



For additional information, contact Withholding Services and Compliance

Telephone: **888.792.4900**
916.845.4900 (not toll-free)

Our automated telephone system allows you to access important information seven days a week, 24 hours a day. If the system does not completely answer your questions, you may speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

To get forms, publications, and other withholding information, go to our website or email us:

Website: **ftb.ca.gov**
Email Address: WSCS.GEN@ftb.ca.gov
(for nonconfidential email)

Fax: 916.845.9512

Mailing Address: WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Express mail/Overnight delivery: WITHHOLDING SERVICES AND COMPLIANCE MS F182
FRANCHISE TAX BOARD
SACRAMENTO CA 95827

For privacy information, get FTB 1131 *Privacy Notice* online at **ftb.ca.gov**.

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments, please call TTY/TDD 800.822.6268.

ASISTENCIA TELEFONICA Y EN EL INTERNET

Dentro de los Estados Unidos, llame al 800.852.5711
Fuera de los Estados Unidos, llame al (cargos aplican) 916.845.6500
Sitio en el Internet **ftb.ca.gov**

Asistencia para personas discapacitadas: Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos pueden llamar al TTY/TDD 800.822.6268.

Table of Contents

	Page
Purpose	4
Form Changes	4
Frequently Asked Questions	4
Part I. General Information	4
Part II. Real Estate Escrow Person	5
Part III. Exemptions	6
In General	6
Principal Residence	7
Loss or Zero Gain	8
Involuntary Conversions	8
Contributed Capital	8
IRC Section 1031 Exchanges	8
Installment Sales	9
Corporations	9
Partnerships	9
Limited Liability Companies (LLCs)	9
Tax-Exempt Entities	10
Other Exemptions	10
Part IV. Other Common Questions	10
Multiple Sellers/Parcels	10
Trusts	10
Relocation Companies	11
Real Estate Investment Trusts (REITs)	11
Bankruptcy Trusts and Estates	11
Estates	11
Conservatorships	11
Leaseholds/Options	11
Personal Property	11
Cash-Poor Transactions	12
Part V. Reporting and Remitting Withholding	12
Part VI. Interest and Penalties	13
Part VII. Where to Get More Information	13
Index	14

Purpose

This publication provides guidance on the withholding requirements for sales of California real property closing on or after January 1, 2008.

Form Changes

- **Form 593**, *Real Estate Withholding Certificate*. We combined the 593 and 593-B to make one easy-to-use form.

There are no changes to the following forms:

- **Form 593-C**, *Real Estate Withholding Certificate*.
- **Form 593-E**, *Real Estate Withholding – Computations of Estimated Gain or Loss*.
- **Form 593-I**, *Real Estate Withholding Installment Sale Agreement*.

Use forms preprinted with year 2008 for escrows closing on or after January 1, 2008. To get current forms and information, go to our website at ftb.ca.gov.

Frequently Asked Questions

Part I. General Information

1. What is real estate withholding?

Real estate withholding is a prepayment of California state income tax for sellers of California real property.

2. Is real estate withholding an additional tax on the sale of California real property?

No. Real estate withholding is not an additional tax on the sale of real estate. It is a prepayment of the income (or franchise) tax due on the gain from the sale of California real property.

3. What is the withholding rate?

The withholding rate is $3\frac{1}{3}$ percent of the total sale price, or an optional gain on sale withholding based on the maximum tax rate on the gain on sale as follows:

- 9.3 percent for individuals.
- 8.84 percent for corporations.
- 10.84 percent for banks and financial corporations.
- 1.5 percent for S corporations.
- 3.5 percent for financial S corporations.

4. When is withholding required?

Withholding is required on sales or transfers of California real property when the total sale price exceeds \$100,000 and meets one of the following conditions:

- The seller is a corporation with no permanent place of business in California immediately after the sale.
- The seller is an individual or any other type of entity except for a partnership.

Note: Sellers who meet the above criteria may still qualify for a full or partial exemption (see *Part III, Exemptions*).

5. When is withholding not required?

Withholding is not required when any of the following is true:

- The total sale price does not exceed \$100,000.
- The seller is a bank acting as a fiduciary for a trust.
- The property is being foreclosed upon.
- The seller meets a full exemption on Form 593-C.

6. What is a buyer?

We use the term *buyer* throughout this publication to refer to the buyer or any other transferee of the property.

7. What is a seller?

We use the term *seller* throughout this publication to refer to the seller or any other transferor of the property.

8. Can sellers whose withholding payment is more than their tax liability receive an early refund from FTB?

No. The law does not provide for early refunds of taxes withheld on sales of real estate. You must file your California tax return to claim the amount withheld.

9. Does withholding relieve sellers from the requirement to file California tax returns?

No. Sellers must file California tax returns if they meet the filing requirements. If withholding is more than the actual tax liability, FTB will refund the overpayment. If withholding is less than the actual tax liability, additional tax will be due.

10. If sellers are exempt from withholding, are they still required to file California tax returns?

Yes. Sellers must file California tax returns if they meet the filing requirements.

11. How does the seller elect to withhold on the gain?

The seller making the election must complete and sign Form 593-E and Form 593. By signing these forms, the seller certifies in writing under penalty of perjury the gain required to be recognized and the gain on sale withholding amount.

12. Does the seller have to complete Form 593-E?

The seller has to complete it if they elect to have the withholding computed using the optional gain on sale calculation method.

