

2018 Instructions for Form 593-C

Real Estate Withholding Certificate

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2015**, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, for taxable years beginning on or after January 1, 2015, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2015. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

Like-Kind Exchanges – For taxable years beginning on or after January 1, 2014, California requires taxpayers who exchange property located in California for like-kind property located outside of California, and meet all of the requirements of the IRC Section 1031, to file an annual information return with the Franchise Tax Board (FTB). For more information, get form FTB 3840, California Like-Kind Exchanges, or go to ftb.ca.gov and search for **like kind**.

Purpose

Use Form 593-C, Real Estate Withholding Certificate, to certify that you qualify for a full or partial withholding exemption.

Qualifying for an exemption from withholding or being withheld upon does not relieve you of your obligation to file a California income tax return and pay any tax due on the sale of California real estate.

You may be assessed penalties if:

- You do not file a tax return.
- You file your tax return late.
- The amount of withholding does not satisfy your tax liability.

The seller/transferor must submit this form before the close of the real estate transaction to prevent withholding on the transaction. After the real estate transaction has closed, amounts withheld may be recovered only by claiming the withholding as a credit on the appropriate year's tax return.

How to Claim the Withholding

To claim the withholding credit, you must file a California tax return. Report the sale or transfer as required, and enter the amount from line 5, Amount Withheld from this Seller/Transferor, of Form 593, Real Estate Withholding Tax Statement, on your California tax returns as withholding from Form(s) 592-B or 593. If your filing status changed after escrow closed and before filing your California tax return, call the Withholding Services and Compliance phone service at 888.792.4900 or 916.845.4900 for instructions on how to claim your withholding credit. Claim your withholding credit on one of the following:

- Form 540, California Resident Income Tax Return
- Form 540NR Long, California Nonresident or Part-Year Resident Income Tax Return
- Form 541, California Fiduciary Income Tax Return
- Form 100, California Corporation Franchise or Income Tax Return
- Form 100S, California S Corporation Franchise or Income Tax Return
- Form 100W, California Corporation Franchise or Income Tax Return – Water's-Edge Filers
- Form 109, California Exempt Organization Business Income Tax Return
- Form 565, Partnership Return of Income
- Form 568, Limited Liability Company Return of Income

Specific Instructions

Private Mail Box (PMB) – Include the PMB in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Foreign Address – Follow the country's practice for entering the city, county, province, state, country, and postal code, as applicable, in the appropriate boxes. **Do not** abbreviate the country name.

Part I – Seller/Transferor Information

Enter the name, tax identification number, and address of the seller/transferor. If the seller/transferor does not provide a tax identification number, then Form 593-C is void, and withholding is required.

Note: If you choose to provide a copy of Form 593-C to the buyer/transferee, delete the seller's/transferor's tax identification number on the buyer's/transferee's copy.

If the seller/transferor is an **individual**, enter the social security number (SSN) or individual taxpayer identification number (ITIN). If the sellers/transferors are spouses/registered domestic partners (RDPs) and plan to file a joint return, enter the name and SSN or ITIN for each spouse/RDP. Otherwise, **do not** enter information for more than one seller/transferor. Instead, complete a separate Form 593-C for each seller/transferor.

If you do not have an SSN because you are a nonresident or a resident alien for federal tax purposes, and the Internal Revenue Service (IRS) issued you an ITIN, enter the ITIN in the space provided for the SSN.

An ITIN is a tax processing number issued by the IRS to individuals who have a federal tax filing requirement and do not qualify for an SSN. It is a nine-digit number that always starts with the number 9.

If the seller/transferor is a business, enter the business name in the name field along with the federal employer identification number (FEIN), CA Corporation number (CA Corp no.), or CA Secretary of State (CA SOS) file number.

