



# Withholding Law Changes For 2007

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On September 22, 2006, the Governor signed Assembly Bill 2962 that amends Revenue and Taxation Code Sections 18662 and 18668 making changes to real estate withholding requirements, for all transactions closing on or after January 1, 2007. The significance of AB 2962 is that a seller may elect to certify an alternate withholding amount based on applying the seller's estimated gain to the maximum tax rate. The maximum tax rates are as follows:

- 9.3% for individuals
- 8.84% for corporations
- 10.84% for banks and financial corporations

Franchise Tax Board (FTB) will provide an electronic form on its Web site to assist sellers in calculating the amount of gain and the alternate withholding amount.

If the seller elects an alternate withholding amount, the seller will be required to certify the alternate withholding amount in writing under penalty of perjury.

## Withholding Agent Responsibilities

The responsibilities of the withholding agent and real estate escrow person have not changed. The withholding agent is still expected to provide certain forms to the seller and certain forms to the buyer, and then withhold accordingly. The real estate escrow person is still required to provide written notification to the buyer. The escrow officer's notification to the buyer has been amended to include language regarding the alternate withholding amount.

In addition, FTB forms used to calculate and to elect the alternate withholding amount have been amended to state that title and escrow persons are not authorized to provide legal or accounting advice for the purposes of determining the withholding amounts, and that competent tax professionals should be consulted.

## Forms

With new law come new forms. The forms for 2007 have not been finalized; however, we plan to have the forms available in mid to late December. The following changes are planned:

- **Form 593-B, Real Estate Withholding Tax Statement.** The escrow person or withholding agent is to continue to submit this form to the FTB along with the Form 593 Real Estate Withholding Remittance Statement. In addition, Form 593-B will also be used to notify the FTB of the seller's election and the certified alternate

withholding amount. If the seller elects the certified withholding amount, the seller's signature is required on Form 593-B.

- **Form 593-C, Real Estate Withholding Certificate.** The seller is to continue to complete, sign, and submit this form to the escrow person to claim a withholding exemption.
- **Form 593-E, Real Estate Withholding – Computation of Estimated Gain or Loss.** This form replaces Form 593-L and will be used by the seller to calculate the loss or gain on the sale and the reduced withholding amount. If the seller claims an exemption based on the loss calculation or elects the alternate withholding amount based on the gain, the seller is to complete, sign, and maintain this form for five years.
- **Electronic Calculator Form (NEW)**– In addition to the Form 593-E, the FTB will have an electronic calculator on their Web site that mimics the Form 593-E. The seller can use this form to calculate the loss and gain on the property and the alternate withholding amount. When the form prints, it will print as a Form 593-E.
- **Form 593-L, Real Estate Withholding – Computation of Estimated Gain or Loss.** This form is discontinued and replaced with Form 593-E.

The FTB does not anticipate significant changes to Form 593, Real Estate Withholding Remittance Statement or Form 593-I, Real Estate Withholding Installment Sale Agreement, except to include language relating to the alternate withholding amount.

## Q&A

We are including some questions and answers we hope will help.

### 1. How does the seller elect to withhold on the gain?

- The seller calculates the amount of gain and the alternate withholding amount on Form 593-E, Real Estate Withholding – Computation of Estimated Gain or Loss. If the seller elects the alternate withholding amount, the seller completes and signs Form 593-E, which is maintained by the seller.
- The seller must certify Form 593-B, which the withholding agent submits to the FTB along with Form 593, Real Estate Withholding Remittance Statement, and the withholding amount.

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

The seller completes and certifies the Form 593-E if the seller claims a withholding exemption due to a loss or zero gain on the sale or if the seller elects the alternate withholding amount.

**3. Who is responsible for completing and maintaining Form 593-E, Real Estate Withholding – Computation of Estimated Gain or Loss?**

The seller is responsible for completing Form 593-E, which assists in calculating the loss or zero gain and the alternate withholding amount. If the seller claims a loss or zero gain or elects an alternate withholding amount, the seller is to complete and certify the form. The seller is to maintain the form for five years and furnish the form to the Franchise Tax Board upon request. After completing this form, the seller must certify Form 593-B to elect the alternate withholding amount. A certified Form 593-B is to be provided to the withholding agent.

**4. Is the seller required to complete, sign, and provide the withholding agent the completed Form 593-C, Real Estate Withholding Certificate?**

This form is to be completed only if the seller claims a full or partial withholding exemption. Under those circumstances, the seller must give a completed and certified Form 593-C to the withholding agent. Otherwise, the withholding amount will be either 3½% of the total sale price or the alternate withholding amount certified by seller on Form 593-B.

**5. Is the withholding agent responsible for verifying the alternate withholding amount stated on Form 593-B?**

No. As long as the form is complete and certified under penalty of perjury, then no other verification is required.

**6. Is the seller required to provide the withholding agent the Form 593-E?**

No. The seller completes, certifies, and maintains Form 593-E if the seller claims a withholding exemption due to a loss or zero gain on the sale or if the seller elects the alternate withholding amount. The seller is to maintain the form for five years and furnish the form to the FTB upon request. If the seller elects the alternate withholding amount, the seller must provide the withholding agent with a signed Form 593-B.

**7. In an installment sale, is the seller required to sign Form 593-B for each installment payment submitted to the FTB?**

No. If the buyer elects to withhold on each installment payment, the buyer will be required to execute Form 593-I, Real Estate Withholding Installment Sale Agreement. Form 593-I is required to be submitted to the FTB along with a copy of the signed promissory note (showing the installment payment requirements) and a copy of the seller's original certification of Form 593-B (which is submitted on the first payment in escrow or by the withholding agent). While a new Form 593-B must be completed and submitted with each installment payment, the buyer will not be required to obtain the seller's signature each time the buyer submits additional withholding payments.

The FTB will update their Web site, [www.ftb.ca.gov](http://www.ftb.ca.gov) (search – real estate), as new handouts, forms, publications, etc., become available.



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