



FTB Publication 1016

Real Estate Withholding Guidelines



Online Resources

Go to ftb.ca.gov and search for **withholding requirements** or **qualified intermediary** (or **qi**) for updates, online tools, and more information, including:

- **Forms and Publications**
Find forms and information about real estate withholding requirements.
- **SWIFT**
File your information returns electronically.
- **Subscription Services**
Sign up to receive emails regarding our updated real estate withholding information.
- **Webinars**
Learn valuable information regarding our real estate forms.

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Purpose

This publication provides guidance on the tax withholding requirements for sales of California real property. This information is not applicable in all situations, should not be considered legal advice, and is not binding to the Franchise Tax Board (FTB).

Legal Authority

California Revenue and Taxation Code (R&TC) Section 18662 and the related regulations require withholding of tax at source from the sale or exchange of California real estate. All California residents, nonresident individuals, and non-California business entities are subject to withholding requirements unless certain exceptions specified in R&TC Section 18662, subdivision (e)(3), are met.

What's New

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.

General Information

Real estate withholding is a prepayment of income (or franchise) tax due from sellers on the gain from the sale of California real property. It is not an additional tax on the sale of real estate.

Definitions

The terms buyer, seller, real estate escrow person, remitter, and qualified intermediary when used throughout this publication have the following meanings:

Buyer refers to the buyer or any other transferee of real property.

Seller refers to the seller or any other transferor of real property.

Real estate escrow person (REEP) refers to any attorney, escrow company, or title company responsible for closing the transaction, or any other person who receives and disburses payment for the sale of real property.

Remitter refers to any person who is required to remit to FTB any tax withheld on any disposition from the sale or exchange of California real estate and file the prescribed forms on the buyer's behalf.

Qualified intermediary (QI) refers to an entity that facilitates a deferred like-kind exchange. A QI is also known as an accommodator or buyer.

Real Estate Withholding Forms

Go to ftb.ca.gov/Forms to find the following real estate forms mentioned in this publication:

Search for...	Form Title
593	<i>Real Estate Withholding Statement</i>
593-V	<i>Payment Voucher for Real Estate Withholding</i>

We accept electronic signatures on all withholding forms.

Withholding Requirement

California law requires real estate withholding whenever a transfer of title on California real property occurs.

Examples:

- Sales or transfers of real property (including gifts and exchanges)
- Leaseholds/options
- Short sales
- Easements
- Personal property sold with real property (if not stated separately)
- Vacant land

Withholding is the responsibility of the buyer or QI, but it may be performed by the REEP on the buyer's behalf.

Whoever remits (sends in) the payment (buyer, QI, or REEP) is considered the remitter and completes Form 593 and Form 593-V.

Who is Subject to Real Estate Withholding

Unless an exemption applies, all of the following are subject to real estate withholding:

- Individuals
- Corporations
- Partnerships
- Limited liability companies (LLC)
- Estates
- Trusts
- Real estate investment trusts (REIT)
- Relocation companies
- Bankruptcy trusts and estates
- Conservatorships

When Real Estate Withholding is not Required

Real estate withholding is not required when any of the following apply:

1. The total sales price is \$100,000 or less.
 - When multiple sellers are involved in the transaction, the withholding is determined by the total sales price, not by each seller's portion.
 - Sales of multiple parcels and/or family units (duplex, triplex, etc.) within the same escrow agreement constitute one transaction for purposes of determining the withholding requirements. Withholding is required when the combined sales price of all parcels exceeds

\$100,000, even though the sales price of each separate parcel in the same escrow transaction is under \$100,000.

Example:

Three properties (parcels) are sold within the same escrow agreement.

- Property A is sold for \$50,000
- Property B is sold for \$10,000
- Property C is sold for \$60,000

Since the total sales price exceeds \$100,000 and the properties are sold in one escrow transaction, withholding is required.

2. The property is being foreclosed upon in any of the following ways:
 - Sold according to a power of sale under a mortgage or deed of trust.
 - Sold according to a decree of foreclosure.
 - Acquired a deed in place of foreclosure.
3. The transferor is a bank acting as a trustee (except for a deed of trust).
4. The seller or transferor certifies to a full exemption on Form 593, Part III.

California law excludes the following entities from withholding:

- The United States and any of its agencies or instrumentalities.
- A state, a possession of the United States, the District of Columbia, or any of its political subdivisions or instrumentalities.

Information for Sellers

California law requires withholding when a person (an individual, business entity, trust, or estate) sells California real property unless the seller qualifies for an exemption.

Exemptions for Sellers

As the seller, you may qualify for partial or no withholding if you meet the criteria for an exemption. Complete and sign Form 593 under penalty of perjury identifying your full exemption under Part III or your partial exemption under Part IV. Provide a completed and signed Form 593 with a valid taxpayer identification number (TIN) to the buyer or REEP prior to the close of the real estate transaction. Withholding is required if the buyer or REEP does not receive a completed and signed Form 593 identifying your exemption prior to the close of the real estate transaction.

