STATE OF CALIFORNIA
Franchise Tax Board

FTB Publication 1017

Resident and Nonresident Withholding Guidelines



Online Resources

Go to **ftb.ca.gov** and search for **withholding requirements** for updates, online tools, and more information, including:

- **Forms and Publications**
  Find forms and information about resident and nonresident withholding requirements.
- **Electronic Filing**
  File your information returns electronically via SWIFT or MyFTB for Withholding Agents.
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  Learn valuable information regarding resident and nonresident withholding requirements.

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Purpose

This publication provides guidance on withholding requirements to assist you to:

- Withhold on payments to nonresident independent contractors, including entertainers.
- Withhold on rent or royalty payments to nonresidents.
- Withhold on distributions to nonresident beneficiaries.
- Meet domestic and foreign nonresident partner withholding requirements.

For information on real estate withholding, refer to the Franchise Tax Board (FTB) Publication 1016, *Real Estate Withholding Guidelines*.

For information on employee wage withholding, contact the California Employment Development Department (EDD) at **edd.ca.gov**.

Law References

General

California Revenue and Taxation Code (R&TC) Section 18662 and the related regulations require withholding of California income or franchise taxes from payments and distributions made to nonresidents on California source income.

With certain limited exceptions, R&TC Section 18664 applies backup withholding to reportable payments made on or after January 1, 2010.

R&TC Section 18668 makes the withholding agent liable to remit the tax withholding required.

R&TC Section 17951 contains the provision requiring nonresidents to be taxed on all income from California sources. California source income includes payments for personal services performed in California. Where the nonresident lives, the location where the contract for services is entered into, or the place of payment does not determine the source of income from personal services. The location where the personal services are performed determines the source of income. Nonresidents must include in California gross income the gross payments for all services performed in California.

Domestic (Nonforeign) S Corporation Shareholders and Partners

R&TC Section 18662 and the related regulations require S corporations and partnerships to withhold income taxes when distributing current or prior year income to domestic S corporation shareholders and partners. Withholding is not required if distributions to an S corporation shareholder or partner are $1,500 or less during the calendar year.

Foreign (Non-U.S.) Partners

R&TC Section 18666 requires withholding on income from California sources, which is allocated to foreign partners. R&TC Section 18666 generally conforms to federal Internal Revenue Code (IRC) Section 1446 to the extent that the income is from California sources.

Limited Liability Companies (LLCs) and Limited Liability Partnerships (LLPs)

For withholding purposes, both LLCs, classified as partnerships, and LLPs are treated like partnerships. For purposes of this publication, LLCs and LLPs are generally included in the term "partnership" and members are generally included in the term "partner." LLC and LLP information returns are included in the term "partnership information returns." Form 568, *Limited Liability Company Return of Income*, is included in Form 565, *Partnership Return of Income*. However, LLCs should specifically refer to questions 29 and 30 relating to consenting and nonconsenting members.

What's New

Beginning on January 1, 2020, we have a new Form 592-PTE, *Pass-Through Entity Annual Withholding Return*. Form 592-PTE is an annual form for pass through entities (PTEs) to allocate withholding credit to its payees. Withholding payments associated to Form 592-PTE are still due each payment period, and submitted with the new Form 592-Q, *Payment Voucher for Pass-Through Entity Withholding.*

Frequently Asked Questions

General Withholding Requirements

1. **When is backup withholding required?**

   If you are required to withhold and remit backup withholding to the Internal Revenue Service (IRS) you are also required to withhold and remit to FTB, except for instances specifically excluded for California purposes.

2. **What if two or more types of withholding apply?**

   Under circumstances where both backup withholding and other types of withholding apply, backup withholding replaces all other types of withholding.

3. **How do payers remit backup withholding?**

   Remit backup withholding to us using Form 592-V, *Payment Voucher for Resident and Nonresident Withholding*.

   The due dates for California backup withholding are different than federal backup withholding due dates. California backup withholding due dates are the same as the due dates for individual estimated tax payments. The period due dates are described in the Form 592, *Resident and Nonresident Withholding Statement*, instructions and question 121 of this publication.

   When an entity is a PTE (LLC, S Corp, Partnership, Estate, or Trust), use Form 592-PTE and Form 592-Q. When an entity has foreign partners or members, use Form 592-F and Form 592-A.

4. What is withholding?

Withholding is a prepayment of California state income or franchise tax (similar to wage withholding).

5. Who is the withholding agent?

A withholding agent is any person or entity with the control, receipt, custody, disposal, or payment of California source income. We also refer to withholding agents as "payers."

6. Who is the payee?

Generally, the payee is the person or entity that receives items of income from a payer. It also includes partners, beneficiaries, shareholders, or members that receive payments or distributions from a PTE, estate, or trust. A payee may also include vendors that provide services to the payer.

7. Who is the payer?

Generally, the payer is the person or entity that pays an item of income or makes a distribution to a payee.

8. What is a partnership?

The term partnership has the same meaning as defined in R&TC Section 17008. For purposes of withholding, both LLCs and LLPs classified as partnerships are treated as partnerships.

9. What is a partner?

The term partner has the same meaning as defined in R&TC Section 17008. For purposes of withholding, members of both LLCs and LLPs classified as partnerships are generally included in the term partner.

10. When is a withholding agent required to withhold?

A withholding agent is required to withhold from all payments or distributions of California source income made to a nonresident payee unless the withholding agent receives a certified Form 590, *Withholding Exemption Certificate*, or authorization from us for a waiver, or an approved reduced withholding amount. The withholding agent is required to withhold once the total payments exceed $1,500 in a calendar year.

11. When should a withholding agent start withholding if the total payments to a nonresident are expected to exceed $1,500 during the calendar year?

Withholding is at the discretion of the withholding agent until payments exceed $1,500 during a calendar year. Once the total payments exceed $1,500, the withholding agent is required to withhold.

12. Is *catch-up* withholding required if the withholding agent reasonably believed the total payments to a nonresident for the year would not exceed $1,500, but later determines the total payments will exceed $1,500?

No. Withholding must begin as soon as the total payments of California source income for the calendar year exceed $1,500.

13. What is the withholding rate for domestic (nonforeign) partners?

The withholding rate is 7 percent of the following:

- Gross payments made to nonresident independent contractors for services performed in California.
- Gross payments made to nonresident recipients of California rents or royalties.
- Distributions of California source income made to nonresident beneficiaries of estates or trusts.
- Distributions of California source income to domestic nonresident S corporation shareholders and partners.

14. What are the withholding rates for foreign (non-U.S.) partners?

The withholding rate is California's highest tax rate for each partner's entity type. The current withholding rates are:

- Noncorporate partners – 12.3 percent
- Corporate partners – 8.84 percent
- Foreign bank and financial institution partners – 10.84 percent

15. Are there exceptions to withholding?

Yes. Withholding is not required if one of the following exceptions is met:

- The individual, S corporation shareholder, or partner is a California resident.
- The payee meets one of the exemptions on Form 590.
- The total payments or distributions of California source income to the nonresident are equal to or less than $1,500 for the calendar year.
- The payment is for goods.
- The services provided by the nonresident are not performed in California.
- The nonresident payee or the withholding agent receives written authorization from us waiving the withholding.
- The payments are income from intangible personal property, such as interest and dividends, unless the property has acquired a business situs in this state.
- The payments are compensation from a motor carrier providing transportation in two or more states, subject to Section 14503(a)(1) of Title 49 of the United States Code.
- The payments are wages paid to employees. For information on employee wage withholding, contact the California EDD.
- The payee is a bank or banking association.
- The payments are made to a nonresident corporate director for director's services.
- The distribution is exempt income.
- The partner has certified that the income was previously reported on the partner's California tax return.