13. Who is responsible for completing Form 593-E?

The seller is responsible for completing Form 593-E. Real estate escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes

of determining withholding amounts. Sellers are strongly encouraged to consult with a competent tax professional for this purpose.

14. Is the real estate escrow person responsible for verifying the amounts on Form 593-E?

No. As long as the form is complete and signed, then no other verification is required.

15. How can I get withholding forms and publications?

To get withholding forms and publications (including additional copies of FTB Pub. 1016), call 888.792.4900 or go to our website at ftb.ca.gov.

16. How can sellers determine if FTB requires them to file California tax returns?

Usually, California real property sellers must file a California tax return. For more information on California filing requirements, or to order tax forms, call the numbers listed below:

From within the United States 800.852.5711

From outside the United States 916.845.6500
(not toll free)

For hearing impaired
with TTY/TDD. 800.822.6268

Tax forms and information are available on our website at ftb.ca.gov

Part II. Real Estate Escrow Person

17. Who must withhold?

Although the law requires buyers to withhold, they can request the real estate escrow person to do the withholding.

18. What is a real estate escrow person?

We use the term *real estate escrow person* throughout this publication to refer either to the real estate escrow person or the buyer, whoever is taking responsibility for withholding.

19. What is the real estate escrow person required to do?

It is the real estate escrow person's responsibility to give written notice of the withholding requirements to the buyer. Once the real estate escrow person notifies the buyer, it is the buyer's responsibility to withhold. However, buyers may delegate the responsibility to the real estate escrow person.

The real estate escrow person should:

- Give the Form 593-C/Form 593-E Booklet to all sellers.
- Withhold when required.
- Complete Form 593 when withholding is done. The seller is to complete and certify the optional gain on sale withholding amount on Form 593.
- Give one copy of Form 593 to the sellers.
- Send a copy of Form 593 to FTB with the withholding payment.

For more information, see *Part V, Reporting and Remitting Withholding*.

20. How must real estate escrow persons notify buyers of the withholding requirements?

The real estate escrow person must provide written notification to the buyer or other transferee unless the transferee is an intermediary or accommodator in a deferred exchange. The written notification must be in substantially the same language as follows:

In accordance with Section 18662 of the Revenue and Taxation Code (R&TC), a buyer may be required to withhold an amount equal to 3½ percent of the sale price, or an optional gain on sale withholding amount certified by the seller in the case of a disposition of California real property interest by either:

1. *A seller who is an individual, trust, estate, or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the sellers.*
2. *A corporate seller that has no permanent place of business in California immediately after the transfer of title to the California property.*

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if any of the following apply:

1. *The sale price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000).*
2. *The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California.*
3. *The seller, who is an individual, trust, estate, or a corporation without a permanent place of business in California, executes a written certificate, under the penalty of perjury, of any of the following:*
 - A. *The California real property being conveyed is the seller's or decedent's principal residence (within the meaning of Section 121 of the Internal Revenue Code (IRC)).*
 - B. *The last use of the property being conveyed was use by the transferor as the transferor's principal residence (within the meaning of IRC Section 121).*
 - C. *The California real property being conveyed is, or will be, exchanged for property of like kind (within the meaning of IRC Section 1031), but only to the extent of the amount of gain not required to be recognized for California income tax purposes under IRC Section 1031.*
 - D. *The California real property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and the seller intends to acquire property similar or related in service or use so as to be eligible for*

nonrecognition of gain for California income tax purposes under IRC Section 1033.

E. The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes.

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

21. When a transfer is done without an escrow, who must notify buyers of the withholding requirements?

The person responsible for closing the transaction (attorney, title company, etc.) must notify buyers of the withholding requirements. If no one is responsible for closing the transaction, then the person who receives and disburses the funds for the property sold is responsible for notifying the buyers.

22. Are real estate escrow persons responsible for verifying sellers' certifications on Form 593-C?

Real estate escrow persons should only verify certifications to the extent that they have knowledge of the facts. If they have no knowledge of the facts, then they must only verify that the certificate is complete and signed. Real estate escrow persons should not rely upon an incomplete or unsigned certificate. Examples:

1. A seller completes Form 593-E, *Real Estate Withholding – Computation of Estimated Gain or Loss*, and certifies a loss on the transaction. We do not require the real estate escrow person to verify the loss shown on Form 593-E.
2. A seller completes Form 593-C, *Real Estate Withholding Certificate*, and certifies that the sale is an installment sale. However, the buyer has not provided a completed and signed Form 593-I, *Real Estate Withholding Installment Sale Agreement*. The real estate escrow person should not accept Form 593-C and should withhold.
3. A seller completes Form 593-C and certifies that a partnership is selling the property, but the real estate escrow person knows that the recorded title is not in the name of the partnership. The real estate escrow person should not accept the exemption certificate and should withhold. See question 57.

23. Can the real estate escrow person charge a fee for withholding?

Yes. The real estate escrow person may charge no more than \$45 for providing assistance in complying with the withholding requirements.

Assistance includes, but is not limited to:

- Helping the parties clarify whether withholding is required with FTB.
- Withholding and remitting the payment to FTB.

Assistance does not include:

- Providing written notification of the withholding requirements to buyers.

- Providing the Form 593-C/Form 593-E Booklet to sellers.

24. Who pays the escrow fee for withholding?

The fee is negotiable. Either buyers or sellers may pay the escrow withholding fee.