If you knowingly execute (sign) a false exemption certificate, the penalty is the greater of \$1,000 or 20% of the required withholding.

Full Withholding Exemptions

You may qualify for a full exemption if you meet at least one of the criteria we outline in this publication.

- **Principal Residence**

You qualify for a withholding exemption if during the five-year period (ten-year period for persons on qualified extended duty in the U.S. Armed Services or the Foreign Service) ending on the date of the sale, both of the following are true (Internal Revenue Code [IRC] Section 121):

- You owned the property for at least two years.
- You used the property as your principal residence for any two years during the five-year ownership period.

The following exceptions apply to the two-year property ownership rule if the primary reason for the sale is due to one of the following:

- A change in place of employment.
- Health reasons.
- Unforeseen circumstances such as death, divorce, loss of job, etc.

Your principal residence is the home where you live, and you may own only one principal residence at a time. If you own more than one principal residence, then where you live most of the time is considered your principal residence for tax purposes.

Your principal residence may be any of the following:

- House
- Houseboat with sleeping, cooking, and restroom facilities
- Mobile home permanently fixed to a foundation or subject to real property taxes
- Cooperative apartment
- Condominium

Generally, the following types of properties do not qualify as your principal residence:

- Rental property
- Vacant land
- Vacation home
- Second home

However, property that has been rented or used as a vacation home may still qualify for an exemption, if it meets the criteria we outlined.

If multiple family units (duplex, triplex, etc.) are involved in the transaction, the law requires withholding on the portion of the sales price for the nonprincipal residence unit(s). Allocate the sales price between the principal residence and the remainder of the units. To determine what portion of the sales price is subject to withholding, use the same method that you use to determine depreciation for reporting purposes on your California income tax return. Withholding is still required when the total sales price of all the units exceeds \$100,000, even if the portion of the sales price related to the nonprincipal residence does not exceed \$100,000.

If a grantor trust owned a principal residence, the grantor trust may qualify for this exemption. A nongrantor trust cannot qualify for an exemption unless the trust was a grantor trust before the death of the grantor.

- **Property Last Used as a Principal Residence**
You qualify for a withholding exemption if you last used the property as your principal residence without regard to the two-year time period (for withholding purposes only). If the sale does not qualify for a principal residence exemption, report the gain on your federal and California income tax returns.

- **Loss or Zero Gain on Sale**
To qualify for this exemption, the seller must calculate a loss or zero gain on the sale on Form 593, Part VI. California law requires you to send Form 593 to FTB, and keep a copy for your records for five years.

For California income tax purposes, a loss or zero gain means the adjusted basis is more than or equal to the selling price (less selling expenses).

Short sales do not qualify for this exemption simply because the seller receives no cash from the sale or if the property sells for less than it is worth.

Use only passive activity losses that directly relate to this property sale when you determine your gain or loss.

- **Involuntary Conversion**
An involuntary conversion occurs when the property is destroyed, condemned, or disposed of under threat of condemnation and the seller receives other property or money in payment (IRC Section 1033).

You qualify for a withholding exemption when both of the following apply:

- The conversion qualifies for a deferral of gain under IRC Section 1033.
- The seller intends to acquire property similar or related in service or use which qualifies for nonrecognition of gain.

- **Nonrecognition Treatment**
You qualify for a withholding exemption when one of the following applies:

- Property transferred to a corporation controlled by the transferor (IRC Section 351).
- Property contributed to a partnership in exchange for a partnership interest (IRC Section 721).

- **California Corporation**
A corporation qualifies for a withholding exemption when they are qualified through the California Secretary of State (SOS) or have a permanent place of business in California.

- **California Partnerships**
You qualify for a withholding exemption if you are:
 - A California partnership.
 - A limited liability company (LLC) classified as a partnership for federal and California income tax purposes, which is not a single member LLC that is disregarded for federal income tax purposes.
 - Qualified to do business in California by being registered through the California SOS.

- **Tax Exempt Entity**
You qualify for a withholding exemption if you are a tax-exempt entity under California or federal law (such as religious, charitable, educational, etc.).
- **Insurance company, individual retirement account, qualified pension plan, charitable remainder trust, or profit sharing plan.**

Partial or Full Withholding Exemptions

You may qualify for a partial or full exemption if you meet one of the criteria outlined as follows:

- **Simultaneous or Deferred Like-Kind (1031) Exchange**
You may qualify for a withholding exemption if your transaction qualifies for a simultaneous or deferred like-kind exchange under IRC Section 1031.
If you receive money or other property (in addition to property that is a part of the like-kind exchange) which exceeds \$1,500 from the transaction, withholding is required based on the withholding calculation you select on Form 593, Part VII.
If the exchange does not take place or if the exchange does not qualify for nonrecognition treatment, the QI must withhold 3 1/3% (.0333) of the total sales price unless the seller elects to use the Alternative Withholding Calculation Method.
- **Installment Sale**
You may qualify for a withholding exemption when your sale is structured as an installment sale. The buyer is required to withhold on the principal portion of each installment payment (including the down payment during escrow). We require the buyer to submit to us a copy of both Form 593 with all applicable parts, including Part V, and the promissory note.
Refer to the **Installment Sales** section for more information.