The exemption for motor carriers does not apply to all transportation providers. Similar exemptions for payments made to air, water, and rail carriers apply only to nonresident employees and not to independent contractors.

16. Are withholding agents required to notify nonresidents of the withholding requirements?

No. Withholding agents are not required to notify nonresidents of the withholding requirements. However, we recommend that they explain California's withholding requirements to avoid confusion.

Income Subject to Withholding

17. What types of payments are subject to withholding?

The following California source income is subject to withholding:

- Payments made for personal services performed in California. Where the nonresident lives, the location where the contract for services is entered into, or the place of payment does not determine the source of income from personal services. The location where the personal services are performed determines the source of income.
- Payments made to nonresident entertainers for services rendered in California. These payments include, but are not limited to, guaranteed payments, overages, royalties, and residual payments.
- Payments received for a covenant not to compete in California.
- Payments releasing a contractual obligation to perform services in California.
- Income from options received because of performing personal services in California.
- Bonuses paid for services performed in California.
- Rents and royalties from assets located in California.
- Prizes and winnings received by nonresidents for contests in California.
- Distributions of California source income. This is different from foreign partner withholding under R&TC Section 18666, which is based on allocations (not distributions) of income.

For withholding purposes, California source income does not include return of capital, income sourced in another state, or other distributions not taxable by California.

18. What types of payments are not subject to withholding?

The following types of payments are not subject to withholding:

- Payments made to nonresident directors of a corporation for attending board meetings in California.
- Income from intangible personal property such as stocks, bonds, notes, etc., is not considered income from California sources unless the property has acquired a business situs in California. California business situs is acquired when the property is employed as capital in California. A California business situs is also acquired when the possession and control of the property has been localized in connection with a business, trade, or profession in California so that its substantial use and value attach to and become an asset of that business. The entire income, including the gain from the sale of such an asset, is income from California sources. Examples include an intangible asset pledged as security for a loan connected to a California business or a bank account maintained to pay expenses related to business activities in California.

19. Are payments that are exempt from federal tax due to tax treaties (IRS Form W-8, *Certificate of Foreign Status*), also exempt from California tax and withholding?

No. California does not conform to federal law relating to income protected by U.S. tax treaties. California income is taxable and subject to withholding. Nonresident aliens are required to report income from California sources on Form 540NR, *California Nonresident or Part-Year Resident Income Tax Return*.

20. Is withholding required on payments made to reimburse expenses?

If the reimbursement is separately accounted for and is not subject to IRS Form 1099 reporting, withholding is not required on payments to reimburse nonresidents for expenses related to services performed in California (corporate payees, for purposes of this exception, should be treated as individual persons). When the reimbursed expenses do not meet these requirements, withholding agents should withhold on the total payment.

21. How do you determine the amount subject to withholding with income from inside and outside California?

For withholding purposes, use any reasonable method to approximate the ratio of California income to worldwide income. Reasonable methods include using the prior year's ratio or apportionment factors, annualizing current year data, and using actual year-to-date figures. (Refer to California Schedule R, *Apportionment and Allocation of Income*, for more information on apportionment.) We do not expect exactness in meeting this requirement. Making a good faith effort to comply with the withholding requirements will satisfy this requirement.

Entities Subject to Withholding

22. Which nonresident entities are subject to withholding when receiving payments or distributions of California source income?

Nonresident entities subject to withholding include:

- Individuals who are nonresidents of California.
- Corporations that do not have a permanent place of business in California and are not qualified through the Office of the Secretary of State (SOS) to do business in California.
- Partnerships and LLCs that do not have a permanent place of business in California and are not registered through SOS.
- Nonresident estates and trusts.

- Domestic nonresident partners include:
  - Individuals who are nonresidents of California.
  - Corporations that are not qualified by SOS to do business in California or do not have a permanent place of business in California.
  - Nonresident estates and trusts.
  - Partnerships that do not have a permanent place of business in California.

23. Are withholding agents required to withhold when vendors perform services in connection with the sale of goods?

Yes. Withholding is required on the portion of the sale that relates to services provided in California. Form 587, *Nonresident Withholding Allocation Worksheet*, may be used to distinguish the portion of payments made for goods from the portion for services.

24. Is withholding required on distributions to nongrantor trusts?

Yes. Withholding is required on distributions to nongrantor trusts unless at least one trustee is a California resident. Withholding agents may rely on an exemption certification using Form 590, *Withholding Exemption Certificate*.

25. Is withholding required on distributions to grantor trusts?

Yes. A grantor trust is when the grantor retains substantial control and is deemed to remain the owner. As a result, a grantor trust is disregarded for tax purposes. The determination to withhold depends on the residency of the grantor. If the grantor is a California resident, the grantor may certify to the residency exemption on Form 590, noting that the grantor is signing as the grantor of a grantor trust.

26. Is withholding required on distributions to estates?

Yes. Withholding is required on distributions to estates unless the decedent was a California resident at the date of death. Withholding agents may rely on a certificate by the estate that the decedent was a California resident at the date of death. Use Form 590 for this purpose.

27. Is withholding required on distributions to tax-exempt entities, such as churches and pension plans (i.e., Individual Retirement Accounts (IRA), and other tax-deferred plans)?

No. Withholding is not required on entities exempt from tax under either California or federal law. The withholding agent may rely on a completed Form 590.

28. Is withholding required when tax-exempt entities make payments to nonresident payees?

Yes. Regardless of your tax or organizational status, when a payment is made to a nonresident for a service performed in California, withholding may be required.

29. Are LLCs required to withhold on nonresident members who have signed FTB 3832, *Limited Liability Company Nonresident Members' Consent*?

Yes. The LLCs must withhold on nonresident members who have signed FTB 3832.

30. Are LLCs required to withhold on nonresident members if the nonresident members have not signed FTB 3832, and the LLCs are paying the nonconsenting nonresident tax for the nonconsenting members?

Yes. Payment of nonconsenting nonresident tax does not relieve LLCs of the requirement to withhold on nonresident members. However, LLCs who can show they pay the nonconsenting nonresident tax on all nonconsenting members may request a waiver from us for withholding on their nonconsenting members.

31. When are S corporations and partnerships required to withhold?

S corporations and partnerships must withhold on distributions of California source income to nonresident S corporation shareholders and partners. This includes, but is not limited to, distributions of current year income and distributions of prior year income that were not previously reported as income from California sources on the S corporation shareholder's or partner's California tax return. Withholding is optional, at the discretion of the withholding agent, on the first $1,500 in payments made during the calendar year, or if the S corporation shareholder or partner has received a waiver of withholding from us.

32. Are payments to nonqualified S corporations subject to withholding?

Yes. Payments to S corporations that do not have a permanent place of business in California and are not qualified through SOS to do business in California are subject to withholding.

33. What entities are subject to foreign partner withholding?

California conforms to the federal definition of foreign partners. Thus, foreign partners who are nonresident alien individuals, foreign corporations, foreign partnerships, foreign estates, or foreign trusts are subject to foreign partner withholding.

Withholding Exemptions

34. Who is exempt from withholding?

The following individuals and entities are exempt from withholding:

- California residents.
- Corporations with a permanent place of business in California.
- Corporations qualified through SOS to do business in California.
- Partnerships and LLCs with a permanent place of business in California.
- Tax-exempt organizations, under either California or federal law.
- Insurance companies, IRAs, or qualified pension/profit sharing plans.
- California nongrantor trusts.
- Estates where the deceased was a California resident at the time of death.

