the calendar year: (1) Within California (2) Outside California; and (3) Total payments.
- (5) For each Income Allocation category, the payments expected from the withholding agent in the following areas must be indicated:
- (A) Goods/materials (no withholding required);
 - (B) Services (withholding required);
 - (C) Rents or lease payments;
 - (D) Royalty payments;
 - (E) Prizes and other winnings;
 - (F) Other payments;
 - (G) Total payments subject to withholding.
- (6) The name, telephone number, and dated signature of the payee.
- (7) The name, telephone number, and dated signature of the payee's authorized representative.
- (I) FTB Form 590, Withholding Exemption Certificate. See Regulation section 18662-4, subsection (h).

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

Regulation Section 18662-6 is amended to read:

§ 18662-6. Nonresident Withholding, Entertainers, Athletes, and Speakers.

(a) Payments Subject to Withholding.

(1) General. Payments to nonresident independent contractors or to non-California business entities for services performed in California by entertainers, athletes, and speakers are subject to withholding.

(A) The Phrase "Entertainers, Athletes, and Speakers." The phrase "entertainers, athletes, and speakers" (also referred to as "entertainers") includes, but is not limited to:

- ~~(i)~~1. Actors;
- ~~(ii)~~2. Bands;
- ~~(iii)~~3. Boxers;
- ~~(iv)~~4. Dance teams;
- ~~(v)~~5. Orchestras;
- ~~(vi)~~6. Performers;
- ~~(vii)~~7. Singers;
- ~~(viii)~~8. Speakers;
- ~~(ix)~~9. Sports entertainers and athletes;
- ~~(x)~~10. Wrestlers;
- ~~(xi)~~11. Stage crews;
- ~~(xii)~~12. Lighting crews;
- ~~(xiii)~~13. Promoters; and
- ~~(xiv)~~14. Talent agents.

(B) Withholding Required Even if Contract States No Withholding.

Withholding agents are required to withhold tax on payments even when the nonresident entertainer's contract states that there shall be no withholding from compensation. California law requires the withholding agent to withhold tax on payments, and the withholding agent is legally responsible for the withholding amount.

(C) Payments Made to Reimburse Expenses. If the reimbursement is separately accounted for and is not subject to federal Form 1099 information reporting, withholding agents are not required to withhold on payments to reimburse a nonresident entertainer for expenses relating to services performed in California. When the reimbursed expenses do not meet these requirements, the withholding agent should withhold on the total payment.

Example: A nonresident entertainer incurred lodging expenses, and the contract allows reimbursement of expenses. To obtain reimbursement of the expense, the nonresident entertainer submits substantiating documentary evidence that shows the amount, date, place, and essential character of this incurred expense, which is related to the services performed. If the lodging receipt substantiates that the expense was for a business purpose and a federal Form 1099 is not required, the withholding agent is not required to withhold on the reimbursement payment to the nonresident entertainer.

(2) Payments Made to Entertainer's Agents or Promoters.

- (A) In General. Withholding is required on California source income paid to the nonresident entertainer whether or not the Franchise Tax Board contacts the withholding agent. In addition, if the withholding agent receives written notification from the Franchise Tax Board to withhold tax at source, withholding is required according to that written notice on all payments made directly or indirectly to the nonresident entertainer. Withholding is required even if the nonresident entertainer's agent or promoter meets one of the exceptions listed in Regulation section 18662-4, subsection (c), unless the nonresident entertainer's agent or promoter is a California resident (as defined in Regulation section 18662-2, subsection (d)) or a California business entity (as defined in Regulation section 18662-2, subsection (b)). Exceptions apply to the entertainer as the person who directly performed the service. Because the entertainer performed the service, the entertainer is required to report his or her compensation for the performance and is entitled to the withholding credit in proportion to the entertainer's share of the income withheld upon by the entertainment venue. The required information specified in FTB Form 590, Withholding Exemption Certificate, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 590"), is set forth in subsection (g), below.

Example 1: If compensation is earned by the nonresident entertainer but the entertainment venue pays the compensation directly to the entertainer's agent or promoter, the entertainment venue as the withholding agent must withhold and remit tax on the gross payments and provide the Franchise Tax Board with an information return, on FTB Form 592, Resident and Nonresident Withholding Statement, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592"), which credits the withholding amount to the nonresident entertainer. The required information specified in FTB Form 592 is set forth in subsection (h), below. The entertainment venue should not file an information return, on FTB Form 592, which credits the withholding amount to the entertainer's agent or promoter.

Example 2: A nonresident entertainer's promoter is qualified to do business in California and submits a certified Form 590 to the withholding agent. The withholding agent's payment is for the nonresident entertainer

performing a service in California. Therefore, the nonresident entertainer must meet an exemption on Form 590 to avoid withholding.

- (B) California Residents and California Business Entities. If the entertainer's agent or promoter is either a California resident (as defined in Regulation section 18662-2, subsection (d)) or a California business entity (as defined in Regulation section 18662-2, subsection (b)), the entertainment venue is not required to withhold under either Regulation section 18662-4 or Regulation section 18662-6 if the entertainer's agent or promoter certifies to an exemption on FTB Form 590. The entertainment venue may rely on a printout from the Office of the California Secretary of State (SOS) website showing the entertainer's agent's or promoter's business entity number, that the business entity has a permanent place of business in California (e.g., the "jurisdiction" field shows "California" or the "entity city, state, zip" field shows "CA" for the state), and that the business entity is in good standing ("e.g., the "status" field shows "active"). The SOS website printout—which must be printed within 30 days prior to making a payment—protects the withholding agent from penalties for failure to withhold, unless the withholding agent has actual knowledge that the information received from the SOS, is false. The entertainer's agent or promoter, as the withholding agent, must withhold and remit the withholding on the gross payments made to the nonresident entertainer, unless the nonresident entertainer meets one of the exemptions listed in Regulation section 18662-4, subsection (c), set forth in FTB Form 590.

