

This brochure provides an overview of exchanges of real estate property, including tips on:

- ◆ Exchange requirements.
- ◆ Qualified intermediary responsibilities.
- ◆ Boot and failed exchanges.
- ◆ Other reporting.

Forms and Publications

Go to ftb.ca.gov to find the following forms and publications we mention in this guide:

Search for...	Title
593	<i>Real Estate Withholding Statement</i>
593-V	<i>Payment Voucher for Real Estate Withholding</i>
1016	<i>Real Estate Withholding Guidelines</i>
3840	<i>California Like-Kind Exchanges</i>

For a quick reference guide on real estate withholding, refer to FTB 4065.

Contact Us

Web

Go to ftb.ca.gov and search for **QI** or **3840** for more information.

MyFTB offers secure online tax account information and services, including available nonwage withholding credits. For more information and to register, go to ftb.ca.gov and search for **myftb**.

Phone

Phone: 888.792.4900
916.845.4900 (outside U.S.)

California
Relay
Service: 711 or 800.735.2929
Fax: 916.845.9512

Mail

WITHHOLDING SERVICES
AND COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

FTB 4016 (REV 01-2022)

California Real Estate Withholding Exchanges

Quick Reference Guide



STATE OF CALIFORNIA
Franchise Tax Board

Overview

A qualified intermediary (QI) or accommodator is an individual or business entity that facilitates a like-kind exchange. (Internal Revenue Code Section 1031)

It is the QI's obligation to withhold and not the obligation of the real estate escrow person.

Cash Poor Exchange

Effective January 1, 2022, a Qualified Intermediary's (QIs) withholding obligation will be limited to available funds in those situations where the QI does not receive sufficient funds from escrow or the QI disbursed funds for purpose of completing an exchange under Internal Revenue Code (IRC) Section 1031. Enter the amount that should have been withheld on Form 593, line 34 and certify this is a cash poor transaction on Side 3. The QI must provide supporting documentation for this transaction and attach to the Form 593.

Exchange Requirements

During the exchange, the law requires the QI to act as a withholding agent. Obtain a copy of Form 593, *Real Estate Withholding Statement*, and verify the form is accurate, complete, and signed:

- ◆ If the seller is **exempt for one of the reasons stated in Part III of Form 593**, then withholding is not required. You must complete Parts I, II, and III.
- ◆ If the seller does not qualify for an exemption and there is **boot in excess of \$1,500**, then withholding is required based only on the boot. You must complete Parts I, II, IV, and VII.
- ◆ If the seller does not qualify for an exemption and there is a **failed exchange**, then withholding is required. You must complete all applicable parts.

QI Responsibilities

The QI verifies Form 593 to the extent the QI has actual knowledge of the facts. A QI cannot rely on an incomplete certificate. The QI is required to withhold, unless the exchanger meets an exemption.

- ◆ **Withholding is not required** if Form 593, Part III, has any box from 1-9 checked. The QI needs to verify the form is accurate, complete, and signed. Withholding is not required in these instances, even if there is boot or if the exchange fails.
- ◆ **Withholding may be required** if Form 593, Part IV, has box 10 or 11 checked. The QI needs to verify the form is accurate, complete, and signed. Withholding is required if there is boot in excess of \$1,500 (cash, property, or liability) or if the exchange fails
- ◆ **Withholding is required**, if Form 593, Part IV, box 12, Part VI, or Part VII is completed.

If a seller is a corporation or partnership with a permanent place of business in California, withholding is **not** required even if there is boot or if the exchange fails. If Form 593, Part III or IV is not completed **and** a QI incorrectly determines that the corporation or partnership is exempt from withholding, the QI may be subject to applicable penalties.

The QI keeps a copy of the certificate for 5 years.

Boot and Failed Exchange

If the exchange had boot in excess of \$1,500 (cash, property, or liability) **or** the exchange failed, then withholding is required unless Form 593, Part III, has any box from 1-9 checked. If the transaction has boot in excess of \$1,500, use the total sales price method. If the transaction has failed, use either of the following options.

Total Sales Price Method

Total Sales Price x 3 1/3% = Total Withholding. Complete Form 593 to report withholding and Form 593-V, *Payment Voucher for Real Estate Withholding*. Send the completed and signed forms, and the withholding balance due to Franchise Tax Board (FTB). Provide a copy of Form 593 to the seller.

Alternative Withholding Calculation

Use Form 593, Part VI, to determine the alternative withholding amount. Complete all other needed parts of Form 593, including Parts I, II, and VII. Complete Form 593-V. Send the completed and signed forms and the withholding balance due to FTB. Provide a copy of Form 593 to the seller.

Other Reporting for Sellers

If California real property is exchanged for like-kind property located outside of California, the seller needs to file Form FTB 3840, *California Like-Kind Exchanges*, until the gain is required to be recognized. In addition, if the out-of-state replacement property is later exchanged for another property as part of a tax-deferred exchange, Form FTB 3840 is still required because the gain or loss deferral continues. Refer to Form FTB 3840 and its instructions.

