

Withholding on California Real Estate

What is Withholding?

Real estate withholding is a prepayment of state income taxes for sellers of California real property. Real estate withholding is not an additional tax on the sale of real estate but a prepayment of the income tax due on the gain from the sale of real property. Withholding is required on sales or transfers of California real property when the sales price exceeds \$100,000 and does not qualify for an exemption.

In California all transferees (buyers) are required to withhold 3 1/3% of the total sales price unless exempt by reasons listed below. To document the exemption, the real estate escrow person (REEP) obtains a completed and signed under penalty of perjury (FTB form 593-C).

Below are the exemptions listed on the FTB form 593C which would determine whether you qualify for a full or partial withholding exemption.

Certifications which fully exempt the sale from withholding:

- The property qualifies as the seller's or transferor's (or decedent's, if sold by the decedent's estate or trust) principal residence within the meaning of Internal Revenue Code (IRC) Section 121.
- The seller or transferor (or decedent, if sold by the decedent's estate or trust) last used the property as the seller's or transferor's (or decedent's) principal residence within the meaning of IRC Section 121 without regard to the two-year time period.
- The seller or transferor has a loss or zero gain for California income tax purposes on this sale. To select this, you must complete Form 593-E, Real Estate Withholding-Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16.
- The property is being compulsorily or involuntarily converted and the seller or transferor intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC Section 1033.
- The transfer qualifies for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest).
- The seller or transferor is a corporation (or a limited liability company (LLC) classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State (SOS) or has a permanent place of business in California.
- The seller or transferor is a California partnership or a partnership qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a single member LLC that is not disregarded for federal and California income tax purposes). If this is selected, the partnership or LLC must still withhold on nonresident partners or members.
- The seller or transferor is a tax-exempt entity under California or federal law.
- The seller or transferor is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.

Certifications that may partially or fully exempt the sale from withholding:

- The transfer qualifies as a simultaneous like-kind exchange within the meaning of IRC Section 1031.
- The transfer qualifies as a deferred like-kind exchange within the meaning of IRC Section 1031.
- The transfer of this property is an installment sale where the buyer is required to withhold on the principal portion of each installment payment. Copies of Form 593-I, Real Estate Withholding Installment Sale Acknowledgement, and the promissory note are attached.

Alternative withholding:

An election is made to withhold on the actual calculated gain of sale as follows:

12.3% individuals and non-California Partnerships, 13.8% S corporations, 15.8% Financial S corporations, 8.84 Corporations or 10.84% Bank and Financial Corporations.

Additional Information

California Tax Form 593-E may be used to estimate the amount of your gain or loss for withholding purposes and to calculate an optional gain on sale withholding amount. This form and information is for the seller's calculation and held by the seller as applicable for 5 years. See guidelines provided from Franchise Tax Board as to completion of this form.

For answers to questions on tax withholding, you are urged to contact the State of California Franchise Tax Board at 888.792.4900 or consult with your Tax Advisor/CPA.