25. Does withholding relieve the real estate escrow person from the Form 1099-S reporting requirements?

No. The regular Form 1099-S requirements continue to apply.

Part III. Exemptions

In General

26. What are the withholding exemptions for sellers?

Sellers are exempt from withholding if the:

- Property qualifies as their principal residence (IRC Section 121).
- Property was last used as their principal residence (IRC Section 121).
- Sale will result in a loss or zero gain for California tax purposes.
- Transaction will qualify as a like-kind exchange, with the exception of boot (IRC Section 1031).
- Transaction will qualify as an involuntary conversion (IRC Section 1033).
- Transaction will qualify 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).
- Seller is a corporation with a permanent place of business in California.
- Seller is a partnership.
- Seller is an LLC classified as a partnership for federal and California income tax purposes, which is not a single member LLC that is disregarded for federal and California income tax purposes.
- Seller is a tax-exempt entity.
- Seller is an insurance company, individual retirement account (IRA), qualified pension plan, or charitable remainder trust.

Sellers who meet one of the above exemptions must sign a written certification (Form 593-C) under penalty of perjury to be exempt from withholding.

27. What form do sellers use to certify that they qualify for an exemption?

Sellers must use California Form 593-C to certify that they qualify for one of the exemptions. Sellers must give a completed and signed form to the real estate escrow person by the close of escrow or withholding will be required. The real estate escrow person will be relieved of the withholding requirements if they rely in good faith on a completed and signed Form 593-C that certifies an exemption.

28. Does the law always require withholding when sellers do not qualify for any of the exemptions?

Withholding is required unless the sale qualifies for an automatic exemption (total sale price is \$100,000 or less, the transferor is a bank acting as a trustee other than a trustee of a deed of trust, or the transferee is acquiring the property as part of a foreclosure). Pursuant to a foreclosure, the transferee must be acquiring the property under one of the following to be excluded:

- A power of sale required under a mortgage or deed of trust.
- A decree requiring foreclosure.
- A deed in lieu of foreclosure.

29. Once sellers complete and sign Form 593-C, should the Form 593-C be sent to FTB?

No. Form 593-C should not be sent to FTB unless requested by FTB. The real estate escrow person must keep this form in their files for five years following the close of the transaction.

30. Can sellers request a waiver?

No. There is no waiver process for real estate transactions sellers. Sellers can get Form 593-C to certify that they qualify for an exemption.

31. Can sellers who will have a small gain or a lower tax liability apply for reduced withholding?

No. There is no provision in the law that allows reduced withholding for any sellers. The real estate escrow person must withhold the full 3¹/₃ percent (.0333%) of the total sales price or the withholding amount based on gain on sale even when the sale will only result in a small gain.

Principal Residence

32. Does the law require withholding on the sale of a principal residence?

There is no withholding if sellers certify on Form 593-C that the property qualifies as their principal residence (IRC Section 121).

33. What qualifies as a principal residence under IRC Section 121?

Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of the sale, the sellers have owned and lived in the property as their main home for at least two years. There are exceptions to the two-year rule if the primary reason they are selling the home is due to a change in their place of employment, health, or other unforeseen circumstances such as death, divorce, or loss of job, etc.

There may be other restrictions, limitations, or exceptions. For more information, get Internal Revenue Service's Publication 523, *Selling Your Home*, at www.irs.gov or call the IRS at 800.829.3676.

34. Can sellers certify that the property was their principal residence, even though they are not living in it at the close of escrow?

Even though the sellers do not currently live in the property, it may still qualify as their principal

residence. If the sellers have owned and lived in the property as their main home for at least two of the past five years, then they meet the requirement. The two years can be **any** two years during the five-year period.

For example, the sellers retired 2½ years ago and moved from their city home of 20 years to a home on the coast. For the past 2½ years, they have been renting the city home and are now selling it. Since the sellers have owned and lived in the home as their main home for at least two of the last five years, they may certify the city home was their principal residence.

35. Can sellers claim the property as their principal residence if they have not owned or lived in the property for two years and do not meet any of the exceptions or unforeseen circumstances under IRC Section 121?

If the property was last used as the seller's principal residence within the meaning of IRC Section 121 without regard to the two-year time period, no withholding is required. If the last use of the property was as a vacation home, second home, or rental, the seller does not qualify for an exemption. Sellers must have lived in the property as their main home. If they have two homes and lived in both of them, the main home is the one they lived in most of the time.

Note: The exemption based on the seller's last use of the property as their principal residence is for withholding purposes only. IRC Section 121 has not changed. If the sale does not qualify for exclusion under IRC Section 121, the gain must be reported on the seller's federal and California tax returns.

36. Does the law require withholding when an estate is selling property that was the decedent's principal residence?

No. The exemptions for the sale of a principal residence were expanded to include sales by estates when the property was the decedent's principal residence (IRC Section 121).

37. What types of property qualify as a principal residence?

A mobile home, houseboat, cooperative apartment, or condominium can be a principal residence. Usually, the place where the seller lives is the principal residence. If the seller owns more than one home, the principal residence is the home lived in most of the time.

38. What types of property do not qualify as principal residences?

Generally, the following types of property do not qualify as principal residences:

- Rental property.
- Vacant land.
- Vacation home or second home.

However, property that has been rented or used as a vacation home may still qualify as a principal residence if the seller meets the criteria (IRC Section 121).