Example: An entertainment venue signs a contract with an entertainer's agent who is incorporated in California, and pays the compensation directly to the entertainer's agent. The entertainer's agent certifies to an exemption on FTB Form 590. The entertainment venue does not withhold on the entertainer's agent. The entertainer's agent as the withholding agent must withhold and remit tax on the gross payments made to the nonresident entertainer and provide the Franchise Tax Board with an information return, on FTB Form 592, which credits the withholding amount to the nonresident entertainer. The required information specified in FTB Form 592 is set forth in subsection (h), below.

- (3) Sound and Lights. Withholding is required on payment for sound and light services paid to a nonresident.

- (b) Request for Waiver or Reduced Withholding Amount. Withholding is required on the total (gross) payment paid by the withholding agent, unless an exemption on FTB Form 590, waiver on FTB Form 588, Nonresident Withholding Waiver Request, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 588"), or reduced withholding amount on FTB Form 589, Nonresident Reduced Withholding Request, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 589"), is authorized. The required information specified in FTB Form 588 and FTB Form 589 is set forth in subsections (i) and subsection (j), respectively, below. A waiver is requested by filing FTB Form 588 at least 21

business days prior to the nonresident's performance or California activity date, or reduced withholding amount by filing FTB Form 589 at least 10 business days for online filing, or 21 business days for paper filing, prior to the nonresident's performance or California activity date. The Franchise Tax Board will then determine, based on the information and documentation submitted, if withholding at the statutory 7 percent rate on the entire payment from the performance or activity will result in over-withholding. If so, the Franchise Tax Board may grant the waiver pursuant to FTB Form 588 or authorize pursuant to FTB Form 589 deductions from the gross amount to compute a withholding base that more accurately represents the nonresident entertainer's estimated tax liability when the 7 percent withholding rate is applied. The reduced amount of the total amount of expenses (FTB Form 589, Part IV (Withholding Computation), line 12) cannot exceed 50 percent of the gross California source payment (FTB Form 589, Part IV (Withholding Computation), line 1). If the Franchise Tax Board grants a waiver pursuant to FTB Form 588 or authorizes a reduced withholding amount pursuant to FTB Form 589, the Franchise Tax Board will then notify the withholding agent of the withholding required for the specific performance by sending the withholding agent a waiver determination notice or reduced withholding approval letter. If the withholding agent does not notify the Franchise Tax Board of the performance or the Franchise Tax Board does not notify the withholding agent of an approved waiver or reduced withholding rate, the withholding agent must withhold 7 percent from payments made to nonresident entertainers. (See Regulation section 18662-4.)

- (c) Exceptions. Withholding is optional if the entertainer (not the entertainer's agent) meets one of the following exclusions or exceptions:
- (1) California Resident. The entertainer is a California resident.
 - (2) California Business Entity. Payment is made to a business entity that is qualified to do business in California or has a permanent place of business in California for the entertainer's services.
 - (3) Tax Exempt Organization. Payment is made to a tax exempt organization under either California or federal law for the entertainer's services.
 - (4) Total Payments Equal to or Less Than \$1,500. The total payments of California source income to the entertainer are equal to or less than \$1,500 for the calendar year.
 - (5) Services Performed Outside of California. The services provided by the entertainer are performed outside of California.
 - (6) Withholding Waiver Received. The entertainer or the withholding agent receives a withholding waiver from the Franchise Tax Board.
- (d) Entertainment Venues Having Similar Names. An owner or lessor of an entertainment venue that mistakenly receives a reduced withholding approval letter or other correspondence from the Franchise Tax Board for a performance he or she is not engaged in must contact the Franchise Tax Board and provide

the necessary information to allow the Franchise Tax Board to notify the correct withholding agent.

- (e) Canceled Performances. If a withholding agent receives a reduced withholding approval letter when no payment is made to the nonresident entertainer because the performance was canceled, the withholding agent should write "Canceled" on the reduced withholding approval letter and return it to the Franchise Tax Board with an explanation that withholding was not done because the performance was canceled and no payment was made. The Franchise Tax Board may request additional information to validate the canceled performance.
- (f) Additional Rules for Athletes.
 - (1) Duty Days. A duty day is any day during which services are performed under the contract from the beginning of an official preseason activity until the last game played. The duty days in California are then divided by the total duty days to create a ratio, which is in turn multiplied by the total compensation. The result is California source income.
 - (2) Performance and Signing Bonuses. Performance bonuses are included in the income to be allocated within and without California if any of the conditions to receive the bonus were met or partially met while performing services in California. The signing bonus issue is dealt with on a case-by-case basis with an examination of the wording of the contract. If services must be performed to receive or keep the signing bonuses and if any of those services are performed or partially performed in California, then the signing bonus is included in the compensation to be allocated within and without California.
- (g) FTB Form 590, Withholding Exemption Certificate. See Regulation section 18662-4, subsection (h).
- (h) FTB Form 592, Resident and Nonresident Withholding Statement. See Regulation section 18662-4, subsection (i).
- (i) FTB Form 588, Nonresident Withholding Waiver Request. See Regulation section 18662-4, subsection (k)~~(l)~~.
- (j) FTB Form 589, Nonresident Reduced Withholding Request. See Regulation section 18662-4, subsection (l)~~(m)~~.

Note: Authority cited: Section 19503, Revenue and Taxation Code. Reference: Sections 18662 and 18815, Revenue and Taxation Code.

Regulation Section 18662-7 is adopted to read:

§ 18662-7. Domestic Pass-Through Entity Withholding.