Payees must complete FTB Form 590, *Withholding Exemption Certificate*, to certify their status.

Exemptions apply to the actual payee and not to their agent or representative.

35. Who is a California resident?

The term *resident* includes every individual who is in California for other than a temporary or transitory purpose and every individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose extending over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident. For more information on residency, refer to FTB Publication 1031, *Guidelines for Determining Resident Status*.

36. How can withholding agents identify resident payees?

The following are examples of accepted reasonable methods:

Example 1:

Withholding agents may send their payees a Form 590. Payees may use this form to certify their residency status.

For Form 590 to be valid, payees must include their taxpayer identification number.

Example 2:

Withholding agents can rely on a California street address as an indication of a payee's residency status. If the payee has a California street address, no withholding is required and Form 590, is not needed to verify residency status unless the withholding agent has reason to believe such address is merely a forwarding address. A valid California street address does not include a California post office box, or an **in care of** address. If a change of address occurs, the withholding agent must reevaluate the payee's residency status. For assistance in this area, call us at 916.845.4900.

37. When does a corporation have a permanent place of business in California?

A corporation has a permanent place of business in this state when it is organized and exists under the laws of this state or it has qualified through 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 this state only if it maintains an office in this state that is permanently staffed by its employees.

38. How can withholding agents determine if a corporation has a permanent place of business in California or is qualified to do business in this state?

The following are examples of accepted reasonable methods:

Example 1:

Withholding agents may rely on a completed Form 590, stating the corporation has a permanent place of business in California. This protects the withholding agent from penalties for failure to withhold (unless the withholding agent has actual knowledge that the statement is false).

For Form 590 to be valid, a corporate payee must include its taxpayer identification number.

Example 2:

If a corporation has a permanent place of business in California, it is required to qualify with SOS. Withholding agents may determine if a corporate payee is qualified to do business in this state by contacting:

CERTIFICATION AND RECORDS
SECRETARY OF STATE
PO BOX 944260
SACRAMENTO CA 94244-2600

Phone: 916.657.5448

To request confirmation of a corporation's qualification, send a self-addressed, stamped envelope with a check or money order for the $5 fee for each corporation status report you requested.

39. What is the difference between corporations incorporated in California and corporations qualified to do business in California for withholding purposes?

Corporations that incorporate in California are automatically qualified to do business in California as long as they file all tax returns and pay all taxes due. Corporations not incorporated in California, but incorporated under the laws of other states or countries, can still qualify to do business in California. SOS administers the California Corporations Code as it applies to incorporation and qualification to do business in California. Corporation payees incorporated in California or qualified to do business in California are exempt from the withholding requirements.

40. What significance does the doing business standard have in determining income subject to withholding?

California taxes the income derived from business activity within the state. If a nonresident payee is doing business in California and is earning California source income, withholding is required unless the payee meets an exemption.

41. What if the corporate payee is not qualified through SOS and does not have a permanent place of business in this state, but is included in the combined report of a corporation that does have a permanent place of business in California? Can Form 590, *Withholding Exemption Certificate*, be completed to exempt it from withholding?

No. But the payee may request a waiver from us using Form 588, *Nonresident Withholding Waiver Request*.

42. What information must be included on Form 590 for it to be valid?

Form 590 must include the:

- Name and address of the payee.
- Payee's taxpayer identification number (SOS file number, social security number [SSN], individual taxpayer identification number [ITIN], California corporation number, or federal employer identification number [FEIN]).
- Withholding agent's name.
- Box checked in front of the applicable exemption.
- Name and title of the individual completing the form.
- Individual's signature and date.

43. What should the withholding agent do if a payee gives the withholding agent an incomplete Form 590?

Before accepting Form 590 from a payee, the withholding agent should check that the form is complete. Refer to Question 42 for details.

An incomplete Form 590 is invalid and the withholding agent should not accept it. The withholding agent is required to withhold tax on payments made to the payee until a valid Form 590 is received. The withholding agent should also verify the information on the form pertains to the payee and not to the payee's representative or agent.

44. Must a payee's Form 590 be renewed each year?

No. The certification does not need to be renewed annually. The certification remains valid until the payee's status changes. The withholding agent should evaluate the need for securing a new Form 590 when any indication of a change in residency status occurs, such as a change of address, etc.

45. What should a withholding agent do if they receive a false Form 590?

The withholding agent should not accept the Form 590 and should inform the payee that the form was not accepted. The withholding agent and the payee can contact us if they have any questions.

46. Is the withholding agent liable for knowingly accepting a false Form 590?

Yes. A withholding agent who knowingly accepts a false Form 590 is subject to the liabilities and penalties related to failure to withhold.

Income Allocation

47. In situations when a nonresident payee is performing services within California as well as outside of California, how does the withholding agent determine the portion of the services the nonresident payee provided within California?

The following are examples of accepted reasonable methods:

Method 1:
Withholding agent asks the payee to complete Form 587, *Nonresident Withholding Allocation Worksheet.* This form is used to determine the amount of California source income subject to withholding. The payee completes and returns Form 587 to the withholding agent. This information determines if withholding is required, and, if required, what portion of the payment is subject to withholding.

Example:
A withholding agent sends Form 587 to an out-of-state independent contractor (vendor) before making a payment for services. The total contract amount is $100,000. The vendor returns Form 587 certifying that $60,000 is for services performed in California and $40,000 is for work performed in another state. The amount of withholding would be:

$60,000	California source income
X 7%	Withholding rate
$ 4,200	

If the amount subject to withholding ($60,000 in the example above) is equal to or less than $1,500, then no withholding is required.

Method 2:
The withholding agent relies on the nature of the work to indicate where the services are performed. For example, a construction company building a shopping center is most likely performing services where the shopping center is located. We do not expect exactness in determining what portion, or ratio, of the services is performed in California. A good faith effort by the withholding agent to comply with the withholding rules will satisfy this requirement. Withholding agents may use other reasonable methods approved by us. For assistance in this area, call us at 916.845.4900.

48. How much reliance can be placed on allocations provided by payees on FTB Form 587, *Nonresident Withholding Allocation Worksheet*?

Withholding agents may rely on allocations provided by payees on a properly completed and signed Form 587. No additional verification efforts are needed. If the withholding agent has actual knowledge that the *Nonresident Income Allocation Worksheet* is incorrect, then they should not rely on it and should withhold at 7 percent. The withholding agent should not rely upon an incomplete, unsigned, or fraudulent worksheet.

49. How long should withholding agents keep Form 587 completed by a payee?

Retain the form for a minimum of five years.

50. When using an allocation based on time, what is the appropriate denominator for the ratio?

Compensation for personal services performed by nonresident independent contractors will normally be allocated to California based on working days in California to total working days in and out of California. The denominator is the total number of days actually worked on the particular job. The number of days covered by the vendor's contract can only be used when the vendor is:

- Hired for the exclusive use of the withholding agent for the entire contract period.
- Required to be available to work each day at the discretion of the withholding agent during the contract period.
- Paid whether or not they provide services.

Days spent acquiring knowledge, skills, or experiences necessary as a condition of employment are not considered work days (Marc Wilson v. Franchise Tax Board (1993) 20 Cal. App. 4th 1441). Professionals and others who bill by the hour allocate compensation based on the number of billable hours worked in California to the total number of billable hours related to the particular service.

51. When payments are made for goods and services, how may withholding agents determine the portion of the payment related to services?