Calculate Withholding

As the seller, you may choose between the two withholding calculation methods available:

- Total Sales Price Method
- Alternative Withholding Calculation Method

REEPs and QIs are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. We encourage sellers to consult with a tax professional for this purpose.

Total Sales Price Method

To calculate the withholding using the Total Sales Price Method, multiply the total sales price or boot by 3 1/3% (.0333). Boot is defined as the money, debt relief, or the fair market value of "other property" received by the seller in an exchange in addition to replacement property.

Alternative Withholding Calculation Method

To calculate the withholding using the Alternative Withholding Calculation Method, also known as the Optional Gain on Sale Election Method, multiply the estimated gain calculated on Form 593, Part VI, by the seller's or transferor's maximum tax rate. To find the current maximum tax rates, go to ftb.ca.gov/Tax-Rates.

If you elect to compute withholding using the Alternative Withholding Calculation Method, you are required to complete and sign Form 593, including Parts VI and VII.

By signing the form, you certify under penalty of perjury the gain shall not be less than the gain required to be recognized. California law requires you to send Form 593 to FTB, and keep a copy for your records for five years. We may review relevant escrow information to ensure withholding compliance.

Calculate Withholding for Multiple Sellers

Calculate the withholding for multiple sellers by applying the withholding rate to each seller's proportion of the sale.

Example 1: Total Sales Price Method

Total sales price or boot: \$200,000

Seller's ownership percentages:

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

Withholding calculations for each seller:

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 Method

Gain on sale: \$200,000

Seller's ownership percentages:

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

Withholding for individual seller assuming a maximum tax rate of 9.3%:

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

B. $\$200,000 \times 30\% \times .093 = \$5,580$

C. $\$200,000 \times 50\% \times .093 = \$9,300$

Seller's Filing Requirements

If you meet California filing requirements, even if you are exempt from withholding, you must timely file a California income tax return to report the income and claim the amount withheld. If the withholding is more than the actual tax liability, we refund the overpayment after you file and we process your income tax return. If your withholding payment is more than your tax liability, California law does not provide for early refunds of taxes withheld on sales of real estate. If withholding is less than the actual tax liability, additional tax may be due.

If you are exempt from withholding, you are still required to file California tax returns if you meet the filing requirements. To get more information about California filing requirements or to order tax forms, go to ftb.ca.gov and search for **do I need to file**.

To verify we applied the withholding credits to your account, go to ftb.ca.gov and log in to **MyFTB** or call us at 916.845.4900.

Like-Kind Exchange Filing Instructions

For tax years beginning on or after January 1, 2014, sellers are required to file Form 3840, *California Like-Kind Exchanges*, when a California resident or nonresident defers gain or loss on the exchange of California property for out-of-state replacement property (R&TC Sections 18032 and 24953). Taxpayers are required to file Form 3840 for the tax year of the exchange and in each subsequent tax year in which the gain or loss attributable to the exchange has not been recognized. If a taxpayer fails to file Form 3840, we can estimate the net income from any available information, including the amount of gain deferred, and propose to assess the amount of tax, interest, and penalties due.

In a like-kind exchange, withholding is reported as a credit for the taxable year the withholding occurred.

QI Withholding for a Failed Exchange

If a QI withholds for a failed exchange or on boot in the year following the year of the sale, the seller generally reports withholding in the second year. However, the law allows sellers to choose one of the following three options to report and claim the withholding credit:

1. When the seller reports the gain and withholding in the year the exchange fails (Year 2).

The QI...	The Seller...
Withholds in the year the exchange fails (Year 2).	Reports the gain and withholding on their Year 2 California income tax return.
Example: If a seller sells a property in December 2019, but the exchange fails in April 2020, the QI reports the withholding with a 2020 Form 593.	

2. When the seller reports the gain and withholding in the year of the sale (Year 1).

The QI...	The Seller...
Withholds in the year the exchange fails (Year 2).	<ol style="list-style-type: none">1. Calls us to request we move the withholding credit to the year of the sale (Year 1). If the seller calls us to request we move the credit before the seller files their income tax return, then the credit can be applied against the seller's tax liability at the time we process the seller's income tax return.2. Reports the income and withholding on their Year 1 income tax return.
Example: If a seller sells a property in December 2019, but the exchange fails in April 2020, the QI reports the withholding on a 2020 Form 593. The seller calls us to request we move the withholding to their 2019 tax year and reports the gain and withholding on their 2019 income tax return.	