- (a) General. A pass-through entity shall withhold tax on behalf of a nonresident owner in an amount equal to the nonresident owner's tax rate of withholding multiplied by the nonresident owner's distributive share of the pass-through entity's California source income. A pass-through entity that withholds tax on behalf of an owner that is a non-California upper tier S corporation is also required to withhold tax on behalf of each resident or nonresident owner of the non-California upper tier S corporation owner.
- (b) Income from California Sources Subject to Withholding. A nonresident owner's distributive share of a pass-through entity's California source income is determined in the manner described in Regulation section 25137-1 for nonresident corporate partners and Regulation section 17951-4 for all other nonresident owners.
- (c) Nonresident Owner's Tax Rate of Withholding. The pass-through entity shall withhold at the rate specified below with respect to each nonresident owner's tax rate of withholding under subsection (a) is as follows:
 - (1) Nonresident Individual Owner. The tax rate applicable to each nonresident individual owner's distributive share shall consist of the highest marginal tax rate or rates in effect under Revenue and Taxation Code section 17041. The highest marginal tax rate or rates under Revenue and Taxation Code section 17041 include the additional tax imposed by Revenue and Taxation Code section 17043.
 - (2) Pass-Through Entity Nonresident Owner That is a Non-California Business Entity. The tax rate applicable to the distributive share of each nonresident owner that is itself a non-California business entity owner of the pass-through entity shall be the following:
 - (A) Pass-Through Entity Owner That is a Corporation. The tax rate applicable to the distributive share of each nonresident owner that is itself a non-California corporate owner of the pass-through entity shall consist of the tax rate in effect under Revenue and Taxation Code section 23151(f)(2); or, if applicable, the tax rate in effect under Revenue and Taxation Code section 23186.
 - (B) Pass-Through Entity Owner That is an Upper Tier S Corporation. The tax rate applicable to the distributive share of each nonresident owner that is itself a non-California upper tier S corporation owner of the pass-through entity shall consist of the tax rate in effect under Revenue and Taxation Code section 23802. Additionally, the tax rate applicable to the distributive share of each resident or nonresident owner of a non-California upper tier S corporation shall consist of the highest marginal tax rate in effect under Revenue and Taxation Code section 17041. The highest marginal tax rate or rates under Revenue and Taxation Code section 17041 include the additional tax imposed by Revenue and Taxation Code section 17043.

(C) Pass-Through Entity Owner That is an Upper Tier Pass-Through Entity Other Than an S Corporation. The tax rate applicable to the distributive share of each nonresident owner that is itself a non-California upper tier pass-through entity shall consist of the highest marginal tax rate in effect under Revenue and Taxation Code section 17041. The highest marginal tax rate or rates under Revenue and Taxation Code section 17041 include the additional tax imposed by Revenue and Taxation Code section 17043.

(3) Pass-Through Entity Nonresident Owner That is a Trust or Estate. The tax rate applicable to the distributive share of each nonresident owner that is itself a non-California trust or estate shall consist of the highest marginal tax rate in effect under Revenue and Taxation Code section 17041. The highest marginal tax rate or rates under Revenue and Taxation Code section 17041 include the additional tax imposed by Revenue and Taxation Code section 17043.

(d) Withholding Payment Due Dates. Payment of withholding on distributive share of income is due by the federal estimated due date as required by Regulation section 18662-8, subsection (c)(1)(B). An upper tier pass-through entity that is only allocating withholding paid on its behalf is not required to remit withholding under this subsection unless it has a separate withholding requirement under subsection (g).

(e) Reporting Requirements.

(1) Reporting to Franchise Tax Board.

(A) Form 592-~~VQ~~, Payment Voucher for **Pass-Through Entity Resident or Nonresident** Withholding. A pass-through entity shall submit a Form 592-~~VQ~~ with each withholding remittance in accordance with Regulation sections 18662-0 through 18662-8. An upper tier pass-through entity that is allocating withholding paid on its behalf is not required to file Form 592-~~VQ~~ unless it has a separate withholding requirement under subsection (g). (See Regulation section 18662-8, subsection **(k)(i).**)

(B) Form 592-~~PTE~~, **Pass-Through Entity Resident and Nonresident Annual Withholding Statement**~~Return~~. A pass-through entity that has withheld on the income of a nonresident owner or has had its income withheld upon shall file a Form 592-~~PTE~~ on an annual basis no later than January 31st of the year following the year in which such withholding was remitted to the Franchise Tax Board to allocate withholding in accordance with Regulation sections 18662-4 and 18662-8. (See **Regulation section 18662-4, subsection (i)(i).**) **Additionally, a trust or estate that has had its income withheld upon and paid a distribution of that income to its beneficiaries shall file a Form 592 on an annual basis no later than January 31st of the year following the year in which such withholding was remitted to the Franchise Tax Board to allocate withholding in accordance with Regulation sections 18662-4 and 18662-8.**

- (i) Lower Tier Pass-Through Entity. A lower tier pass-through entity that has withheld on income of nonresident owners shall file a Form 592-PTE to allocate withholding to each nonresident owner that has income that has been withheld upon, in accordance with each nonresident owner's interest in the lower tier pass-through entity.
- (ii) Upper Tier Pass-Through Entity. An upper tier pass-through entity that has income that has been withheld upon by a lower tier pass-through entity shall file a Form 592-PTE to allocate withholding paid on its behalf to each owner, whether a resident or nonresident of California, in accordance with each owner's interest in the upper tier pass-through entity.

 - a. Upper Tier Pass-Through Entity Owner. Any owner of an upper tier pass-through entity that is itself a pass-through entity shall likewise file a Form 592-PTE to allocate withholding to each owner, whether a resident or nonresident of California.
 - b. Allocation of Withholding Paid. Once Form 592-PTE allocates withholding paid to an upper tier pass-through entity, the withholding payment made by the lower tier pass-through entity is treated as having been paid on behalf of each upper tier pass-through entity owner.
 - c. Credit for Tax Withheld. If an upper tier pass-through entity claims any of the amount withheld on its **income** tax return for the entity-level tax imposed, **then** it shall attach a **copy of Form 592-B to schedule to Form 592-PTE specifying the amount claimed on the upper tier pass-through entity's income tax return and amount to be allocated to the upper tier pass-through entity's owners.** (See **Regulation section 18662-8, subsection (c)(2)(E), subsection (f)(2)** and Regulation section 19002, subsection (b).)
 - d. Self-Certification. An upper tier pass-through entity may certify on Form 592-PTE under penalty of perjury that the Form 592-PTE is filed by the upper tier pass-through entity within 30 days of receipt by the upper tier pass-through entity of the Form 592-B from the lower tier pass-through entity. If the upper tier pass-through entity certifies on Form 592-PTE under penalty of perjury that the Form 592-PTE is filed within 30 days of receipt of the Form 592-B from the lower tier pass-through entity and the Form 592-PTE is received by FTB within 30 days of the upper tier pass-through entity's receipt of the Form 592-B from the lower tier pass-through entity, then an information return penalty will not be imposed on the upper tier pass-through entity for a late filed Form 592-PTE. An information return penalty shall be imposed if the self-certification is incomplete or otherwise factually incorrect. The information return penalty amount shall be determined in accordance with Regulation section 18662-8, subsection (d)(2)(A).