We accept any reasonable method. One method is to use the same allocation of goods and services that is used for sales and use tax purposes in the sales contract. The portion of the payment not subject to sales or use tax would be considered payment for services and subject to withholding. If a payment is not subject to California sales or use tax, but is subject to another state's sales or use tax, withholding agents may use the allocation for the other state to determine the portion relating to services and subject to withholding. Generally, under sales and use tax laws, charges for labor or services for installation are not subject to sales or use tax. Payments for installation would be subject to withholding. Charges for designing, consulting, performing feasibility studies, evaluating bids, and providing training services are also considered service activities if they are separately stated and not part of the sale of tangible personal property. Payments for repairs would be subject to withholding except for parts that are separately stated on the invoice. Payments for mandatory maintenance contracts or warranties subject to sales tax are not subject to withholding. However, payments for optional maintenance contracts or warranties that are not subject to sales tax are subject to withholding. One exception is transportation charges. Even if the payment for transportation charges is not subject to sales or use tax, withholding is not required. In unique situations, withholding agents should call us at 916.845.4900.

Reduced Withholding and Waivers of Withholding

Reduced Withholding

52. Are requests for reduced withholding amounts allowed?

We may authorize a reduced withholding amount when the 7 percent withholding on the gross California source payment results in significant overwithholding. Beginning January 1, 2020, the total amount of expenses cannot exceed 50 percent of the gross California source payment.

53. May foreign partners receive a reduction in withholding?

Yes. A foreign (non-U.S.) partner or member may file Form 589 to reduce or eliminate a partner's withholding tax obligation.

54. Who initiates a request for reduced withholding?

The nonresident payee must complete Form 589, *Nonresident Reduced Withholding Request,* and submit it before receiving payment for services from the withholding agent. The payee must provide the gross California source payment, any expenses relevant to the services being performed, and calculate a proposed reduced withholding amount.

55. How is a reduced withholding amount approved?

Upon receipt of Form 589, we review the information on the form. We may request to review all relevant documentation including, but not limited to, expense documentation such as receipts and contracts.

56. When should the payee send Form 589, *Nonresident Reduced Withholding Request*?

The payee must complete and file Form 589 with FTB before receiving payment for services.

- If filing online, allow at least **10** business days for processing prior to payment.
- If filing by mail or fax, allow at least **21** business days for processing prior to payment.

Refer to Form 589 for detailed instructions.

57. How quickly will I get a response to the Form 589?

We generally respond within one week if the Form 589 is complete and signed. However, the processing time may vary if we ask for supporting documentation.

58. Are withholding agents required to honor the authorized reduced withholding amounts?

Yes. Withholding agents must honor authorized reduced amounts.

59. Does an S corporation or partnership need to request a reduction in withholding if they have no California source income?

No. If the distribution is a return of capital or does not represent California source income, withholding is not required and a reduction is not necessary.

60. Is withholding required if the withholding agent has not received FTB 3952, *Request for Reduced Withholding* – Approved, from FTB confirming a reduction in withholding before the nonresident is paid?

Yes. The withholding agent must withhold 7 percent of the gross California source payment if they did not receive FTB 3952 approving a reduction in withholding before the nonresident is paid for their services.

Waivers of Withholding

61. Are waivers of withholding granted?

We may authorize a waiver of withholding if the payee has California tax returns on file for the two most recent taxable years in which the payee has a

filing requirement **and** is considered current on any outstanding tax obligations. If the payee does not have a current filing history, but is making estimated tax payments for the current tax year and is current on any outstanding tax obligations, we may issue a waiver that is good for a two-year period ending on December 31 of the same calendar year. Waivers of the withholding requirements are available to domestic nonresident payees only. For more information about who qualifies for a waiver, refer to Form 588, *Nonresident Withholding Waiver Request.*

62. May foreign partners receive a waiver from withholding?

A foreign (non-U.S.) partner or member may file Form 589, to reduce or eliminate a partner's withholding tax obligation; however, a foreign (non-U.S.) partner or member may not request a withholding waiver.

63. Can a payee receive a waiver for their first payment of California source income?

Yes. Withholding is optional and at the discretion of the withholding agent on the first $1,500 in payments made during the calendar year. However, if the payment exceeds $1,500, the payee must meet one of the criteria on Form 588 to receive a waiver from withholding.

64. What are the procedures for requesting a waiver?

Nonresident payees or withholding agents should complete Form 588, and attach any pertinent facts to support the request. If sufficient information is not provided, we may request additional information or deny the request. Mail the completed Form 588 to:

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Or

Fax: 916.845.9512

65. What is the time frame for a response to a waiver request?

We generally respond within 21 business days. We will contact the requester if additional information is required.

66. Must a waiver be requested for each payment or distribution?

No. Waivers are generally granted for fixed periods with a maximum expiration date of two years.

67. Are withholding agents required to honor authorized waivers?

Yes. Withholding agents must honor authorized waivers.

68. Does an S corporation or partnership need to request a waiver from withholding if they have no California source income?

No. If the distribution is a return of capital or does not represent California source income, withholding is not required and a waiver is not necessary.

69. How does a nonresident qualify for a waiver?

The requirements to qualify for a waiver include, but are not limited to:

- Payee has California tax returns on file for the two most recent taxable years in which the payee has a filing requirement **and** is considered current on any outstanding tax obligations.
- Payee is making timely estimated tax payments for the current taxable year **and** is considered current on any outstanding tax obligations.

Refer to Form 588, *Nonresident Withholding Waiver Request*, for details.

70. What should a withholding agent do if they withheld 7 percent but have not remitted the amount to FTB and a waiver has been authorized?

The withholding agent must return any amounts withheld.

Nonwage, Independent Contractors, Rents and Royalties, Beneficiaries of Estates and Trusts

This portion provides guidance for those making payments to nonresident independent contractors, payments of rents or royalties to nonresidents, and distributions to nonresident beneficiaries of estates or trusts.

71. What is the difference between an independent contractor and an employee?

An independent contractor is engaged in a bona fide business that is separate and apart from the business paying them. A bona fide business is subject to profit and loss. An independent contractor is usually contracted to perform specific tasks and has the right to control the way the work is to be accomplished. An independent contractor has a substantial investment in the business and contracts to perform services with more than one business. An employee is subject to the wage withholding provisions administered by EDD. If the nonresident vendor is an independent contractor, withholding is sent to us. A particular withholding agent could have some payees who are employees and others who are independent contractors. Please contact EDD to learn more about the definition of an employee.

72. What are the withholding agent's responsibilities when making payments to subcontractors?

The withholding agent is required to withhold when making payments directly to nonresident subcontractors for services performed in California. To decide if withholding is required when payments to more than one contractor are made, the withholding agent should provide each contractor with:

- Form 587, *Nonresident Withholding Allocation Worksheet*
- Form 590, *Withholding Exemption Certificate*

If the withholding agent knows of only one contractor, use the information provided by the

contractor-of-record. If the contractor is a resident, no withholding is required. However, if the contractor-of-record is a nonresident, withholding is required. Withholding is not required on payments to general contractors who are California residents. However, general contractors must withhold on payments made to nonresident subcontractors for services performed in California.

73. When is withholding required on rent or lease payments made to nonresidents?

Withholding on rent or lease payments to nonresidents is required when all of the following criteria are met:

- Payments are made in the course of the lessee's business (tenants of residential property are not required to withhold on payments made directly to nonresident owners, but payments from property management companies are subject to withholding).
- Rented or leased property is located in California.
- Withholding is optional and at the discretion of the withholding agent on the first $1,500 in payments made during the calendar year. The withholding only applies when the rent or lease payers are renting or leasing property in the course of their business from a non-California owner.

