

Withholding on California Real Estate

What is Withholding?

Real Estate withholding is a prepayment of state income taxes for sellers of California real estate. The California Real Estate withholding law was implemented in January of 2003 and updated in June of 2009. Sellers subject to withholding by the Franchise Tax Board include all individuals (residents and non-residents). This withholding also applies to certain non-individuals with a last known street address outside California.

In California all transferees (buyers) are required to withhold $3\frac{1}{3}\%$ of the total sales price unless exempt by reasons listed below. The amount withheld will be held in trust for the State of California according to the law.

Reasons for Exemption from this Law

Effective in 2003 and updated in 2009, $3\frac{1}{3}\%$ of the total sales price is required to be withheld unless:

- 1 The property sales price is less than \$100,000;
- 2 The property is the principal residence of an individual transferor;
- 3 The transferor is an exempted non-individual which includes a corporation with a permanent place of business in California immediately after the transfer, a partnership or LLC (excepting single member LLCs), a tax exempt entity, insurance company, IRA or qualified pension plan, irrevocable trust with a California trustee, estate with a California decedent, or a bank, including a bank acting as a fiduciary for a trust;
- 4 The property is transferred to a corporate beneficiary by foreclosure or deed in lieu;
- 5 The property is transferred by an individual and will be replaced in a "Like-Kind" exchange pursuant to IRC Section §1031, but withholding is required as to any "boot";
- 6 An individual as an involuntary conversion transfers the property with the intent to acquire eligible replacement property;
- 7 An individual transferor certifies under penalty of perjury that the transaction will result in a loss for California income tax purposes; or
- 8 An election is made to withhold on the actual calculated gain of sale as follows: 9.55% individuals and non-California partnerships, 11.05% S corporations, or 13.05% financial S corporations.

The new law only allows for reduced withholding requested for waivers from non-individuals. For answers to questions on tax withholding, you are urged to contact the State of California Franchise Tax Board at 888.792.4900.