(iii) Trust or Estate. A trust or estate that has income that has been withheld upon by a pass-through entity and paid a distribution of that income to its beneficiaries in the same year withholding was remitted shall file a FTB Form 592 to allocate the withholding paid on its behalf to each beneficiary, whether a resident or nonresident of California, in accordance with each beneficiary's share in the trust or estate.

- a. Allocation of Withholding Paid. Once Form 592 allocates withholding paid to a trust or estate, the withholding payment made by the pass-through entity is treated as having been paid on behalf of each beneficiary.**
- b. Credit for Tax Withheld. If a trust or estate claims any of the amount withheld on its income tax return, then it shall attach a copy of Form 592-B to the trust or estate's income tax return. (See Regulation section 18662-8, subsection (c)(2)(E) and Regulation section 19002, subsection (b).)**
- c. Self-Certification. A trust or estate may certify on Form 592 under penalty of perjury that the Form 592 is filed by the trust or estate within 30 days of receipt by the trust or estate of the Form 592-B from the pass-through entity. If the trust or estate certifies on Form 592 under penalty of perjury that the Form 592 is filed within 30 days of receipt of the Form 592-B from the pass-through entity and the Form 592 is received by FTB within 30 days of the estate or trust's receipt of the Form 592-B from the pass-through entity, then an information return penalty will not be imposed on the trust or estate for a late filed Form 592. An information return penalty shall be imposed if the self-certification is incomplete or otherwise factually incorrect. The information return penalty amount shall be determined in accordance with Regulation section 18662-8, subsection (d)(2)(A).**

(2) Notification to Owners of Withholding. Form 592-B, Resident and Nonresident Withholding Tax Statement. A pass-through entity that has withheld on income of a nonresident owner or has income that has been withheld upon is required to provide a Form 592-B to each owner that is allocated withholding in accordance with Regulation sections 18662-0 through 18662-8 no later than January 31st of the year following the year in which such withholding was remitted. (See Regulation section 18662-8, subsection (n)(e).) Additionally, a trust or estate that has income that has been withheld upon by a pass-through entity and paid a distribution of that income to its beneficiaries is required to provide a Form 592-B to each beneficiary that is allocated withholding in accordance with Regulation sections 18662-0 through 18662-8 no later than January 31st of the year following

the year in which such withholding was remitted. (See Regulation section 18662-8, subsection (m).)

(A) Lower Tier Pass-Through Entity. A lower tier pass-through entity that has withheld on income of nonresident owners shall provide a Form 592-B to each nonresident owner that has income that has been withheld upon.

(B) Upper Tier Pass-Through Entity. An upper tier pass-through entity that has income that has been withheld upon by a lower tier pass-through entity shall provide a Form 592-B to each owner, whether a resident or nonresident of California, that is to be allocated withholding. Any owner of an upper tier pass-through entity that is itself a pass-through entity shall provide a Form 592-B to each owner, whether a resident or nonresident of California, that is to be allocated withholding.

(C) Trust or Estate. A trust or estate that has income that has been withheld upon by a pass-through entity and paid a distribution of that income to its beneficiaries shall provide a Form 592-B to each beneficiary, whether a resident or nonresident of California, that is to be allocated withholding.

(f) Credit for Tax Withheld.

(1) Individuals and Corporations. An individual or corporation, not including an S corporation, that has income that has been withheld upon may claim a refund for withholding paid on the ~~respective individual or corporate franchise or income appropriate~~ tax return to the extent that the amount withheld exceeds the tax liability. To ~~claim receive~~ a credit for withholding paid, a copy of Form 592-B received from the pass-through entity ~~shall must~~ be attached to the ~~individual or corporate or income appropriate~~ tax return.

(2) Upper Tier Pass-Through Entities. An upper tier pass-through entity that has income that has been withheld upon may not claim a refund for withholding paid on the upper tier pass-through entity's income tax return. The owners of the upper tier pass-through entity may authorize the pass-through entity to use some or all of the withholding credit to satisfy the entity-level tax of the pass-through entity due for the taxable year. (See Regulation section 19002, subsection (b).) ~~To claim a credit for withholding paid, a copy of Form 592-B received from the lower tier pass-through entity shall be attached to the upper tier pass-through entity's income tax return. If the upper tier pass-through entity claims any of the amount withheld on its income tax return, then the upper tier pass-through entity must:~~

(A) ~~Attach a copy of Form 592-B received from the lower tier pass-through entity to the income tax return as well as a schedule specifying the amount to be claimed on the upper tier pass-through entity's income tax return and amount allocated to the upper tier pass-through entity's owners; and~~

(B) Attach a schedule to Form 592-PTE specifying the amount claimed on the upper tier pass-through entity's income tax return and amount to be allocated to the upper tier pass-through entity's owners.

(3) Trusts or Estates.

(A) A trust or estate that has income that has been withheld upon by a pass-through entity and that has not paid a distribution of that income to its beneficiaries in the same year that withholding was remitted shall claim a credit for the withholding paid on its behalf and may claim a refund to the extent that the amount withheld exceeds the tax liability. To claim a credit for withholding paid, a copy of FTB Form 592-B received from the pass-through entity shall be attached to the income tax return.

(B) A trust or estate that has income that has been withheld upon by a pass-through entity and that has paid a distribution of all that income to its beneficiaries in the same year that withholding was remitted shall not claim a credit for the withholding paid on its behalf. Such trust or estate shall instead allocate the credit for the withholding paid on its behalf to each beneficiary in accordance with each beneficiary's share of the income received.