Although withholding is not required on rent payments made by tenants directly to owners of residential property, income derived from real property as well as tangible personal property located in California is California source income and is subject to California tax. This includes rents, lease payments, and the gain on the sale of such property.

74. What types of rental or leased property are subject to withholding?

- Real property, such as land and buildings.
- Tangible personal property, such as machinery, equipment, vehicles, aircraft, etc.

75. Can a California property manager who collects rent or lease payments on behalf of a nonresident property owner deduct the property management fee from the payment before withholding the required 7 percent?

Yes. The property manager may deduct the management fees and then calculate the 7 percent withholding based on the amount to be sent to the property owner.

Example:
Property manager receives $4,000 per quarter from tenant and the property owner is a resident of Nevada. The property manager charges $250 per quarter to manage the property.

$4,000	California source income
− 250	Property management fee
$3,750	California income subject to withholding
X 7%	Withholding rate
$ 262	

If the amount subject to withholding is equal to or less than $1,500, then no withholding is required.

76. When is withholding required on royalty payments made to nonresidents?

California requires withholding agents to withhold on royalties paid for the right to use natural resources located in California, including, but not limited to, oil, gas, other minerals, geothermal, and timber. Withholding is also required on royalty or residual payments made to nonresidents for services originally performed in California.

77. Is withholding required on payments to nonresident directors of a corporation when board meetings are held in California?

No. R&TC Section 18662 was amended to eliminate withholding requirements on wages, salaries, fees, or other compensation paid by a corporation for services performed in California by nonresident corporate directors. This includes attendance at a board of directors meeting.

78. Are information returns required when a person makes payments to a nonresident corporate director?

Yes. An entity paying wages, salaries, fees, or other compensation to a nonresident director must file an information return with FTB and provide the payee with a payee statement. To meet this requirement, the paying entity must file IRS Form 1099-MISC and provide a copy of the form to the payee.

79. Is withholding required on payments made to nonresident seminar providers for seminars held In California?

Yes. Withholding is required on payments that are compensation for services performed in California by a nonresident.

80. Is withholding required on payments to expert witnesses who are nonresidents?

Yes. Withholding is required on payments that are compensation for services performed in California by a nonresident.

81. When is a trust considered a California trust?

For withholding purposes, a trust is considered a California trust if at least one trustee is a California resident. Withholding is not required on payments to California trusts.

82. When is an estate considered a California estate?

An estate is considered a California estate for withholding purposes when the decedent was a California resident on the date of death.

83. May the trustee of a trust allocate distributions between California and non-California source income based on past year's allocations for withholding purposes?

Yes. If the trustee does not know the amount of California source income included in a distribution, the trustee may use the previous year's ratio of California source income to total income to allocate the distribution.

84. Does California tax endorsement income of nonresident athletes and entertainers?

Yes. California taxes nonresidents on their income earnings in California, including endorsement income.

85. Is withholding required on endorsement income of nonresident athletes and entertainers?

Yes. Withholding is required on income earned in California by a nonresident. If an athlete or entertainer performs services on contract in California on behalf of a sponsor, the payments received on the contract are generally considered to be California source income. For example, where a contract requires an athlete to wear the sponsor's clothing bearing its logo, or use the sponsor's equipment, and the athlete appears at a California event, that athlete has performed a service on behalf of the sponsor at that California event.

86. What types of endorsement income are considered California source income?

California source income to nonresident athletes and entertainers at a California event may include, but are not limited to payments for:

- Wearing or using sponsor's product.
- Making promotional appearances.
- Participating in photo and filming days.
- Combinations thereof, in connection with the advertisement, promotion, and sale of products.

87. In situations where a nonresident athlete or entertainer is performing services within California as well as outside California, how does the withholding agent determine what portion of endorsement income is California source income?

The withholding agent should make a reasonable allocation of the payment based on the facts and circumstances of each contract. The following is an example of an accepted, reasonable method:

Example:
Golfer is a resident of Nevada, receives endorsement income under a contract that requires him to wear the sponsor's logo at tournaments, and plays in tournaments in both Nevada and California. In 2010, the golfer played in a total of 20 tournaments and earned $100,000 in endorsement income. Of those 20 tournaments, ten were in California. Golfer's California source income is $50,000 ($100,000 X 10/20):

$50,000	California source income
X 7%	Withholding rate
$ 3,500	

If the amount subject to withholding ($50,000 in the example above) is equal to or less than $1,500, no withholding is required. Refer to Question 47 for other examples of reasonable calculation methods.

88. Is withholding required if the compensation paid to nonresident athletes or entertainers is made to their California agents or promoters?

Yes. Withholding is required even if the agent or promoter meets one of the exemptions listed in FTB Pub. 1017, *Resident and Nonresident Withholding Guidelines*, PAGE 5, question 34. Since the athlete or entertainer performed the service, the athlete or entertainer is required to report their compensation for the performance and is solely entitled to the entire withholding credit.

Entertainment

This portion explains the requirements for those making payments to nonresident entertainers.

89. Is withholding required on previous payments made to a nonresident entertainer if the withholding agent reasonably believed that total payments to a nonresident entertainer for the year would not exceed $1,500, but later determines that the total payments will exceed $1,500?

No. Withholding is optional at the discretion of the withholding agent on the first $1,500 in payments made during the year. Withholding must begin as soon as the total payments of California source income for the calendar year exceed $1,500.

90. How much withholding is required on performance deposits or guarantees?

Regardless of performance deposits or guarantees, venues and promoters are responsible for withholding on the entire contract amount, including any bonuses, assuming total payments exceed $1,500 in a calendar year. For example, a venue signs a $10,000 contract with a performer for a performance scheduled for the upcoming year, plus a $1,000 bonus. The venue is required to place a $5,000 deposit in an escrow account held by the performer's agent. Calculation: The total contract amount was $10,000, plus a $1,000 bonus. The deposit was $5,000. The venue's or promoter's withholding liability is $770 (7 percent of $11,000).

91. Are withholding agents required to withhold tax when the nonresident entertainer's contract states that there shall be no withholding from compensation?

Yes. California law requires the withholding agent to withhold, and the withholding agent can be held liable for the withholding.

92. Is withholding required on payments made to nonresidents of California for sound and light services provided in California?

Yes. Withholding is required on payments made for sound and light services if payable to a nonresident.

93. What is the procedure if a withholding agent receives a letter from FTB instructing them to withhold when no payment is made to the nonresident entertainer because the performance was canceled?

The withholding agent should write *canceled* on the letter and return a copy to us with an explanation that withholding was not done because the performance was canceled and no payment was made. We may request additional information to validate the canceled performance.

Domestic Pass-Through Entities

This portion explains the withholding requirements for domestic (nonforeign) nonresident pass-through entities (PTEs).

94. What are PTEs?

PTEs include partnerships, LLCs, S corporations, estates, trusts, etc. A PTE may pass through income or losses to its partners, members, S corporation shareholders, or beneficiaries instead of paying the related tax at the entity level. Partners, members, S corporation shareholders, or beneficiaries must include the pass-through items on their tax returns.