3. When the seller pays all related taxes before the exchange and funds are distributed.

The QI...	The Seller...
<p>Retains the seller's funds until the seller provides the QI with an approval letter from us (generally within 30 days). Our approval releases the QI from the withholding requirement and approves the QI to release and distribute the funds without withholding.</p>	<ol style="list-style-type: none"> 1. Files an income tax return to report the income and pays all related taxes in the year of the sale (Year 1). 2. Calls us to request a release from withholding. We process the seller's income tax return and confirm that the sale was reported to us and the tax was paid. 3. Receives an approval letter from us (generally within 30 days) which releases the seller from withholding. The seller provides a copy of the letter to the QI.
<p>Example: If a seller sells a property in December 2019, but the exchange fails in April 2020. The seller files their 2019 income tax return, reports the gain from the sale, and pays all related taxes. The seller contacts us and requests we release the QI from the withholding requirement. The QI holds the seller's funds until the seller receives an approval letter from us which releases the QI from the withholding requirement. The seller provides a copy of the approval letter to notify the QI to distribute the funds to the seller without withholding.</p>	

Installment Sales Filing Instructions

If the sale includes an installment agreement, the buyer withholds on the principal portion of each payment made to you, the seller. We require that you file the appropriate California income tax return to report installment sale income and claim the related withholding credit in each tax year you receive installment payments.

Elect Out of Withholding on Installment Payments

If you do not want the buyer to withhold from payments following the close of escrow, you can elect not to report the gain as an installment method (IRC Section 453[d]) by taking the following actions:

- File a California income tax return and report the entire gain on Schedule D-1, *Sales of Business Property*, in the year of the sale.
- After you file your income tax return and report the entire gain, contact us by phone, fax, or mail to request we release the buyer from withholding on the installment sale payments. (Refer to **Additional Information** section for contact information.)

Once we receive your request, we issue an approval or denial within 30 days. The buyer must continue to withhold until they receive a copy of the approval notice from you.

Trusts

A **grantor trust** is a trust where the grantor (the person who transferred property into the trust) retains the right to cancel or revoke the trust. Once canceled, a grantor trust is disregarded for tax purposes and the grantor (usually an individual) must report a real estate sale and claim the withholding on their individual California income

tax return. Generally, family trusts and living trusts are grantor trusts.

Withholding is required on a grantor trust unless the grantor qualifies for an exemption. Use the individual's (grantor's) information to complete all withholding forms.

A **nongrantor trust** is a trust not owned by an individual and viewed as a separate taxable entity. If the seller is a nongrantor trust, then use the name of the trust and the trust's federal employer identification number to complete all withholding forms. Do not use the trustee name or TIN on withholding forms.

If the trust distributes the income from the gain on the sale of California real estate, then the trust is also required to distribute the withholding. The trust must file Form 592, Resident and Nonresident Withholding Statement, to allocate the related withholding credit to the beneficiary. The Schedule K-1, *Shareholder's Share of Income, Deductions, Credits, etc.*, is not used to pass through the withholding.

A nongrantor trust may be required to file Form 592 to allocate the income and credit from the trust to the beneficiaries.

Estates

The law does not provide for an exemption to an estate because the decedent was a California resident. However, if the property being sold qualifies as the decedent's principal residence, withholding is not required if certified on Form 593, Part III.

Disregarded Single Member LLCs

If the seller is a single member LLC that is disregarded for federal income tax purposes, then the single member is considered to be the real estate seller. For withholding purposes, the title to the property is considered to be in the name of the single member.

Incidental Sellers

If incidental sellers have no financial ownership in a real estate sale, then their ownership percent is zero and no withholding is required.

Examples of sellers on title for incidental purposes:

- A father is on title only because he cosigned to help his daughter qualify for a loan. If the father completes Form 593, Part III, and all other applicable parts showing zero percent of ownership, then 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, Part III, and all other applicable parts showing zero percent of ownership, then no withholding is required on the son. The mother is subject to the normal withholding requirements.

Foreign Sellers

Foreign sellers follow the same rules as domestic sellers for California real estate withholding.

Sellers With No Taxpayer Identification Number

A seller must have a valid Taxpayer Identification Number (TIN) to qualify for a withholding exemption. If a seller does not have a TIN, the seller can contact the Internal Revenue Service (IRS) and apply for an Individual Taxpayer Identification Number (ITIN).

If a seller is unable to get an ITIN before the close of escrow, then Form 593, Part III and Part IV, is void and withholding is required. The seller can elect to have withholding calculated using:

- The Total Sales Price Method on the total sales price and then remit the withholding to us without a TIN.
- The Alternative Withholding Calculation Method on the gain and then remit the withholding to us without a TIN.

The seller must contact us once they obtain a TIN, and we will assign the withholding credit to the seller. Failure to provide a valid TIN results in the denial of the real estate withholding credit when the seller files their California income tax return.

Penalties and Interest

For complete penalty and interest information, refer to the **Penalties and Interest section**.

Information for Buyers

Withholding Requirement

As the buyer, California law requires you to withhold on the sale of California real estate, unless a QI is involved in a deferred like-kind exchange. Once the REEP notifies you of your responsibility to withhold, you must fulfill your withholding requirement. The remitter may assist you in complying with the withholding requirements by doing the following:

- Perform or assist in the withholding.
- Complete the necessary withholding forms.
- Remit the required withholding.