(C) A trust or estate that has income that has been withheld upon by a pass-through entity and that has paid a distribution of a portion of that income to its beneficiaries in the same year that withholding was remitted shall allocate the withholding credit attributable to the portion of the income that was withheld upon and paid as a distribution in accordance with each beneficiary's share of the income received. Such trust or estate that has paid a distribution of a portion of the income withheld upon shall claim the balance of the withholding credit attributable to the portion of the income that was withheld upon and retained by the trust or estate on its income tax return and may claim a refund to the extent such withholding credit claimed exceeds the tax liability. To claim a credit for withholding paid, a copy of Form 592-B received from the pass-through entity shall be attached to the trust or estate's income tax return.

(g) Separate Withholding Requirement.

(1) ~~for~~ Upper Tier Pass-Through Entities. If an upper tier pass-through entity that has income that has been withheld upon has California source income, other than income that has already been withheld upon by a lower tier pass-through entity, then it may have a separate withholding requirement with respect to such income and may be required to withhold on behalf of each nonresident owner in accordance with Regulation sections 18662-0 through 18662-8.

(2) Trusts or Estates. If a trust or estate that has income that has been withheld upon has California source income, other than income that has already been withheld upon by a pass-through entity, then it may have a separate withholding requirement with respect to such income if

it pays a distribution to a nonresident beneficiary and may be required to withhold on behalf of each nonresident beneficiary in accordance with Regulation sections 18662-0 through 18662-8.

- (h) Penalties and Corresponding Provisions for Relief from the Applicable Penalty Provisions. Any pass-through entity required to withhold or report withholding that fails to meet its withholding obligation shall be subject to all applicable liabilities and penalties under Regulation section 18662-8, subsection (d), and Revenue and Taxation Code sections 18668 and 19183, including, but not limited to:
- (1) Liability for failure to withhold or failure to transmit the withheld amounts to the Franchise Tax Board on or before the due date. (See Revenue and Taxation Code section 18668, subdivision (a) and Regulation section 18662-8, subsection (d)(2)(D)(G).)
 - (2) Penalty for failure to timely file information returns: Form 592-~~PTE~~ and Form 592-~~VQ~~. (See Revenue and Taxation Code section 19183, subdivision (a)(1) and Regulation section 18662-8, subsection (d)(2)(A).) A penalty for failure to timely file Form 592-~~PTE~~ will not be imposed on an upper tier pass-through entity **or trust or estate** if proper self-certification, which is not fraudulent and does not contain incorrect facts, is received pursuant to subsections (e)(1)(B)(ii)d. **and (e)(1)(B)(iii)c., respectively.**
 - (3) Penalty for failure to timely file payee statements: Form 592-B. (See Revenue and Taxation Code section 19183, subdivision (b)(1) and Regulation section 18662-8, subsection (d)(2)(A).)
 - (4) Penalty relief for failure to timely file information returns and payee statements. (See Revenue and Taxation Code section 19183, subdivision (d) and Regulation section 18662-8, subsection (d)(2)(A).)
- (i) **FTB Form 592-PTE, Pass-Through Entity Resident and Nonresident Annual Withholding Return. FTB Form 592-PTE shall contain the following information:**
- (1) **A check box indicating whether the form is filed as an amended FTB Form 592-PTE.**
 - (2) **A check box indicating total withholding paid at end of year.**
 - (3) **Withholding Agent information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), withholding agent's address, and telephone number.**
 - (4) **Pass-Through Entity Information: Withholding agent information for pass-through entity which withheld on behalf of current Form 592-PTE filer. Withholding agent information includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), withholding agent's address, and telephone number.**

- ~~(5) Total number of payees reported on the FTB Form 592-PTE.~~
- ~~(6) Total tax amount withheld from all payees listed by withholding agent, excluding backup withholding.~~
- ~~(7) Total backup withholding from all payees listed by withholding agent.~~
- ~~(8) Total amount of tax withholding and backup withholding (combined).~~
- ~~(9) Total of prior payments made to the Franchise Tax Board but not previously allocated to the payees on a prior FTB Form 592-PTE.~~
- ~~(10) Amounts withheld by another entity and being allocated to pass-through entity owners under this FTB Form 592-PTE.~~
- ~~(11) Total of prior payments not previously allocated on a prior FTB Form 592-PTE, plus amounts withheld by another entity and being allocated under this FTB Form 592-PTE (combined).~~
- ~~(12) Total amount being submitted on FTB Form 592-PTE.~~
- ~~(13) The name and dated signature of the withholding agent.~~
- ~~(14) The name, PTIN number, address, telephone number, and dated signature of the preparer.~~
- ~~(15) Payee information, which includes the business or individual name (not both), identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), a check box indicating whether the amount submitted constitutes backup withholding, address, total amount of income, and amount of tax withheld. Multiple payees may be submitted on one form.~~

~~(j)(i)~~ Examples.

Example 1: Upper Tier Pass-Through Entity and Lower Tier Pass-Through Entity Definition.

A is a California general partnership with two equal partners, B and C. B is an individual who is a resident of California. C is a non-California general partnership. C has two equal partners, D and E. D is an individual who is a nonresident of California and E is a California general partnership.

A is a lower tier pass-through entity because it has California source income and it has an owner that is a pass-through entity. C is an upper tier pass-through entity because it is an owner of a pass-through entity, A, and is itself a pass-through entity. E is also an upper tier pass-through entity because it is an owner of a pass-through entity, C, and is itself a pass-through entity.

Example 2: Payment Due Date and Tax Rate.

Same facts as Example 1. A has \$100,000 of California source income in Year X and remits withholding on behalf of C's \$50,000 distributive share of A's \$100,000 of California source income at the highest marginal tax rate in effect under Revenue and Taxation Code section 17041 by the applicable federal estimated tax due date because C is a nonresident owner. A is not required to

withhold on behalf of B's \$50,000 distributive share of A's \$100,000 of California source income because B is a resident of California.