95. May PTEs which are withheld upon claim the withholding on their own tax returns?

The answer depends on the type of PTEs as follows:

- **Partnerships** – Since partnerships have no tax liabilities except for the annual tax paid by limited partnerships, the withholding can only be claimed on Form 565, *Partnership Return of Income*, to the extent that the annual tax is still due at the time the tax return is filed. Partnerships may not receive a refund of withholding on Form 565. The withholding in excess of the tax due on Form 565 must be allocated to the partners. (Even if the partnership will owe tax with Form 565, the partnership can still choose to allocate the entire withholding to its partners instead of using a portion to offset the tax due.)
- **LLCs** – LLCs can either allocate the entire withholding credit to its members or use a portion of the credit to offset any LLC tax (including nonconsenting nonresident tax) or fees still due with Form 568, Limited Liability Company Return of Income, and allocate any excess to its members. LLCs may not receive a refund of withholding on Form 568.
- **Estates and Trusts** – Withholding on estates and trusts must follow the income. If the related income is not being distributed to the beneficiaries in the current year, the withholding credit must be claimed by the estate or trust on Form 541, California Fiduciary Income Tax Return. If the related income is being distributed in the current year, the withholding credit must be allocated to the beneficiaries and claimed by them.
- **S corporations** – Since S corporations are taxed at the entity level, S corporations can choose to allocate the withholding credit to their S corporation shareholders, claim the withholding on the S corporation tax return (not to exceed the amount of tax), or use a combination of both. If a PTE claims any of the amount withheld on its tax return, attach Form 592-B, Resident and Nonresident Withholding Tax Statement, or Form 593, Real Estate Withholding Statement, from the withholding entity to the front lower portion of the tax return and include a schedule in the body of the tax return explaining that the remainder of the credit (if any) was allocated. PTEs must also attach a note to Form 592, Resident and Nonresident Withholding Statement, specifying the amount that will be claimed on its tax return. S corporations may not receive a refund of withholding on Form 100S, California S Corporation Franchise or Income Tax Return.

96. How do PTEs that were withheld upon allocate or "flow through" the withholding credit?

The withholding must be allocated to all partners, members, S corporation shareholders, or beneficiaries, whether they are residents or nonresidents of California, in proportion to their ownership or beneficial interest. Refer to Form 592-PTE, *Pass-Through Entity Annual Withholding Return*, for detailed instructions.

97. Are there different due dates for Form 592-PTE, when PTEs that have been withheld upon must allocate the withholding credit?

No. Form 592-PTE is due annually on January 31 following the year of withholding. Payments are due each payment period with Form 592-Q. Question 121 contains the Payment Period Timeframe chart with specific due dates. The PTE must identify the income and withholding distribution for each partner on Form 592-PTE. If PTEs were withheld upon, then they should contact the withholding agent and request to receive the withholding information early so the PTEs can file their forms by the period due date. If the PTEs still do not get the information in time to file, then they should file as soon as they get the information. The PTEs should attach a letter to Form 592 stating the reason for filing late and documenting their attempts to get their withholding agents to furnish the information early.

98. When a PTE is withheld upon, how does it transfer its withholding credit to its payees?

When a PTE is withheld upon, it receives a withholding document (Form 592-B or similar form) from the withholding agent showing how much was withheld. To allocate the amount withheld to its payees, it must complete Form 592-PTE, showing each payee's share of the withholding. The tax withheld must be allocated to all payees, whether residents or nonresidents of California, based on the payee's interest in the PTE.

99. May a PTE that is withheld upon claim a refund for the tax withheld?

No. Refunds of withholding credits are not allowed for PTEs. Although PTEs may use the withholding to offset their outstanding tax liability, any excess withholding must be allocated to the payees. General partnerships must allocate the entire amount to its partners. A partnership has no tax liability, except for the minimum tax paid by a limited partnership. Form 565, *Partnership Return of Income*, is an information return. The income or loss reported on Form 565 flows through to the partners and is reported on their tax returns. The withholding must follow the income and flow through to the partners. The partners can claim the withholding credit against their individual tax liabilities.

100. Are LLCs required to withhold on nonresident members who have signed form FTB 3832, *Limited Liability Company Nonresident Member's Consent*?

Yes. The LLCs must withhold on nonresident members who have signed form FTB 3832.

101. Are LLCs required to withhold on nonresident members if the nonresident members have not signed form FTB 3832 and the LLCs are paying the nonconsenting nonresident tax for the nonconsenting members?

Yes. Payment of nonconsenting nonresident tax does not relieve LLCs of the requirement to withhold on nonresident members. However, LLCs who can show they pay the nonconsenting nonresident tax for all nonconsenting members may request a waiver of withholding on their nonconsenting members.

102. How are S corporations and partnerships notified of the withholding requirements?

We annually mail notices to S corporations and partnerships that are first-time filers. Additionally, we provide notice annually in the S corporation and partnership information return instructions. S corporations and partnerships that do not file California S corporation or partnership information returns when required to file are still considered to have received constructive notice of the withholding requirements. Constructive notification is considered to have been given on the due date of the S corporation and partnership information return (without regard to any extensions of time to file).

103. Is withholding required on distributions by "investment partnerships"?

No. According to R&TC Sections 17955 and 23040.1, income earned by partners in "investment partnerships" from the buying, selling, or holding of "qualified investment securities" is not derived from California sources. Therefore, this income is not subject to withholding. Income of nonresident partners, including banks or corporations, derived from qualified investment securities of investment partnerships is considered income from the partner's state of residence, except as noted in the next paragraph. Therefore, nonresident partners generally will not be taxed by California on this income. Partnerships should inform their nonresident partners if all or part of their distributive share of income is from qualified investment securities of an investment partnership. Nonresident partners are taxed by California on their distributive share of income from investment partnerships if:

- The qualified investment securities are interrelated with any other business activity of the nonresident partners that is separate and distinct from the investment activity and is conducted in California.
- The qualified investment securities are acquired with the working capital of a California trade or business in which the nonresident owns an interest. A bank or corporation is taxed on its distributive share of income if it participates in the management of the investment activities or is engaged in a unitary business with another taxpayer that participates in managing the investment activities or has income from California sources. An investment partnership is a partnership that meets the following two criteria:

1. No less than 90 percent of the cost of the partnership's assets consists of:
   - Qualifying investment securities.
   - Deposits at banks or other financial institutions.
   - Office equipment and office space reasonably necessary to carry on the activities of an investment partnership.
2. No less than 90 percent of the partnership's gross income is from interest, dividends, and gains from the sale or exchange of qualifying investment securities. Qualifying investment securities include:
   - Common and preferred corporate stock, as well as debt securities, convertible into common stock.
   - Bonds, debentures, and other debt instruments.
   - Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.
   - Mortgage or asset-backed securities secured by government agencies.
   - Repurchase agreements and loan participations.
   - Foreign currency exchange contracts.
   - Forward and futures contracts on foreign currencies.
   - Stock and bond index securities and futures contracts and other similar securities.
   - Regulated futures contracts.
   - Options to purchase or sell any of the preceding qualified investment securities, except regulated futures contracts. Qualifying investment securities do not include an interest in a partnership unless such partnership qualifies as an investment partnership.

104. How is current year income subject to withholding determined before the end of the year?

The partnership must make a good faith effort to estimate the total amount of California source income for the current year. Where it is impractical or impossible to estimate, use the amount of California source income recognized as of the date of the distribution.

105. Are guaranteed payments to partners subject to withholding?

Yes. If the guaranteed payments represent income from California sources and are not subject to wage withholding through EDD, the payments are subject to withholding.

106. Are distributions of property subject to withholding?

Yes. If the property distribution represents California source income, withholding is required and is based on the fair market value of the property being distributed.

107. Is withholding required on distributions to insurance companies?

No. Insurance companies pay a gross premium tax to the California Department of Insurance instead of California corporation income or franchise tax. Withholding only applies to income or franchise tax.

108. Is withholding required when a partnership makes distributions of California source income to domestic nonresident partners that are partnerships, publicly traded partnerships, or master limited partnerships?