39. Does the law require withholding when the property is a multiple family unit (duplex, triplex, etc.) and the sellers lived in one of the units as their principal residence?

Yes. However, the law only requires withholding on the portion of the sale price that is not for the principal residence. The sale price should be allocated between the principal residence and the remainder of the units using the same method that the seller used to determine depreciation.

Withholding is still required when the total sales price of all the units exceeds \$100,000, even if the portion of the sale price related to the nonprincipal residence does not exceed \$100,000.

40. When does the law require withholding on the sale of a mobile home?

The law requires withholding if the mobile home was not the seller's principal residence and the mobile home is permanently affixed to a foundation or is subject to real property taxes. The law also requires withholding on the land sold with the mobile home.

Loss or Zero Gain

41. Does the law require withholding when the seller will not have a gain on the sale?

Withholding is not required when the seller certifies on Form 593-C that the sale will result in a loss or zero gain for California income tax purposes.

42. What is a loss or zero gain for California income tax purposes?

A *loss or zero gain for California income tax purposes* means that sellers will report a loss or zero gain on the sale on their California tax return. There is a loss or zero gain on the sale when the adjusted basis is more than or equal to the selling price (less selling expenses).

It is not a loss or zero gain just because there are no proceeds from the sale or because the property is selling for less than what it is worth.

43. How do sellers determine if they will have a loss or zero gain on the sale?

If sellers believe they may have a loss or zero gain on the sale, they must complete Form 593-E. Sellers certify that they will have a loss or zero gain on the sale when they complete Form 593-C and Form 593-E and they have a loss or zero gain on line 16 of Form 593-E.

44. Can sellers use suspended passive activity losses or other losses to compute the loss or zero gain on the sale?

Sellers may only use passive activity losses that directly relate to the property being sold. They may not use losses that are not directly related to this property (e.g., capital loss carryforwards, stock losses, passive activity losses from other properties).

45. Who is responsible for completing Form 593-E?

The seller is responsible for completing Form 593-E.

46. Once sellers certify that they have a loss or zero gain, should Form 593-E be sent to FTB?

No. Form 593-E should not be sent to FTB unless requested by FTB. The seller must keep this form for five years and provide it to FTB upon request.

Involuntary Conversions

47. Does the law require withholding when the sale is the result of an involuntary transfer such as a condemnation?

Withholding is not required when sellers certify on Form 593-C that the transfer is the result of an involuntary transfer as defined under IRC Section 1033 **and** that they intend to replace the property with qualified property.

48. What is an involuntary conversion?

An *involuntary conversion* occurs when property is destroyed, condemned, or disposed of under the threat of condemnation and other property or money is received in payment. For example, the government informs the seller that it intends to acquire the seller's property for public use.

To qualify for the withholding exemption, the seller must also intend to replace the property with qualified property. In general, the replacement property must be similar or related in service or use to the converted property. Visit the Internal Revenue Service website at www.irs.gov to download IRS Publication 544, *Sales and Other Dispositions of Assets*.

Contributed Capital

49. Does FTB require withholding when the property is transferred to a corporation or contributed to a partnership?

Withholding is not required when transferors certify on Form 593-C that the transfer qualifies for nonrecognition treatment under IRC Section 351 (property is being transferred to a corporation controlled by transferor) or IRC Section 721 (property is being contributed to a partnership in exchange for a partnership interest).

IRC Section 1031 Exchanges

50. Does the law require withholding when the sale is part of a like-kind exchange as defined under IRC Section 1031?

Withholding is not required on the initial transfer if the seller certifies on Form 593-C that:

- The transaction will qualify as a *simultaneous* like-kind exchange. However, if the seller receives proceeds (boot) in excess of \$1,500 from the sale, the real estate escrow person must withhold 3¹/₃ percent (.0333%) of the total proceeds or the optional gain on sale withholding amount.
- The transaction will qualify as a *deferred* like-kind exchange. However, if the seller receives proceeds (boot) in excess of \$1,500 from the sale, the real estate escrow person must withhold

3¹/₃ percent (.0333%) of the total proceeds or the optional gain on sale withholding amount.

- The intermediary or accommodator must withhold 3¹/₃ percent (.0333%) of the total sale price or the optional gain on sale withholding amount based on gain on sale if the exchange does not occur or does not meet the requirements of IRC Section 1031.

Installment Sales

51. Must the real estate escrow person withhold the full 3¹/₃ percent (.0333%) of the total sale price or the optional gain on sale withholding amount on installment sales?

The real estate escrow person must withhold the full 3¹/₃ percent of the total sale price or the optional gain on sale withholding amount when escrow closes unless the buyer agrees to withhold on the principal portion of each installment payment.

52. What forms must be completed for withholding on the principal portion of each installment payment?

The buyer must complete and sign Form 593-I. The buyer must give this form to the real estate escrow person. Based on buyer's written agreement with FTB, the real estate escrow person will then withhold either 3¹/₃ percent or the installment withholding percentage and attach Form 593-I to Form 593 and send the required withholding amount to FTB.

53. How do I calculate the optional gain on sale withholding amount for the principal portion of each installment payment?

Calculating the optional gain on sale withholding amount for an installment sale takes two steps.