Assuming C does not have any California source income other than its distributive share from A, C is not required to remit withholding on behalf of D or E with respect to its \$50,000 distributive share of A's \$100,000 of California source income by the applicable federal estimated tax due date because withholding has already been paid on that income on its behalf by A. Similarly, E is also not required to remit withholding on behalf of its owners with respect to its \$25,000 distributive share of C's \$50,000 of California source income by the federal estimated tax due dates because withholding has already been remitted on that income on its behalf.

Example 3: Form 592-~~PTE~~ Filing Requirements.

Same facts as Example 2. A is required to file an annual Form 592-~~PTE~~ following the end of Year X to report the withholding it paid on behalf of C. The filing of Form 592-~~PTE~~ will allocate the withholding A paid on behalf of C to C. A is not required to file an annual Form 592-~~PTE~~ following the end of Year X with respect to B because B was a resident of California and no withholding was required to be paid on his or her behalf.

C is required to file an annual Form 592-~~PTE~~ following the end of Year X to report the withholding A paid on its behalf throughout Year X and that A allocated to C. The filing of Form 592-~~PTE~~ will allocate the withholding A paid on C's behalf to C's owners, D and E, regardless of the owner's state of residency and in accordance with each owner's interest in C.

D is not required to file an annual Form 592-~~PTE~~ following the end of Year X with respect to the withholding allocated to him or her because D is an individual and therefore is not required to allocate withholding. D can claim the withholding credit allocated to him or her on the individual California nonresident income tax return if he or she attaches a copy of Form 592-B received from C.

E is required to file an annual Form 592-~~PTE~~ following the end of Year X to report the withholding A paid on behalf of C during Year X and that C allocated to E. The filing of Form 592-~~PTE~~ will allocate the withholding A paid and that C allocated to E and E allocated to E's owners, regardless of the owners' state of residency, and in accordance with each owner's interest in E.

Example 4: Form 592-~~PTE~~ Self-Certification.

Same facts as Example 3. A sends a late Form 592-B to B and C, which B and C receive on March 15th following the end of Year X instead of January 31st following the end of Year X. As a result of A's late Form 592-B, C also sends a late Form 592-B to E, which E receives on April 15th following the end of Year X.

B is not required to file an annual Form 592-~~PTE~~ following the end of Year X because B was a resident of California and no withholding was required to be paid on his or her behalf.

C is required to file an annual Form 592-PTE following the end of Year X to report the withholding A paid on its behalf throughout Year X and that A allocated to C. Since C received the Form 592-B from A late, on March 15th rather than January 31st following the end of Year X, C may file its annual Form 592-PTE by April 15th following the end of Year X so long as C certifies on the late filed Form 592-PTE that it is filing the Form 592-PTE within 30 days of receiving the Form 592-B from A. An information return penalty will not be imposed if such self-certification is received and the self-certification is not fraudulent or otherwise factually incorrect.

D is not required to file an annual Form 592-PTE following the end of Year X with respect to the withholding allocated to him or her because D is an individual and therefore is not required to allocate withholding.

E is required to file an annual Form 592-PTE following the end of Year X to report the withholding A paid on behalf of C during Year X and that C allocated to E. Since C received the Form 592-B from A late, on April 15th rather than January 31st following the end of Year X, E will obviously receive its Form 592-PTE after January 31st following the end of Year X. E may file its annual Form 592-PTE by May 15th following the end of Year X so long as E certifies on the late filed Form 592-PTE that it is filing the Form 592-PTE within 30 days of receiving the Form 592-B from C. An information return penalty will not be imposed if such self-certification is received and the self-certification is not fraudulent or otherwise factually incorrect.

Example 5: Form 592-B Requirements.

Same facts as Example 2. A is required to send a Form 592-B following the end of Year X to C to notify C of withholding paid on its behalf throughout the year.

C is required to send a Form 592-B following the end of Year X to D and E to notify each owner of withholding paid on C's behalf throughout the year and that has been allocated to D and E.

E is required to send a Form 592-B following the end of Year X to its owners to notify each owner of withholding paid on E's behalf throughout the year and that has been allocated to E's owners.

Example 6: Separate Withholding Requirement for Upper Tier Pass-Through Entities.

Same facts as Example 2. C also has \$20,000 of California source business income from its own operations in Year X and, as the \$20,000 is unassociated with any ownership interests in pass-through entities, there has been no prior withholding on this income. C is required to remit withholding on behalf of D's \$10,000 distributive share of C's \$20,000 of California source income by the applicable federal estimated tax due date because D is a nonresident owner. As a result, C is additionally required to send D a Form 592-B reporting the total withholding paid following the end of the year, and file Form 592-PTE with the Franchise Tax Board to report and allocate the withholding to D. C is not required to remit withholding on behalf of E's \$10,000 distributive share of C's

\$20,000 of California source income by the applicable federal estimated tax due date because E is a California partnership.

Example 7: Non-California Upper Tier S Corporation Pass-Through Entity Withholding Payment and Filing Requirements.

A is a California partnership with two equal partners, B and C. B is an individual that is a resident of California. C is a non-California upper tier non-financial S corporation. C has two equal shareholders, D and E. D is an individual that is a nonresident of California and E is an individual that is a resident of California.

A is required to withhold tax on behalf of C at the 1.5 percent tax rate in effect under Revenue and Taxation Code section 23802 in addition to the highest marginal tax rate in effect under Revenue and Taxation Code section 17041 by the applicable federal estimated tax due date. A is not required to withhold tax on behalf of B because B was a resident of California in Year X.

A is required to file an annual Form 592-~~PTE~~ following the end of Year X to report the withholding it paid on behalf of C. The filing of Form 592-~~PTE~~ will allocate the withholding A paid on behalf of C to C. A is not required to file an annual Form 592-~~PTE~~ following the end of Year X with respect to B because B was a resident of California and no withholding was required to be paid on his or her behalf in Year X.