Yes. Unless the partnership receives a waiver (Form 588, *Nonresident Withholding Waiver Request*), the partnership is required to withhold on all California source income distributions made to these domestic nonresident partners. Waivers are generally approved on distributions by publicly traded partnerships and on distributions to brokerage firms upon written request.

109. Is withholding required on distributions that have incurred losses every year?

No. The distributions would be a return of capital if the partnerships have incurred losses every year.

110. When are distributions considered a return of capital as opposed to income distributions?

Distributions are deemed first from distributable income and second as return of capital.

111. If net operating losses (NOLs) are generated in prior years, resulting in NOL carryovers for their S corporation shareholders or partners, is withholding required on current year distributions of California source income?

Yes. We require withholding on distributions of California source income even though NOLs are generated in prior years. NOL carryovers and deductions are determined at the S corporation shareholder or partner level, not at the S corporation or partnership level.

112. If a domestic nonresident S corporation or partnership shareholder or partner owns other entities, some generating income and others generating losses, may they net income and losses to determine if withholding is required?

No. An S corporation or partnership that distributes California source income is required to withhold even though the S corporation shareholder or partner has losses from other California S corporations and partnerships.

113. Is withholding required on distributions of prior year income if the S corporation shareholder or partner has already reported the income to California?

Withholding is not required on distributions of prior year California source income if the S corporation shareholder or partner provides the S corporation or partnership with a signed Form 590-P, *Nonresident Withholding Exemption Certificate for Previously Reported Income*, certifying that the S corporation shareholder or partner previously reported the income on the S corporation shareholder's or partner's California tax return. The S corporation or partnership may rely on this certification to waive the withholding obligation on that prior year income for that S corporation shareholder or partner.

Foreign (Non-U.S.) Partners

114. What income is subject to withholding?

A foreign (non-U.S.) partner's allocable share of California source income is subject to withholding. This is different than domestic nonresident partners where the income subject to withholding is limited to the amount of income being distributed.

115. When are partnerships with foreign (non-U.S.) partners required to withhold for California purposes?

California generally conforms to IRC Section 1446. R&TC Section 18666 requires partnerships to withhold on amounts subject to IRC Section 1446 withholding which represent California source income effectively connected to a California trade or business.

116. Is there a minimum amount of allocable California source income that must be reached before partnerships must withhold on foreign partners?

No. There is no minimum threshold. Partnerships must withhold on all allocable California source income.

117. What entities are subject to foreign partner withholding?

California conforms to the federal definition of foreign partners. Thus, foreign partners who are nonresident alien individuals, foreign corporations, foreign partnerships, foreign estates, or foreign trusts are subject to foreign partner withholding.

118. How can partnerships identify nonforeign partners?

Partnerships should withhold on partners with a foreign address under the foreign partner withholding requirements, unless the partner has documentation to show nonforeign status. Partnerships may rely on a partner's federal certification of nonforeign status. Refer to federal Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, for acceptable documentation. However, unless the partner is a California resident, the partnership would be required to withhold under the domestic nonresident partner withholding requirements.

119. May foreign partners receive a reduction in withholding?

In conformity with Treasury Regulation section 1.1446-6, a foreign (non-U.S.) partner or member may file a Form 589 to reduce or eliminate a partner's withholding of California tax

on Effectively Connected Taxable Income (ECTI) from California sources. Refer to Form 589 for more information.

Report and Remit Withholding Amounts/Due Dates

120. What forms do withholding agents use to report and remit withholding?

Use the following forms to report and remit withholding:

- Form 592, *Resident and Nonresident Withholding Statement*, to report the income and withholding amount for each domestic resident or nonresident payee.
- Form 592-V, *Payment Voucher for Resident and Nonresident Withholding*, to remit the withholding amount reported on Form 592.
- Form 592-PTE, *Pass-Through Entity Annual Withholding Return*, to report the income and withholding amount for Pass Through Entities domestic resident or non-resident payee(s).
- Form 592-Q, *Payment Voucher for Pass-Through Entity Withholding*, to remit withholding payments to FTB made during the year.
- Form 592-F, *Foreign Partner or Member Annual Return*, to report the total withholding for the taxable year and allocate the income or gain and related withholding to the foreign partners or members.
- Form 592-A, *Payment Voucher for Foreign Partner or Member Withholding,* to remit withholding payments to FTB made during the year, or to remit the balance due on partnership or LLC income or gain allocable under IRC Section 704 to foreign (non-U.S.) partners or members.
- Form 592-B, *Resident and Nonresident Withholding Tax Statement*, is provided to show the amount of income subject to withholding and tax withheld.

121. When are withholding amounts due for domestic (nonforeign) payees?

The withholding amounts due have specific payment due dates.

Form 592, Form 592-V, and the payment of tax withheld have specific payment due dates. Refer to the **Payment Timeframe** chart for specific due dates.

Form 592-PTE is an annual form due no later than January 31 following the year withholding was required. Form 592-Q has the same payment due dates as Form 592-V. Refer to the **Payment Timeframe** chart for specific due dates.

If any additional amounts are determined to be due at the year end, the additional amounts are required to be paid with the Supplemental Payment Voucher from 592-Q when filing Form 592-PTE.

Payment Timeframe	Due Date
January 1 through March 31	April 15
April 1 through May 31	June 15
June 1 through August 31	September 15
September 1 through December 31	January 15

If the due date falls on a Saturday, Sunday, or legal holiday, the due date will be the next business day. These due dates are the same as the due dates for individual estimated tax payments.

122. When are withholding payments due for foreign partners?

Withholding payments for foreign partners are due in four payments during the taxable year in which the California source income is derived and should be submitted with each Form 592-A. Payments with Form 592-A are due to the FTB on the 15th day of the 4th, 6th, 9th, and 12th month of the partnership's or LLC's taxable year. These due dates are the same as the federal due dates. If any additional amounts are determined to be due at the year end, the additional amounts are required to be paid with the Supplemental Payment Voucher from Form 592-A when filing Form 592-F.

Caution: If the partnership withholds on both domestic nonresident partners and foreign partners, a separate Form 592 and/or Form 592-PTE should be filed for the domestic partners since the two groups have different due dates.

123. Where should withholding agents remit the amounts withheld?

Remit payments with Forms 592-V, 592-A, or 592-Q

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

124. What method does the withholding agent use to report the information on Form 592, Form 592-F, or Form 592-PTE?

The information is reported using a completed copy of Form 592, Form 592-F, or Form 592-PTE, including the schedule of payees.

Withholding agents may develop withholding forms, making them suitable for computer preparation. However, substitute withholding forms must be in the same format and include all the same information as our forms. Withholding agents who wish to use substitute withholding forms must follow the procedures in FTB Publication 1098, *Guidelines for the Development and Use of Substitute, Scannable, and Reproduced Tax Forms*.

125. What methods may the withholding agent use to report to the payee the information on Form 592-B?

The information may be reported to the payee using the following:

- A copy of Form 592-B.
- A copy of an approved, substitute Form 592-B.
- Form 592-B information must be mailed to the payee by January 31 of the year following the reportable payments unless we have granted an extension to file.

126. Does IRS Form 1099 reporting program relieve a withholding agent from the California withholding requirements?

No. The IRS Form 1099 reporting is a federal program. It is separate from California's nonresident withholding program.

127. How can errors in withholding be resolved?

If tax is withheld in error, call us at 916.845.4900 for instruction. Generally, the withholding agent will be instructed to file an amended Form 592, *Form 592-F, or Form 592-PTE* correcting the erroneous withholding.

128. Are transcripts of payments made during the year available to withholding agents upon request?

Yes.

Mail your request to:

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Phone: 916.845.4900.