Step 1: Calculate the installment withholding percent that will be applied to all installment payments, including the first installment payment received during escrow as follows:

- a. Gain on sale \$ _____ (sale price minus cost of sale)
- b. Sale price \$ _____ (total sale price)
- c. Installment sale percent, divide line a by line b _____%

Step 2: Calculate the optional gain on sale withholding amount as follows:

- a. Installment payment \$ _____
- b. Multiply line a by installment sale percent calculated above \$ _____
- c. Withholding amount, multiply line b by the applicable tax rate for your filing type \$ _____

Individuals 9.3%, corporations 8.84%, bank and financial corporations 10.84%, S corporations 1.5%, and financial S corporations 3.5%.

54. What if the seller wants the buyer to withhold on each installment payment, but the buyer does not?

If the buyer does not want to withhold on each installment payment, either 3¹/₃ percent of the total sales price or the optional gain on sale withholding

amount certified by seller on Form 593 must be withheld at the time of the sale. Only the buyer can elect to withhold from each installment payment. The election is irrevocable and must be in writing.

Corporations

55. Does the law require withholding when a corporation sells California real property?

Yes. Withholding is required unless the corporation certifies on Form 593-C that it will continue to have a permanent place of business in California after the sale.

56. When does a corporation have a permanent place of business in California?

Corporations have a permanent place of business in California if they meet one of the following conditions:

- They are incorporated in California.
- They are qualified to transact business in California through the California Secretary of State.
- They will still maintain a permanent office in California permanently staffed by its employees after the sale.

Partnerships

57. Does the law require withholding when a partnership sells California real property?

No. Withholding is not required if the title to the property is recorded in the name of a partnership. However, partnerships are required to withhold on nonresident partners. For more information, get FTB Pub. 1017, *Nonresident Withholding Guidelines*, at ftb.ca.gov.

Limited Liability Companies (LLCs)

58. Does the law require withholding when a *single member* limited liability company is the seller?

If the single member LLC is classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. Withholding is required unless the LLC meets one of the exemptions as a corporation.

If the LLC is a single member LLC that has chosen to be disregarded for federal and California income tax purposes, then that single member is considered the seller and title to the property is considered to be in the name of the single member for withholding purposes.

- If the single member is an *individual*, Form 593-C should be completed using the individual's information.
- If the single member is a *corporation*, Form 593-C should be completed using the corporation's information.
- If the single member is a *partnership*, Form 593-C should be completed using the partnership's information.

- If the single member is an *LLC*, Form 593-C should be completed using the single member's information.

59. Does the law require withholding when a multiple member limited liability company is the seller?

If a multiple member LLC elected to be classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes.

If a multiple member LLC elected to be classified as a partnership for federal and California income tax purposes, then the seller is considered a partnership for withholding purposes and no withholding is required.

Tax-Exempt Entities

60. Does FTB require withholding when the seller is a tax-exempt entity?

Withholding is not required when the seller certifies on Form 593-C that it is exempt from withholding because it is exempt from tax under either California or federal law (e.g., religious, charitable, educational).

61. Does FTB require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation sell the property?

FTB does not require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation are the sellers.

Other Exemptions

62. Does FTB require withholding when the seller is an insurance company?

No. Insurance companies are not subject to withholding because they do not pay income taxes. Insurance companies pay a gross premium tax to the California Department of Insurance instead of income or franchise tax. The seller should use Form 593-C to certify that it is an insurance company.

63. Does FTB require withholding when the seller is a charitable remainder trust?

Withholding is not required when the seller certifies on Form 593-C that it is a charitable remainder trust.

64. Does FTB require withholding when the seller is an individual retirement account, a qualified pension, or a profit-sharing plan?

Withholding is not required when the seller certifies on Form 593-C that it is an individual retirement account, a qualified pension, or a profit-sharing plan.

Part IV. Other Common Questions

Multiple Sellers/Parcels

65. How is withholding calculated when there are multiple sellers?

The withholding is calculated by applying the withholding rate to each seller's proportion of the sale.

Example for 3¹/₃ percent of total sale price:

Total sale price \$200,000

Sellers' ownership percentages:

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

Withholding per seller:

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

B 200,000 x 30% x .0333 = 1,998

C 200,000 x 50% x .0333 = 3,330

Example for optional gain on sale withholding:

Gain on sale \$200,000

Seller's ownership percentages:

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

Withholding for individual seller:

A \$200,000 x 20% x .093 = \$3,720

B 200,000 x 30% x .093 = 5,580

C 200,000 x 50% x .093 = 9,300

66. Does FTB require withholding when sellers are on the title for incidental purposes?

If the incidental sellers have no financial ownership, then their ownership percentage is zero and there is no withholding required for them.

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

- A father is on title only because he cosigned to help his daughter qualify for a loan. If the father completes Form 593-C showing zero percentage of ownership, no withholding is required on the father. The daughter is subject to the normal withholding requirements.
- A son is on title only to receive property upon his mother's death. If the son completes Form 593-C showing zero percentage of ownership, no withholding is required on the son. The mother is subject to the normal withholding requirements.

67. Does the law require withholding on the sale of multiple parcels when the total sale price of all properties exceeds \$100,000, but the sale price of each separate parcel is under \$100,000?

Yes. Sales of multiple parcels within the same escrow constitute one transaction for determining the withholding requirements.

Trusts

68. What is a grantor trust?

A grantor trust is a trust where the grantor (person who transferred the property into the trust) retains the right to cancel or revoke the trust. For tax

purposes, a grantor trust is disregarded and the grantor must report the sale and claim the withholding on its individual tax return.