If the seller/transferor is a **grantor trust**, enter the grantor's individual name and SSN. For tax purposes, the grantor trust is disregarded and the individual seller/transferor must report the sale and claim the withholding on their individual tax return. If the trust was a grantor trust that became irrevocable upon the grantor's death, enter the name of the trust and the trust's FEIN. **Do not enter the decedent's or trustee's name or SSN.**

If the seller/transferor is a **non-grantor trust**, enter the name of the trust and the trust's FEIN. **Do not enter trustee information.**

If the seller/transferor is a **single member limited liability company (SMLLC)**, enter the name and tax identification number of the single member.

For all other non-individual sellers/transferors, enter the FEIN, CA Corp no., or CA SOS file number.

Ownership Percentage

Enter your ownership percentage rounded to two decimal places (e.g. 66.67%). If you are on the title for incidental purposes and you have no financial ownership, enter 0.00 and skip to Seller/Transferor Signature. You will not be withheld upon.

Examples of sellers/transferors who are on title for incidental purposes are:

- Co-signers on title (e.g., parents co-signed to help their child qualify for the loan).
- Family members on title to receive property upon the owner's death.

Property Address

Enter the address (or parcel number and county) of the CA real property transferred.

Part II – Certifications Which Fully Exempt Withholding

Line 1 through Line 9

Check all boxes that apply to the property being sold or transferred.

Line 1 – Principal Residence

To qualify as your principal residence under IRC Section 121, you (or the decedent) generally must have owned and lived in the property as your main home for at least two years during the five-year period ending on the date of sale. Military and Foreign Service, get FTB Pub. 1032, Tax Information for Military Personnel.

You can have only one main home at a time. If you have two homes and live in both of them, the main home is the one you lived in most of the time.

There are exceptions to the two-year rule if the primary reason you are selling the home is for a change in the place of employment, health, or unforeseen circumstances such as death, divorce or termination of registered domestic partnership, or loss of job, etc. For more information about what qualifies as your principal residence or exceptions to the two-year rule, get federal Publication 523, Selling Your Home. To get federal publications, go to irs.gov, or call 800.829.3676.

If only a portion of the property qualifies as your principal residence, a second Form 593-C will need to be completed to certify an exemption on the portion not used as a principal residence.

The allocation method should be the same as the seller/transferor used to determine depreciation.

Line 2 – Property last used as your principal residence

If the property was last used as the seller's/transferor's, or decedent's principal residence within the meaning of IRC Section 121 without regard to the two-year time period, no withholding is required. If the last use of the property was as a vacation home, second home, or rental, you do not qualify for the exemption. You must have lived in the property as your main home.

If you have two homes and live in both of them, the main home is the one you lived in most of the time.

Line 3 – Loss or Zero Gain

You have a loss or zero gain for California income tax purposes when the amount realized is less than or equal to your adjusted basis. 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 to certify that the transaction is fully exempt from withholding.

You may not certify that you have a net loss or zero gain just because you do not receive any proceeds from the sale or because you feel you are selling the property for less than what it is worth.

Line 4 – Involuntary Conversion

The property is being involuntarily or compulsorily converted when both of the following apply:

- The California real property is transferred because it was (or threatened to be) seized, destroyed, or condemned within the meaning of IRC Section 1033.
- The seller/transferor intends to acquire property that is similar or related in service or use in order to be eligible for nonrecognition of gain for California income tax purposes.

Get federal Publication 544, Sales and Other Dispositions of Assets, for more information about involuntary conversions.

Line 5 – Non-recognition Under IRC Section 351 or 721

The transfer must qualify for nonrecognition treatment under IRC Section 351 (transferring to a corporation controlled by transferor) or IRC Section 721 (contributing to a partnership in exchange for a partnership interest).

Line 6 – Corporation

A corporation has a permanent place of business in California when it is organized and existing under the laws of California or it has qualified through the CA SOS to transact intrastate business. A corporation not qualified to transact intrastate business (such as a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains an office in California that is permanently staffed by its employees after the sale.

S corporations must withhold on nonresident S corporation shareholders. Get FTB Pub. 1017, Resident and Nonresident Withholding Guidelines, for more information.