C is required to file an annual Form 592-~~PTE~~ following the end of Year X to report the withholding A paid on its behalf throughout Year X and that A allocated to C. The filing of Form 592-~~PTE~~ will allocate the withholding A paid on C's behalf to C's owners, D and E, regardless of the owner's state of residency and in accordance with each owner's interest in C.

C cannot claim a refund for withholding paid on its income tax return. However, it can use some or all of the withholding credit to satisfy the 1.5 percent entity-level tax that was already withheld on its behalf by A. If C claims any of the amount withheld on its income tax return, then it must attach a copy of Form 592-B received from A and a schedule specifying the amount claimed on C's own income tax return as well as the balance allocated to the shareholders to its income tax return. Additionally, C must attach the same schedule to Form 592-~~PTE~~ to allocate the balance of withholding paid on its behalf to its shareholders, D and E.

D and E are not required to file an annual Form 592-~~PTE~~ following the end of Year X with respect to the withholding allocated to him or her because D and E are individuals and therefore are not required to allocate withholding. D and E can claim the withholding credit allocated to him or her on the respective individual income tax return if each attach a copy of Form 592-B received from C.

Note: Authority cited: Section 18662 and 19503, Revenue and Taxation Code.
Reference: Sections 17008, 17041, 17951, 18662, 18668, 19183, 23802, 23101, 23151, 23186, and 25137 Revenue and Taxation Code.

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 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 subsections (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 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. 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 seller/transferor either at the time of sale or not later than the 20th day following the month in which escrow closes, and ~~shall~~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 seller/transferor may be 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 Payment~~ **Remittance and Reporting for** Other Than Real Estate Sales.

(1) **Payment Remittance and Forms** Due Dates ~~and Forms~~.

(A) In General. Withholding on nonresident 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, Resident and Nonresident Withholding 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 FTB Form 592-V, Payment Voucher for Resident or Nonresident Withholding, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-V"), 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 subsections (i) and ~~subsection (j)~~, respectively, below.

(B) Domestic Pass-through Entity. Withholding on ~~payments a nonresident owner's distributive share of a pass-through entity's California source income~~ is due on the same dates as required for calendar year federal estimated tax. Withholding ~~from payments on a nonresident owner's distributive share of a pass-through entity's California source income~~ 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 Resident and Nonresident Annual Withholding Statement~~ **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 FTB Form 592-~~QV~~, Payment Voucher for **Pass-Through Entity Withholding Resident or Nonresident Withholding**, or any successor form designated by the Franchise Tax Board on its website at www.ftb.ca.gov ("FTB Form 592-~~VQ~~"), for paper checks or money orders. Withholding payments made electronically do not require FTB Form 592-~~VQ~~. The required information specified in FTB Form 592-~~PTE~~ and FTB Form 592-~~VQ~~ is set forth in subsections ~~(i)(k)~~ and ~~subsection (j)(l)~~, respectively, below.

(C) Foreign ~~(Non-U.S.) Partners or Members~~. 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. Remittance shall be pursuant to FTB Form 592-F, Foreign Partner ~~or Member~~ Annual Withholding Return, or any successor form 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 subsections ~~(k)(m)~~ and subsection ~~(l)(n)~~, respectively, below.

(2) Reporting.

- (A) In General. Withholding on payments must be reported to the Franchise Tax Board on FTB Form 592, **Resident and Nonresident Withholding Statement**, 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. **Total quarterly withholding payments made throughout the year and to be allocated shall be reported to the Franchise Tax Board pursuant to FTB Form 592, 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.**
- (B) Domestic Pass-through Entity Withholding. If the withholding agent is a domestic pass-through entity, FTB Form 592-~~VQ~~ 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~~ pass-through entity owners, 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. **See Regulation section 18662-7, subsection (e).**
- (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 ~~3rd~~ 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 ~~(l)(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.

- (E) 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"), a payee statement shall be provided to the payee aggregating all withholding for the tax year by January 31st of the following year, and ~~shall~~ 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)(e)~~, below. The payee 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.
- (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 FTB Form 592-V, or FTB Form 593 in these regulations shall also refer to corresponding electronic filings and payments.
- (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 and Payee Statement Penalties. Revenue and Taxation Code section 19183 incorporates federal information return and payee statement penalties by reference. Specifically, Revenue and Taxation Code section 19183, subdivisions (a) and (b) incorporate Internal Revenue Code sections 6721 and 6722 with respect to information return

and payee statement penalties, respectively. FTB Form 592, ~~FTB Form 592-PTE~~, FTB Form 592-F, and FTB Form 593 are information returns. FTB Form 592-B is a payee statement. Failure to file these returns and statements ~~shall~~ may subject the withholding agent or remitter to information return and/or payee statement penalties as specified in this subsection, as well as in Revenue and Taxation Code section 19183, subdivisions (a) and (b) for information returns and payee statements, respectively. The following penalty amounts shall be assessed for failure to file complete, correct, and timely information returns and payee statements with the FTB: (1) \$50 if filed 1 to 30 days after the due date, (2) \$110 if filed 31 days to 6 months after the due date, or (3) \$270 if filed more than 6 months after the due date (or not filed at all). The penalty amounts shall be adjusted pursuant to Revenue and Taxation Code section 19183, subdivisions (a)(3) and (b)(3) for information returns and payee statements, respectively. The penalty is calculated per payee Regulation sections 18662-0 through 18662-8. If the noncompliance is due to an intentional disregard of the requirements of Regulation sections 18662-0 through 18662-8, the penalty assessed shall be the greater of \$550 or 10 percent of the required withholding, consistent with Revenue and Taxation Code section 19183, subdivisions (a)(2) and (b)(2), which incorporate by reference Internal Revenue Code sections 6721(e) and 6722(e), for information returns and payee statements, respectively. However, no penalty shall be imposed with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect, pursuant to Revenue and Taxation Code section 19183, subdivision (d), which incorporates by reference Internal Revenue Code section 6724.