The REEP may charge a fee for this assistance, not to exceed \$45 for each seller. This fee is negotiable and may be paid by either you or the seller. If the REEP completes the necessary forms and remits the withholding, they are deemed the remitter.

Deferred Like-Kind (1031) Exchange

In deferred like-kind exchange transactions, the QI is considered the buyer for withholding purposes:

- On boot received in excess of \$1,500.
- If the exchange does not occur or meet the requirements of IRC Section 1031.

For QI specific information, refer to the **Information for Qualified Intermediaries** section.

Buyer's Instructions During Escrow

Unless you delegate your withholding responsibility to the REEP, you must take the following actions:

- As soon as escrow opens, provide the seller a copy of Form 593.
- Ensure the form's tax year matches the tax year in which the transaction occurs.

If the seller...	Then the buyer...
Returns to the buyer a completed and signed Form 593 to certify their withholding exemption before escrow closes.	<ul style="list-style-type: none"> • Does not withhold. • Files Form 593 with FTB, and provides a copy of the form to the seller. • Keeps the seller's Form 593 for five years.
<ul style="list-style-type: none"> • Does not qualify for a withholding exemption. • Fails to sign or return completed Form 593 with an exemption. 	<ul style="list-style-type: none"> • Completes the following forms: <ul style="list-style-type: none"> • Form 593. If Part V is completed, provide a copy of the promissory note when applicable. • Form 593-V • Withholds the required amount from the seller. • Reports and remits the withholding to us by following the instructions we outline in the Report and Remit Withholding section.

Calculate Withholding

If no exemptions apply, the seller must choose between the two withholding calculation methods available.

If the seller elects to use the Alternative Withholding Calculation Method, they are required to complete and sign to certify all applicable parts of Form 593, including Part VI, and provide the withholding amount. If Form 593 is not certified with the seller's signature or the withholding amount is not provided, calculate the withholding using the Total Sales Price Method.

For more information about withholding calculations, refer to the **Calculate Withholding** section.

Report and Remit Withholding

To report and remit the withholding, mail the required withholding amount to us with the following completed forms:

- Form 593
- Form 593-V, if you remit by check or money order

If Form 593, Part V, is complete, provide a copy of the promissory note (if applicable).

Use Form 593 to report withholding and Form 593-V to remit withholding.

Complete three copies of Form 593 to report real estate withholding on completed sales, installment payments, or exchanges, including failed exchanges. Distribute the copies as follows:

- Mail one copy of Form 593, along with Form 593-V and withholding payment, to us.
- Provide one copy to the seller for California income tax reporting purposes by the 20th day of the month following the month escrow closes.

- Keep one copy of the form for a minimum of five years to provide to us upon request.

Unless the sellers are married or in a registered domestic partnership, file a separate Form 593 for each seller using their proportional share of withholding.

Form 593 may be filed with us electronically using our Secure Web Internet File Transfer (SWIFT) instead of paper. However, the buyer, QI, or REEP must provide the seller or transferor with a paper Form 593. For electronic filing, transmit your file using the SWIFT process we outline in FTB Pub. 923, *Secure Web Internet File Transfer (SWIFT) Guide for Resident, Nonresident, and Real Estate Withholding*. Go to ftb.ca.gov/Forms and search for **923** to get FTB Pub. 923.

Mail Form 593-V to remit real estate withholding payments to us by check or money order, even if you filed Form 593 electronically. If you need to adjust your payment after you mail it, call us for assistance to avoid penalties.

If you are reporting an installment sale, complete, sign, and submit all applicable parts of Form 593, including Part V and Part VII to report the transaction. If it is your first installment payment (which is also known as the down payment during escrow), include a copy of the promissory note, and the Form 593-V with payment. Do not include the promissory note with any subsequent installment payments following the close of escrow.

Due Dates

The withholding payment, Form 593-V, and a copy of Form 593 are due as follows:

Transaction Type	Due Date
Conventional Sale or Transfer	The 20th day of the month following the month escrow closes.
Installment Payment	The 20th day of the month following the month the payment is made.
Deferred Like-Kind Exchange	The 20th day of the month following the month the last leg of the exchange closed.
Failed Exchange	The 20th day of the month following the month when it was determined the exchange would not meet the IRC Section 1031 requirements and the proceeds were distributed to the seller.

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

Installment Sales

An installment sale is a sale of property where the seller receives at least one payment after the tax year in which the sale occurs.

As the buyer, you are required to withhold on the principal portion of the down payment (this includes any deposits, down payments, or amounts paid in escrow excluding the interest portion). Report the withholding payment by completing all applicable parts of Form 593, including Part V and Part VII, and a copy of the promissory note. Sign and date the form, file it with us, and remit the withholding payment with Form 593-V.