69. When a trust holds title to the property, who is considered the seller?

If the trust is a grantor trust, then the seller is the grantor. Usually the grantor of a trust is an individual. All withholding forms should be completed using the individual's (grantor's) information.

If the trust is a nongrantor trust, then the seller is the trust. All withholding forms should be completed using the name of the trust and the trust's federal employer identification number (FEIN). DO NOT USE trustee information on withholding forms.

70. Does the law require withholding on sales by grantor trusts?

Yes. Withholding is required unless the grantor qualifies for an exemption on Form 593. See question 69.

71. Does the law require withholding on sales by family trusts or living trusts?

Typically, family trusts and living trusts are grantor trusts and the sellers are the grantors. Therefore, withholding is required unless the grantors qualify for an exemption on Form 593-C. See question 69.

Relocation Companies

72. What are the withholding rules when the buyer is a relocation company?

Sales to relocation companies are subject to the same rules as other sales. There is no withholding on the sale if the relocating sellers certify that the property was their principal residence or if they qualify for any other exemption. Otherwise, withholding is required.

73. What are the withholding rules when the seller is a relocation company?

Relocation companies are subject to the same rules as other nonindividuals. Examples are:

1. A relocation company resells the property to a third party.
 - There is no withholding on the sale if the relocation company meets an exemption.
 - If the relocation company does not meet an exemption, withholding is required.
2. An employer gives a relocation company power of attorney to act on its behalf in the resale of property to a third party.
 - No withholding is required on the sale if the employer has a permanent place of business in California. The employer can use Form 593-C to certify this fact.
 - If the employer does not have a permanent place of business in California, withholding is required.

- The relocation company is not subject to real estate withholding because it is only acting as an agent for the seller.

Real Estate Investment Trusts (REITs)

74. Does FTB require withholding when a REIT sells the property?

For withholding purposes, a REIT is treated as a corporation. Withholding is not required as long as the REIT has a permanent place of business in California. See question 56.

Bankruptcy Trusts and Estates

75. Does FTB require withholding when a bankruptcy trust or estate sells the property?

Yes. There are no exemptions for trusts with a California trustee.

Estates

76. Does the law require withholding on sales by estates?

Yes. There is no provision in the law to grant an exemption to an estate when the decedent was a California resident. However, if the property being sold qualifies as the decedent's principal residence, withholding is not required. See questions 33 and 34.

Conservatorships

77. Does FTB require withholding on sales by conservators?

Yes. Withholding is required unless the conservatee qualifies for an exemption on Form 593-C. The conservator should complete Form 593-C using the conservatee's information.

Leaseholds/Options

78. Is withholding required on the sale of a leasehold interest in California real property?

Yes. Since the sale of a leasehold is considered a sale of a real property interest, withholding is required.

79. Is withholding required on the sale of an option to buy California real property?

Yes. Since the sale of an option to buy real property is considered a sale of a real property interest, withholding is required.

Personal Property

80. Does California require withholding on personal property sold with real property?

Yes. California requires withholding on the sale, unless the personal property is stated separately in the sales contract.

Cash-Poor Transactions

81. Does the law require withholding in a cash-poor transaction?

Yes. The fact that a transaction is cash-poor is not an exemption to withholding. The parties must arrange to pay the withholding.

82. When a tax lien is recorded on the property, which is paid first, the tax lien or the withholding?

Use the proceeds in the escrow account to first pay the required withholding before applying the proceeds to an existing lien (including IRS liens). If there are not enough proceeds to pay off an IRS lien and the withholding, the parties can arrange to pay the withholding outside of escrow.

Part V. Reporting and Remitting Withholding

83. What forms must the real estate escrow person use to report and remit withholding?

The real estate escrow person must use California Form 593 to report and remit withholding. Send a copy of Form 593 to FTB with the payment. The Form 593 must be signed by each seller if optional gain on sale withholding is elected. Give two copies to the sellers. The real estate escrow person MUST provide the sellers with their copies to attach to their California tax returns to claim the credit for the amount withheld. The real estate escrow person retains a copy for their records.

84. When sellers are husband and wife or registered domestic partners (RDP), how many Forms 593 should real estate escrow persons file?

Normally, they should file just one Form 593 for a husband and wife or RDP. However, if the husband and wife or RDP intend to file separate returns and wish to have the withholding applied to separate accounts, then each spouse or RDP should have a separate Form 593. Each must sign a separate Form 593 if optional gain on sale withholding is elected. Each spouse's or RDP's Form 593 should include only the spouse's or RDP's proportional share of the withholding.

85. When there is more than one seller (other than husband and wife or RDP), how many Forms 593 should real estate escrow persons file?

They should file a separate Form 593 for each seller. Each must sign a separate Form 593 if optional gain on sale withholding is elected. Each seller's Form 593 should include only the seller's proportional share of the withholding.

86. What should the real estate escrow person do if the seller has not returned a completed Form 593-C by the close of escrow?

The real estate escrow person should withhold $3\frac{1}{3}$ percent of the total sale price or the optional gain on sale withholding amount as certified on Form 593 by seller.

87. When should the real estate escrow person send the withholding on regular sales to FTB?

The withholding and a copy of Form 593 are due by the 20th day of the month following the month escrow closes. The Form 593 must be signed by each seller if optional gain on sale withholding is elected.