(B) Self-Certification Safe Harbor For Information Return Penalty. A non-California trust, estate or pass-through entity that has payments of California income withheld upon in accordance with Regulation sections 18662-0 through 18662-6 and section 18662-8, and a nonresident owner that is a trust, estate, or an upper tier pass-through entity, that has income that has been withheld upon in accordance with Regulation section 18662-7, may certify on FTB Form 592 under penalty of perjury that the FTB Form 592 is filed within 30 days of receipt of the FTB Form 592-B. If the certification on the FTB Form 592 is filed within 30 days of receipt of the Form 592-B and the FTB Form 592 is received by FTB within 30 days of such trust, estate, or pass-through entity's receipt of the FTB Form 592-B, then an information return penalty will not be imposed on the trust, estate, or pass-through entity for a late filed FTB Form 592. See Regulation sections 18662-4 and 18662-7.

(C)(B) Real Estate Information Return Penalties. A penalty ~~shall~~ may be assessed if the remitter fails to file a complete, correct, and timely FTB Form 593 ~~between the due date and 30 days after the due date.~~ The penalty amounts are as follows: (1) \$50 if filed 1 to 30 days after the due

date, (2) \$110 if filed 31 days to 6 months after the due date, or (3) \$270 if filed more than 6 months after the due date (or not filed at all). The penalty amounts shall be adjusted pursuant to Revenue and Taxation Code section 19183, subdivision (a)(3). The penalty is calculated per seller. ~~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 assessed shall be the greater of \$550 or 10 percent of the required withholding, consistent with Revenue and Taxation Code section 19183, subdivisions (a)(2) and (b)(2), which incorporate by reference Internal Revenue Code sections 6721(e) and (f) 6722(e), for information returns and payee statements, respectively. The penalty is for each FTB Form 593 that the remitter does not file correctly by the due date. However, no penalty shall be imposed with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect, pursuant to Revenue and Taxation Code section 19183, subdivision (d), which incorporates by reference Internal Revenue Code section 6724.

- (D)(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 information return and/or payee statement 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)**(D)(C)** for required withholding and any resulting information return and/or payee statement 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 and/or payee statement penalties and interest.

- (E)(D)** Special Rules for Real Estate Withholding.

(i)4. Real Estate Notification and Withholding Penalties. As set forth in Revenue and Taxation Code section 18668, subdivisions (d) and (e), the real estate escrow person is liable for ~~The penalty for not properly notifying buyers/transferees is~~ the greater of \$500 or 10 percent of the required withholding when the real estate escrow person fails to provide to the buyer/transferee (other than a buyer/transferee that is an intermediary or accommodator in a deferred exchange) written notification of the withholding requirements, unless it is shown that the failure to notify is due to reasonable cause. As set forth in Revenue and Taxation Code section 18668, subdivision (d), whenever any buyer/transferee is required to withhold any amount and the buyer/transferee has received written notification of the

withholding requirements from the real estate escrow person, the buyer/transferee is liable. The penalty for failing to withhold is for the greater of \$500 or 10 percent of the required withholding amount, unless it is shown that, if the failure to withhold is shown to be due to reasonable cause, the Franchise Tax Board will withdraw the penalty.

(ii)2. Real Estate Information Returns and False Exemption Certificates.

The remitter ~~shall~~may be subject to a penalty if the remitter fails to file a complete, correct, and timely FTB Form 593, as more specifically ~~penalty set forth in subsection (d)(2)(C)(B), that is consistent with Internal Revenue Code section 6721(a) and, if applicable, (b) if the remitter does not provide the sellers/transferees 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 assessed shall be consistent with Internal Revenue Code section 6721(e) and (f).~~ 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 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/transferee. If the seller/transferee knowingly certifies to a false exemption on FTB Form 593 for the purpose of avoiding the withholding requirements of Revenue and Taxation Code section 18662, subdivision (e) (relating to real estate withholding), the seller/transferee ~~shall~~may be subject to a penalty of the greater of \$1,000 or 20 percent of the required withholding.

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

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

~~(j) FTB Form 592-V, Payment Voucher for Resident or Nonresident 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 (SOS) file number), 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: Payments to Independent Contractor; Payments to Non-California Grantor, Simple Trust, or Complex Trust Distributions; Distributions to Nonresident Beneficiary; Rents or Royalties; Payments to Non-California Estate Distributions; Elective Withholding; Elective Withholding by/ 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-VQ, Payment Voucher for Resident and Nonresident Pass-Through Entity Withholding. FTB Form 592-VQ 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-VQ.~~

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

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

~~**(5) A check box indicating whether the amount submitted constitutes backup withholding, pass-through entity withholding, independent contractor withholding, or other withholding.**~~

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

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

~~(1) On the supplemental voucher, a check box to indicate how FTB Form 592-F was submitted, by one of two methods (electronic or paper).~~

- (2) A space to indicate the month, day, and year of the start of the partnership's or LLC's calendar or fiscal year.
- (3) A space to indicate the month, day, and year of the end of the partnership's or LLC's calendar or fiscal year.
- (4) Withholding Agent information, which includes the business name, identification number (FEIN, California corporation number, or SOS file number), contact name at the business, telephone number, and address.
- (5) Amount of payment submitted with FTB Form 592-A.

~~(m)(e)~~ 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.
- (2) Withholding Agent information, which includes name, identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), address, and telephone number.
- (3) Payee information, which includes name, identification number (SSN or ITIN, FEIN, California corporation number, or SOS file number), and address.
- (4) **A check box indicating whether the amount submitted constitutes backup withholding, pass-through entity withholding, independent contractor, or other. A check box to indicate the types of income being reported: Payment to Independent Contractors; Payments to Non-California Grantor Trust, Simple Trust, or Complex Trust Distributions; Rents or Royalties; Distributions to Domestic Nonresident Partners, Members, Beneficiaries, or S Corporation Shareholders; Payments to Non-California Estate Distributions; Distributive Share of Pass-Through Entity California Source Income; Elective Withholding; Elective Withholding by 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 resident and/or nonresident tax withheld (excluding backup withholding).
- (7) Total backup withholding.

Note: Authority cited: Section 19503, Revenue and Taxation Code. Reference: Sections 18662 and 19183, Revenue and Taxation Code.