Line 7 – Partnership or Limited Liability Company (LLC)

Partnerships and LLCs are required to withhold on nonresident partners and members. ~~For more information, get FTB Pub. 1017.~~

Withholding is not required if the title to the property transferred is recorded in the name of a California partnership or it is qualified to do business in California.

Withholding is not required if the title to the property transferred is in the name of an LLC, and the LLC meets both of the following:

- It is classified as a partnership for federal and California income tax purposes.
- It is not an SMLLC that is disregarded for federal and California income tax purposes.

If the LLC meets these conditions, the LLC must still withhold on nonresident members. Get FTB Pub. 1017 for more information.

If the SMLLC is classified as a corporation for federal and California income tax purposes, then the seller/transferor is considered a corporation for withholding purposes. Refer to Line 6.

If the LLC is an SMLLC that is disregarded for federal and California income tax purposes, then that single member is considered the seller/transferor and title to the property is considered to be in the name of the single member for withholding purposes.

When completing Form 593-C as the single member of a disregarded LLC, write on the bottom of the form that the information on the form is for the single member of the LLC, so the Real Estate Escrow Person (REEP) will understand why it is different from the recorded title holder.

If the single member is:	Complete Form 593-C using:
An individual	The individual's information
A corporation	The corporation's information
A partnership	The partnership's information
An LLC	The single member's information

Line 8 – Tax-Exempt Entity

Withholding is not required if the seller/transferor is tax-exempt under either California or federal law (e.g., religious, charitable, educational, not for profit organizations, etc.).

Line 9 – Insurance Company, Individual Retirement Account, Qualified Pension or Profit-Sharing Plan, or Charitable Remainder Trust

Withholding is not required when the seller/transferor is an insurance company, individual retirement account, qualified pension or profit-sharing plan, or a charitable remainder trust.

Part III – Certifications That May Partially or Fully Exempt the Sale From Withholding

Complete Part III only if you did not meet any of the exemptions in Part II.

Line 10 – Simultaneous Exchange

If the California real property is part of a simultaneous like-kind exchange within the meaning of IRC Section 1031, the transfer is exempt from withholding. However, if the seller/transferor receives money or other property (in addition to property that is a part of the like-kind exchange) exceeding \$1,500 from the sale, the REEP must withhold.

Line 11 – Deferred Exchange

If the California real property is part of a deferred like-kind exchange within the meaning of IRC Section 1031, the sale is exempt from withholding at the time of the initial transfer. However, if the seller/transferor receives money or other property (in addition to property that is a part of the like-kind exchange) exceeding \$1,500 from the sale, the qualified intermediary must withhold.

If the exchange does not take place or if the exchange does not qualify for nonrecognition treatment, the intermediary or accommodator must withhold $3\frac{1}{3}\%$ (.0333) of the total sales price.

Line 12 – Installment Sale

The REEP reports the sale or transfer as an installment sale if there will be at least one payment made after the tax year of the sale. The withholding is $3\frac{1}{3}\%$ (.0333) of the down payment during escrow. Buyers/Transferees are required to withhold on the principal portion of all payments made following the close of the real estate transaction unless an approval letter for the elect-out method is received.

When the withholding amount on the down payment is sent to the FTB, the FTB must also receive a completed Form 593-I, Real Estate Withholding Installment Sale Acknowledgement, a completed Form 593, and a copy of the promissory note.

Seller/Transferor Signature

You must sign this form and return it to your REEP by the close of the real estate transaction for it to be valid. Otherwise, the REEP must withhold the full $3\frac{1}{3}\%$ (.0333) of the total sales price or the optional gain on sale withholding amount from line 5 of Form 593 that is certified by the seller/transferor only for the optional gain on sale election.

Penalty – Any seller/transferor who, for the purpose of avoiding the withholding requirements, knowingly executes a false certificate is liable for a penalty of \$1,000 or 20% of the required withholding amount, whichever is greater.