88. When should the withholding on IRC Section 1031 like-kind exchanges be sent to FTB?

The withholding and a copy of Form 593, are due by the 20th day of the month following the month in which the exchange was completed or failed. For *simultaneous* exchanges, this is the month escrow closed. For *deferred* exchanges, this is the month the last leg of the exchange was completed. For *failed* exchanges, this is the month when it was determined that the exchange would not meet the IRC Section 1031 requirements and the proceeds were distributed to the seller.

89. When should the withholding on installment payments be sent to FTB?

- Withholding on first installment payment:
Send the completed Form 593-I, a copy of the promissory note, and seller's certified Form 593 with the required withholding amount by the 20th day of the month following the month escrow closed.
- Withholding on subsequent principal payments:
The withholding and a copy of Form 593 are due by the 20th day of the month following the month of the installment principal payment. Do not obtain seller's signature on each new and completed Form 593.

90. Does the seller need to send Form 593-E to FTB for approval?

No. FTB approval is not needed. However, the seller is required to provide a copy to FTB upon request.

91. In what year should withholding be reported when the relinquished property in a Section 1031 exchange is sold in one year, but the proceeds are not distributed until the next year?

If the proceeds from a completed or failed exchange are not distributed until the year after the relinquished property is sold, the withholding should be reported for the year in which the proceeds were distributed since the seller qualifies for installment sale reporting.

92. Where should the real estate escrow person send amounts withheld?

Amounts withheld, along with Form 593, should be sent to:

**FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651**

Do NOT send amounts withheld directly to Withholding Services and Compliance.

Part VI. Interest and Penalties

93. Does FTB charge interest on late withholding payments?

Yes. Assessing interest on late payments is mandatory. Interest is not a penalty, but compensation for the use of funds. FTB computes interest from the due date of the withholding payment to the date it was received.

94. What is the penalty for not properly notifying buyers?

The penalty is the greater of \$500 or 10 percent of the required withholding.

95. What is the penalty for not withholding?

The penalty for not withholding is the greater of \$500 or 10 percent of the required withholding.

96. Can FTB abate the penalty for not withholding?

Yes. If the failure to withhold was due to reasonable cause, FTB will abate the penalty.

97. What is *reasonable cause*?

Reasonable cause is a standard exception to most penalties under the California Revenue and Taxation Code and the Internal Revenue Code.

Generally, *reasonable cause* exists where noncompliance occurs despite the exercise of ordinary business care and prudence.

98. What is the penalty for not filing a timely and correct Form 593 with FTB?

A \$15 penalty is charged if real estate escrow persons file a correct Form 593 within 30 days after the due date. A \$50 penalty is charged if a correct Form 593 is filed more than 30 days after the due date or if a correct Form 593 is never filed.

If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding.

The penalty is assessed each time the real estate person does not file Form 593 correctly or timely.

99. What is the penalty for not providing a timely and correct Form 593 to the sellers?

A \$50 penalty is charged if the real estate escrow person does not provide the sellers with copies of Form 593 by the due date. If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding.

The penalty is assessed each time the real estate person does not file Form 593 correctly or timely.

100. What constitutes a correct Form 593?

Form 593 is correct when all of the following occur:

- All applicable fields are completed.
- The information is correct.
- The correct version of the form is used. The preprinted year must match the year the transaction occurred. For sales, this is the year escrow closed.

- If the seller elects an optional gain on sale withholding amount, the seller must complete and sign Form 593.

101. What is the penalty for completing a false certification?

If the seller knowingly executes a false exemption certificate, the penalty is the greater of \$1,000 or 20 percent of the required withholding.

Part VII. Where to Get More Information

102. Where can I get more information about the withholding requirements?

If you have Internet access, you can view, download, and print withholding forms, publications (including additional copies of FTB Pub. 1016), and California tax forms from FTB's website at ftb.ca.gov.

To get withholding forms and publications or to speak to a representative, contact FTB's Withholding Services and Compliance automated telephone service at 888.792.4900 or 916.845.4900 (not toll-free).

Our automated telephone service allows you to access important information seven days a week, 24 hours a day. If the service does not completely answer your questions, you may choose to speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