You must also withhold on the principal portion of all installment payments following the close of escrow. You are required to:

- Calculate the withholding amount on the principal portion of the payment.
- Withhold the required amount from the seller.
- Mail the required withholding amount to us with the following completed forms (ensure the tax year on the forms matches the tax year of the installment payment):
 - Form 593
 - Form 593-V
- Send a copy of Form 593 to the seller by the 20th day of the month following the month of the installment payment.

Withholding is required on all installment payments, unless the seller fulfills the requirements to elect out of future withholding. For more information about how the seller can elect out of withholding, refer to the **Elect Out of Withholding on Installment Payments** section.

Calculate the Withholding on Installment Payments

Total Sales Price Method

If no exemptions apply, use this method to withhold 3 1/3% on each installment payment's principal portion received in escrow (excluding interest).

To calculate the total sales price withholding amount:

Multiply installment payment amount \$_____ x 3 1/3% (.0333) = \$_____. Enter this result on Form 593, line **36**.

If the installment payment amount (excluding interest) is unavailable, then follow the instructions in the Installment Payment Table to determine the amount to use in the formula.

Installment Payment Table

If you are withholding on...	Then, enter the...
The down payment in escrow.	Down payment (promissory note amount minus the sales price amount).
An installment payment following the close of the real estate transaction.	Principal portion of the payment.
The final payoff amount in escrow.	Remaining principal required for payoff.

Alternative Withholding Method (Optional Gain on Sale Election Method)

Use this method to calculate the amount of withholding due on the gain on sale using the applicable maximum tax rate.

The formula to calculate the alternative withholding amount requires the following numbers:

- Installment payment amount excluding interest.
- Installment Sale Withholding Percent as calculated.

Alternative Withholding Amount Calculation

To calculate the alternative withholding amount, follow these steps:

1. Enter installment payment \$_____
(if unknown, use Installment Payment Table to determine amount).
2. Enter Installment Sale Withholding Percent as calculated _____%.
3. Multiply line **1** amount by line **2** amount \$_____.
4. Enter applicable maximum tax rate for the seller's filing type _____%.*
5. Multiply line **3** amount by line **4** percentage \$_____. Enter this amount on Form 593, line **36**.

*Individuals and non-California partnerships calculate withholding using the current maximum tax rates. To find current tax rates, go to ftb.ca.gov/Tax-Rates.

Installment Sale Withholding Percentage Calculation

To calculate your Installment Sale Withholding Percent, use the numbers from your completed Form 593, Part VI, or follow these steps:

1. Enter the following amounts:
 - Enter estimated gain on sale (also recorded on line **28** of Form 593) \$_____.
 - Enter selling price (also recorded on line **13** of Form 593) \$_____.
2. Calculate the Installment Sale Withholding Percent:
 - Divide the estimated gain on sale by the selling price, which will result in a decimal number: _____.
 - Multiply the decimal number by 100 to get the percentage _____% Enter the result as the Installment Sale Withholding Percent.

Penalties and Interest

For penalty and interest information, refer to the **Penalties and Interest** section.

Information for REEPs

REEP's Responsibilities

The REEP plays an important role in the closing of the real estate transaction. In addition to their own responsibilities outlined in the following section, the REEP may assist the buyer in complying with their withholding requirements by performing or assisting in the withholding, completing the required withholding forms, and/or remitting the required withholding unless a QI is involved in a deferred like-kind exchange. If you complete the forms and submit the withholding, you are the remitter.

Withholding Notification Requirement

California law requires the REEP to provide the buyers with written notification of their withholding requirements unless the buyer is an intermediary or accommodator in a deferred exchange. In addition, the REEP must provide all sellers with a copy of *Form 593, Real Estate Withholding Statement*. If no one is responsible for closing the transaction, then the person who receives and disburses the funds for the property sold is responsible to notify the buyers.

We may assess a penalty in the amount of \$500 or 10% of the amount required to be withheld, whichever is greater, if the REEP fails to provide the buyer with written notice (unless the buyer is a QI in a deferred exchange). We may only abate this penalty if the REEP shows that the failure to notify the buyer was due to reasonable cause.

Notification Language

The written notification must use substantially the same language as follows:

In accordance with R&TC Section 18662, a buyer may be required to withhold an amount equal to 3 1/3% (.0333) of the sale price, or an alternative withholding calculation amount certified by the seller in the case of a disposition of California real property interest by either:

- A seller who is an individual, trust, or estate, or when the disbursement instructions authorize the proceeds to be sent to a seller's financial intermediary.
- A corporate or partnership seller with 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. The penalty is an amount equal to the greater of 10% of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in R&TC Section 18662 no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

- The sale price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000).

- The seller executes a written certificate under the penalty of perjury certifying that the seller is a corporation or a partnership with a permanent place of business in California.
- The seller, who is an individual, trust, estate, partnership, 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:
 - The California real property being sold is the seller's or decedent's principal residence (within the meaning of Section 121 of the Internal Revenue Code (IRC)).
 - The last use of the property being sold was by the transferor as the transferor's principal residence (within the meaning of IRC Section 121).
 - The California real property being sold 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.
 - 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.
 - The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes.

