

Changes to California Real Estate Withholding Law for 2007

- AB 2962 -

Assembly Bill 2962 amends Revenue and Taxation Code Sections 18662 and 18668 making changes to real estate withholding requirements effective for all transactions closing on or after January 1, 2007. The main changes are:

- A seller of California real estate may elect an alternative withholding amount by applying the maximum tax rate for individuals, corporations, and banks and financials on the gain of sale.
- If the seller makes this election, the seller certifies the alternative withholding amount in writing under penalty of perjury.
- Franchise Tax Board (FTB) will provide an electronic form on its Website to assist sellers in calculating the amount of gain and the alternative withholding amount.
- The escrow officer's notification to the buyer will include language regarding the alternative withholding amount.
- FTB forms for calculating and electing the alternative withholding amount will 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.

The following chart is a comparison of the real estate withholding requirements before and after AB 2962 changed the requirements:

| | Escrows Closing prior to January 1, 2007 | Escrows Closing on or after January 1, 2007 |
|--------------------------------------|---|---|
| Seller Subject to Withholding | Sales by individuals and non-individuals must be withheld upon unless the seller meets one of the certifiable exemptions (a California street address is no longer a general reason for not withholding). | Current requirements apply. In addition, individuals and non-individuals may elect and certify an alternative-withholding amount based on applying the applicable maximum tax rate to the gain on the sale of the property. |
| Rate | The withholding rate is 3 $\frac{1}{3}$ % of the total sales price. | Withhold at 3 $\frac{1}{3}$ % of sale price or make an election to withhold on gain of sale as follows: 9.3% individuals, 8.84% corporations, or 10.84% bank and financials. |
| Forms | 593, 593-B, 593-C, 593-I, and 593-L | 593, 593-B, 593-C, 593-E, and 593-I |
| Threshold | Withholding is only required if the total sales price exceeds \$100,000. | No change. |
| Small Gain | Withholding is required unless there is a loss on the sale for California income tax purposes. Sellers cannot request a waiver or a reduced withholding rate based upon a small gain. | FTB will provide an electronic form on its Website to assist sellers in calculating the amount of gain and the alternative withholding amount. |
| Multiple Seller | Withhold according to the seller's interest in the property of the total sale price. | Withhold at 3 $\frac{1}{3}$ % of sale price or make an election to withhold on gain of sale as follows: 9.3% individuals, 8.84% corporations, or 10.84% banks and financials. |
| Exchange | Individuals and non-individuals can certify, under penalty of perjury, the transfer is part of an IRC Section 1031 exchange. | No change. |