INDEX

Subject	Question(s)	Subject	Question(s)
1031 Exchanges	50, 88, 91	Loss or zero gain	41, 42
1099-S	25	Limited liability companies	58, 59
Banks, sale by	5, 28	Partnerships	57
Bankruptcy estates and trusts	75	Principal residence	33
Boot	50, 88, 91	Tax-exempt entities	60, 61
Buyer		Failure to file Forms 593 with FTB	98
Defined	6	Failure to give Forms 593 to seller	99
Notification	20, 21, 94	Failure to notify buyer of withholding requirements	94
Cash-poor transactions	80, 81	Failure to withhold	95, 96
Certificate of exemption		Family trusts	69, 71
Due date	27	Fees, escrow	23, 24
Form	27	Filing tax returns	
FTB review	28	Forms, how to get	16
Penalty for false certification	101	Requirements	9, 10, 16
Real estate escrow person responsibilities	19, 22	Withholding, effect on filing	9, 10
Charitable remainder trusts	63	Foreclosures	28
Condemnations	47, 48	Forms	
Condominiums	37	California, how to get	15, 16, 102
Conservatorships	77	Estimated Gain or Loss Computation (593-E)	43, 45, 46
Contact information	inside front cover, 102	Installment Sale Agreement (593-I)	51, 52
Contribution of capital	49	Retention	29, 46, 83
Cooperative apartments	37	Withholding Certificate (593-C)	22, 27, 29
Corporations, sale by	55, 56	Withholding Tax Statement (593)	83-85
Co-signers on title	66	Government agencies, sales by	61
Decedents, sale of principal residence	36	Houseboats	37
Deferred exchange (IRC 1031)	50, 88	Incidental ownership	66
Definitions		Individual retirement accounts (IRAs)	64
Buyer	6	Information, where to get additional	102
Involuntary conversion	48	Installment sales	51-54, 89
Loss	42	Insurance companies, sale by	62
Permanent place of business	56	Interest on late withholding payments	93
Principal residence	33, 37, 38	Internet address	
Real estate escrow person	17	Forms	15, 16
Reasonable cause	97	General Information	102
Revocable trust	68	Involuntary conversions	47, 48
Seller	7, 69	IRC Section 121	32-38
Withholding	1, 2	IRC Section 351	49
Zero gain	42	IRC Section 721	49
De minimus rules	5, 39, 67	IRC Section 1031	50, 98, 100
Due dates, withholding	87-91	IRC Section 1033	47, 48
Certificate (Form 593-C)	86	Land, vacant	38
Withholding, payment and forms	87-92	Leaseholds, sale of	78
Duplexes	39	Liens, priority vs. withholding	82
Early refund	8	Like-kind exchanges (IRC 1031)	50, 88, 91
Email address	inside front cover	Limited liability companies (LLCs)	
Escrow fees for withholding	23-24	Multiple member	59
Estates, sale by	36, 76	Single member	58
Exchanges, tax-deferred (IRC 1031)		Living trusts	68-71
Withholding payments	88	Loss or zero gain	
Withholding requirements	50	Calculated	43, 44
Year to report	91	Defined	42
Exemptions to withholding		FTB review	46
Certificate due date	86	Responsibility to calculate	45
Charitable remainder trusts	63	Withholding not required	41
Contributed capital	49	Mixed use of property	34, 39
Corporations, permanent place of business	55	Mobile homes	37, 40
Individual retirement accounts	64	Multiple family units	39
In general	26-31	Multiple parcels in one sale	67
Installment sales	51-54		
Insurance companies	62		
Involuntary conversions	47, 48		

Subject	Question(s)
Multiple sellers	
Calculation of withholding	65, 66
Husband and wife	84
Other individuals on title (incidental)	66
Reporting	87
Nongrantor trusts	69
Notify buyer of withholding requirements	20, 21, 94
Option to buy, sale of	79
Parcels, multiple	67
Partnerships, sale by	57
Passive activity losses	44
Payment address	92
Penalties	
Failure to notify buyer	94
Failure to withhold	95-97
Filing false certifications	101
Failure to file Forms 593 with FTB	98, 100
Failure to give Forms 593 to seller	99
Reasonable cause	97
Pension plans	64
Permanent place of business, defined	56
Personal property, sale of	80
Principal residence	
Decedents	36
Definition	33, 37, 38
Exemptions	32-36
Last use exemption	35
Mobile homes	40
Multiple family units	39
Profit-sharing plans	64
Qualified pension plans	64
Rate of withholding	65, 86
Real estate escrow person	
Defined	17
Fees	23, 24
Interest on late payment	93
Penalties	94-99
Requirements	19, 20, 25
Responsibilities	21, 22, 87
Real estate investment trust (REIT)	74
Reasonable cause, as exception to penalties	97
Reduced withholding and waivers	30, 31
Refund, early	8
Relocation companies	72, 73
Remitting withholding	
Due dates	87-99
Forms	83
Where to send	92
Rental property	34, 38, 39
Reporting and remitting withholding	25, 83-92
Resolution Trust Corporation (RTC), sale by	61
Responsibility for withholding	
Accommodator's/Intermediary's	50
Buyer's	17-21, 86
Installment sales	51, 51, 54
Real estate escrow person	17-22, 86
Exchanges	50
Installment sales	51-54
Transfer without an escrow	21

Subject	Question(s)
Sale price \$100,000 or less	6, 19, 27, 38, 65
Sale subject to withholding	
In general	4
Leaseholds	78
Options	79
Personal property	80
Short sale	81
Sale not subject to withholding	5
Second home	38
Seller	
Certification, due date	86
Husband and wife	84
Incidental	66
Multiple sellers	65, 84, 85
Penalty for filing false certification	101
Short sale	81
Simultaneous exchange (IRC 1031)	50, 88
Single member LLC	58
Tax assistance	16
Tax exempt entities	60, 61
Tax lien, priority vs. withholding	80
Tax returns, filing	
Forms, how to get	15, 16, 102
Requirements	9, 10, 16
Withholding, effect on filing	9, 10
Trusts	
Bankruptcy	75
Charitable remainder	63
Grantor	68-70
Living/family	71
Nongrantor	69
Vacation homes	38
Waivers and reduced withholding	30, 31
Withholding	
Defined	1, 2
Exemptions	5, 26
Forms to remit and report	83-85
Interest on late payment	93
No certification from seller	86
Optional gain	
on sale	3, 4, 12, 31, 41, 51, 52, 53, 65, 83, 85, 87
Payment address	92
Payment due dates	
Exchanges	88
Installment sales	89
Sales	87
Penalties	94-101
Rate	65, 66
Remitting	87, 92
Requirements, general	4, 5
Responsibility for	17
Year of sale, exchanges	91
Zero gain	
Calculated	43-46
Defined	41, 42