Exemption Verification Requirement for REEPs

REEPs are required to verify certifications on Form 593, Part III and Part IV, 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 Form 593, Part III and Part IV, is completed, signed, and received by the close of escrow.

Example 1: A seller completes Form 593, Part III, and certifies a loss on the transaction. We do not require the REEP to verify the loss shown on Form 593, Part VI.

Example 2: A seller completes 593, Part IV, and certifies that the sale is an installment sale. However, there is no first deed of trust in escrow, nor has the buyer provided the promissory note. The REEP should not accept Form 593 certifying an installment sale and must withhold on this transaction.

Example 3: A seller completes Form 593, Part III, and certifies that a California partnership is selling the property, but the REEP knows that the recorded title is not in the name of the California partnership. The REEP should not accept Form 593 certifying that the California partnership is selling the property and must withhold on this transaction.

Withhold and Remit Withholding

The buyer is responsible for withholding unless a QI is involved in a deferred like-kind exchange, but the REEP may assist with the withholding on the buyer's behalf. REEPs who choose to assist the buyer should complete all applicable withholding forms and remit the required withholding to us.

In real estate transactions, the buyer is responsible for withholding but the REEP may perform the withholding on the buyer's behalf. Thus, the remitter (typically the REEP)—not the buyer/transferee—is responsible for remitting the payment to us.

For more information on the withholding requirements, refer to the **Information for Buyers** section.

Providing Buyer Assistance

The REEP may charge a fee for providing withholding assistance, not to exceed \$45 for each seller. This fee is negotiable and may be paid by either the buyer or the seller.

While providing withholding assistance to buyers is optional for a REEP, the REEP must provide written notification of withholding and Form 593 and Instructions.

Requirement to Retain Withholding Forms

California law requires the REEP to keep a copy of all completed real estate withholding forms for five years following the close of escrow.

Penalties and Interest

For complete penalty and interest information, refer to the **Penalties and Interest** section.

Information for Qualified Intermediaries

For more QI-specific information, including withholding exemptions and penalties, go to ftb.ca.gov and search for **qualified intermediaries** or **qi**.

Withholding Requirement

A QI is required to withhold, complete the withholding forms, and remit the withholding in a deferred like-kind exchange. Refer to the **Information for Buyers** section for withholding instructions.

Cross-Year Exchanges

If the deferred like-kind exchange transaction failed in a second tax year, then the transaction generally qualifies as an installment sale. Refer to the **Information for Sellers** section regarding installment sales and like-kind exchanges.

Boot

Withholding is required if there is boot (including cash, property, and liability), regardless of a transferor's certification that the transaction is a like-kind exchange on Form 593 (Part IV, check box 10) unless another exemption applies.

If the transferor has boot in excess of \$1,500, the QI or accommodator must withhold 3 1/3% (.0333) of the boot. If an election is made to use the Alternative Withholding Calculation Method (complete Form 593, Part VI) then the QI or accommodator must withhold the amount determined through the election.

Failed Exchange

Withholding is required if the exchange fails, regardless of a transferor's certification that the transaction is a like-kind exchange on Form 593, Part IV, box 10, unless another exemption applies.

If the exchange fails and no other exemption applies, the QI or accommodator must withhold 3 1/3% (.0333) of the sales price unless an election is made to use the Alternative Withholding Calculation Method (complete Form 593, Part VI).

Cash Poor Exchange

When a QI's withholding obligation is limited to available funds in 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.

Exemption Verification Requirement for QIs

QIs are required to verify certifications on Form 593, Parts III or IV, 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, Form 593, Part III, is completed, signed, and received by the close of the deferred or simultaneous like-kind exchange transaction and any cash is distributed to the seller or transferor.

Example: A seller or transferor completes Form 593, Part III, and certifies that the property is a principal residence. However, if the facts given to you during this transaction designate the real property as an investment, trade, or business use property, then the QI must withhold.

Requirement to Retain Withholding Forms

California law requires the QI to keep a copy of all completed real estate withholding forms for five years after the close of the real estate transaction.

Penalties and Interest

Unless it is shown that the failure is due to reasonable cause and was not due to willful neglect, the following applies:

Nonnotification Liability

We assess a liability when the REEP fails to provide written notice of the withholding requirements to the buyer unless a QI is involved in a deferred like-kind exchange. The penalty is the greater of \$500 or 10% of the required withholding (R&TC Sections 18662 and 18668).

Penalty for Completing a False Certification

Any seller or transferor who, for the purpose of avoiding the withholding requirements, knowingly executes a false exemption certificate is liable for a penalty of \$1,000 or 20% of the required withholding amount, whichever is greater. (R&TC Section 18668(e) (5))

Information Return Penalty

We assess a penalty for failure to file complete, correct, and timely information returns to the withholding agent or remitter. The penalty is calculated for each payee.

For information returns filed before 01/01/2020, the penalty is:

- \$30 if filed 1 to 30 days after the due date.
- \$60 if filed 31 days to 6 months after the due date.
- \$100 if filed more than 6 months after the due date.

For information returns filed on or after 01/01/2020, the penalty amount is:

- \$50 if filed 1 to 30 days after the due date.
 - \$110 if filed 31 days to 6 months after the due date.
 - \$270 if filed more than 6 months after the due date.
- (R&TC Section 19183 and IRC 6721)

Failure to Furnish Correct Payee Statements

We assess a penalty to the remitter for failure to furnish complete, correct, and timely copies of Form 593 to the seller or transferor by the due date. The penalty is up to \$270 for each Form 593. (R&TC Section 19183 and IRC 6722)

Intentional Disregard Penalty

We assess a penalty on any person, including the buyer and REEP, who intentionally disregards the filing or correct information reporting requirements. For information returns filed before 01/01/2020, the penalty assessment is the greater of \$250 or 10% of the required withholding. For information returns filed on or after 01/01/2020, the penalty assessment is the greater of \$550 or 10%. (R&TC Section 19183 and IRC 6721(e)) On or after January 1, 2020, the remitter can also be assessed this penalty.

Failure to Withhold

We assess a liability for not withholding as required only after the buyer, unless a QI is involved in a deferred like-kind exchange as specified, has been notified in writing of the requirements. Any person, including the buyer, who fails to withhold is liable for the greater of \$500 or 10% of the amount required to be withheld. (R&TC Sections 18662 and 18668).

Reasonable Cause

Reasonable cause is a standard exception to most penalties under the R&TC and the IRC. Generally, reasonable cause exists where noncompliance occurs despite the exercise of ordinary business care and prudence. If it is shown that noncompliance was due to reasonable cause and was not due to willful neglect based on the facts, we will abate the penalty.

Interest on Late Withholding Payments

Assessing interest on late payments is mandatory. Interest is not a penalty, but it is compensation for the use of funds. We compute interest from the due date of the withholding payment to the date it was received. (R&TC Section 18668(b))

Rights as a Taxpayer

The California Taxpayers' Bill of Rights ensures that we adequately protect the rights, privacy, and property of all California taxpayers during the process of assessing and collecting taxes. Our goal is to make certain we protect your rights. We want you to have the highest confidence in the integrity, efficiency, and fairness of our state tax system. (R&TC Sections 21001-21028)

FTB 4058C, *California Taxpayers' Bill of Rights, an Overview*, includes information about state taxpayers' rights. To get FTB 4058C, go to ftb.ca.gov/Forms and search for **4058C**, call: 800.338.0505 (enter form code **944** when instructed), or mail: Tax Forms Request MS D120, Franchise Tax Board, PO Box 307, Rancho Cordova CA 95741-0307.

Taxpayers' Rights Advocate Assistance

You may contact the Taxpayers' Rights Advocate if you have an ongoing state income tax problem that you have been unable to resolve through normal channels. However, contacting the Taxpayers' Rights Advocate is not a protest or an appeal and does not extend the period of time for filing one.

You have the right to an independent administrative review of specific collection actions that may be taken by FTB. To request an administrative review of the filing or recording of a tax lien, the request must be made within 30 days of the date of the tax lien notice. To request pre-levy administrative review of a levy (including, for example, a wage garnishment), the request must be made within 30 days of the date of the *Final Notice Before Levy* of your income or assets. You also have the right to an administrative review of a rejection of your request for an installment agreement, or a termination of an existing installment agreement. We generally may not levy your property during the 30-day period after rejection or termination and, if you file a request for administrative review within 30 days of the rejection or termination, during a review of that rejection or termination. (R&TC Sections 19008, 19225, and 21015.5.)

You may contact Executive and Advocate Services for additional information or to submit your request for review.

To request an independent administrative review, call: 800.883.5910, fax: 916.843.6022, or mail: Executive and Advocate Services MS A381, PO Box 157, Rancho Cordova CA 95741-0157.

Additional Information

Withholding Information

Web

Go to ftb.ca.gov and search for **withholding requirements, qualified intermediary, or qi** to download, view, and print California tax forms and publications.

MyFTB offers secure online tax account information and services. For more information and to register, go to ftb.ca.gov and log in to **MyFTB**.

Phone

888.792.4900 or 916.845.4900 (from outside the United States), Withholding Services and Compliance phone service

Fax

916.845.9512

Mail

WITHHOLDING SERVICES AND COMPLIANCE
MS F182
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 95827-1500

General Tax Information

For all other questions unrelated to withholding **or to access the TTY/TDD numbers, refer to Connect With Us.**

Connect With Us/Conéctese Con Nosotros

Web: ftb.ca.gov
Phone: 800.852.5711 from 7:00 a.m. to 5:00 p.m. weekdays, except state holidays/7:00 a.m. a 5:00 p.m. de lunes a viernes, excepto días feriados
916.845.6500 from outside the United States/ fuera de los Estados Unidos

California
Relay

Service: 711 or 800.735.2929 for persons with hearing or speaking limitation/para personas con discapacidades auditivas o del habla