129. How do withholding agents report payee withholding information?

Withholding information is reported on Form 592, Form 592-F, or Form 592-PTE, and submitted to FTB. When the number of payees entered on Form 592, Form 592-F, or Form 592-PTE is 250 or more, this information must be filed electronically. Refer to FTB Publication 1023S, *Resident and Nonresident Withholding Electronic Submission Requirements*, for more information on the required file format and record layout.

130. How do withholding agents report withholding information to their payees?

Withholding agents must provide each payee who was withheld upon with a copy of Form 592-B.

131. May withholding agents use Schedule K-1 to report withholding?

No. Although withholding is included on Schedule K-1, the withholding must be reported using Form 592.

132. Can partnerships request an extension to file Form 592-F, for withholding on foreign partners?

Yes. We will grant an extension to file Forms 592-F for foreign partners if the partnership has received an extension from IRS to file IRS Form 8804, *Annual Return for Partnership Withholding Tax* (Section 1446). IRS approval or denial should be attached to Form 592-F when Form 592-F is filed.

Caution: If a partnership has both domestic nonresident and foreign partners, the extension is only effective for the filing of the forms for foreign partners. In addition, the extension only extends the due date for filing the forms. It does not extend the due date for any final payment of withholding.

133. If a partnership has received a federal extension to file the partnership information return (IRS Form 1065, U.S. *Partnership Return of Income*), does this extension also apply to the filing of Form 592-F?

No. Partnerships must have received an approval to extend the due date to file IRS Form 8804 (Section 1446), on IRS Form 2758, *Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns.*

134. What should the partnership do if the partnership's estimation of the allocable income for withholding results in an amount being over-withheld at year end based on the partnership's actual allocable income?

When the partnership files Form 592-F, it can either request that the excess credits be applied to the next year's withholding liability or be refunded.

Withholding Agent Liability and Penalties

135. Is interest assessed on late payments of withholding?

Yes. The law requires the assessment of interest on late payments of withholding. Interest is computed from the due date of the withholding payment to the date paid. The imposition of interest is not a penalty. It is compensation to the state for the loss of the use of funds.

136. What is the withholding agent's liability for failure to remit withholding?

We assess a liability for failure to remit withholding. Any person, including the withholding agent, who fails to remit or under remits withholding is liable for the greater of:

- The amount actually withheld, plus interest.
- The amount of taxes due from the nonresident, but not more than the amount required to be withheld, plus interest.

(R&TC Sections 18662 and 18668)

137. What is the penalty for failing to file complete, correct, and timely information returns (Form 592, Form 592-F, or Form 592-PTE)?

A penalty will be assessed for failure to file complete, correct, and timely information returns with the FTB. The penalty is calculated per payee:

- $40 if filed 1 to 30 days after the due date.
- $80 if filed 31 days to 6 months after the due date.
- $130 if filed more than 6 months after the due date.
- $330 or 10 percent of the amount required to be reported (whichever is greater) if the failure is due to intentional disregard of the requirement. (R&TC Section 19183 and IRC 6721)

For more information, go to **ftb.ca.gov/Forms** and search for **1150** to find FTB 1150, *Withhold at Source Liability and Penalty Information*. (R&TC Section 19183)

138. What is the penalty for failing to furnish correct and timely Forms 592-B, *Resident and Nonresident Withholding Tax Statement*, to payees?

For information returns filed between 01/01/2020 to 12/31/2023, the penalty is:

- Up to $270 per form.
- $250 or 10 percent of the amount required to be reported (whichever is greater) if the failure is due to intentional disregard of the requirement.

For information returns filed on or after 01/01/2024, the penalty amount is:

- Up to $130 per form.
- $330 or 10 percent of the amount required to be reported (whichever is greater) if the failure is due to intentional disregard of the requirement.

(R&TC Section 19183)

139. What is considered a correct Form 592-B?

All required information must be filled out completely and accurately on Form 592-B. (IRS Form 1099 is not acceptable.) Forms 592-B must be provided to the payees.

140. What is the liability when a withholding agent withheld more than the required amount of withholding but failed to remit the withholding?

If the withholding agent has not returned the excess withholding to the payee, the agent is liable for the amount actually withheld from the payee, plus interest and applicable penalties.

141. What penalties are imposed if the withholding agent used an estimate or computation method for determining the portion of the payments that represents California source income and that estimate or method later proved inaccurate?

Penalties are not imposed on withholding agents who make a good faith effort to comply with the law.

142. Are the policies and penalties related to domestic nonresident partner withholding applicable to foreign partner withholding?

All of the policies and penalties are the same except for the due dates for Forms 592-F.

143. Can penalties be withdrawn?

Yes. If the withholding agent shows that the failure to withhold was due to reasonable cause, the penalties may be withdrawn.

144. What is "reasonable cause"?

"Reasonable cause" is a standard exception to most penalties imposed under the R&TC and the IRC. Generally, reasonable cause exists where the failure to comply occurs despite the exercise of ordinary business care and prudence.

Requirement to File a California Tax Return

145. Does withholding on nonresidents relieve the nonresident of the requirement to file a California tax return?

No. Nonresident individuals or business entities must file a California tax return if they meet the filing requirements. If withholding is more than the actual tax liability, we will refund the overpayment. If withholding is less than the actual tax liability, additional tax will be due.

146. How can nonresidents determine if they have a requirement to file California income tax returns?

In most cases, all nonresidents who receive California source income will have a California filing requirement.

Call us for more information on the California filing requirements, as follows:

Phone:	800.852.5711 from within the United States
	916.845.6500 from outside the United States
California Relay Service:	800.822.6268 for persons with hearing or speech impairments

147. Does a waiver of withholding exempt a nonresident from the requirement to file a California tax return?

No. A nonresident must file a California tax return if the nonresident meets the filing requirements even if a waiver was granted or the nonresident was exempt from withholding.

Where to Get Forms and More Information

148. Where can I get more information about the withholding requirements?

Go to **ftb.ca.gov** to view, download, and print withholding forms, publications (including additional copies of FTB Publication 1017) and California tax forms.

To get withholding forms and publications, or to speak to a representative, call us at 888.792.4900 or 916.845.4900.

Our automated phone service allows you to access important information seven days a week, 24 hours a day. If the service does not completely answer your questions, you may choose to speak with a representative 8 a.m. to 5 p.m. weekdays, except state holidays.

149. Are there any publications similar to the federal publications related to foreign (non-U.S.) partners?

No. This is the only California publication with information about withholding on foreign partners.

However, California conforms to IRC Section 1446, and the following federal publications will provide information on the withholding requirements related to foreign partners:

- Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*
- Publication 519, *U.S. Tax Guide for Aliens*
- Publication 541, *Partnerships*

To obtain these or other IRS publications, go to irs.gov, or call 800.tax.form or 800.829.3676.

Rights as a Taxpayer

The California Taxpayers' Bill of Rights requires that we adequately protect the rights, privacy, and property of all California taxpayers during the process of assessing and collecting taxes. One of our goals is to make certain we protect your rights. We want you to have the highest confidence in the integrity, efficiency, and fairness of our state tax system. (Revenue and Taxation Code [R&TC] Sections 21001-21028)

FTB 4058C, *California Taxpayers' Bill of Rights*, *an Overview*, includes information about state taxpayers' rights. To get FTB 4058C, go to **ftb.ca.gov/Forms** and search for **4058C**, call: 800.338.0505 (enter form code **944** when instructed), or mail: Tax Forms Request MS D120, Franchise Tax Board, PO Box 307, Rancho Cordova CA 95741-0307.

Taxpayers' Rights Advocate Assistance and Review

You may contact the Taxpayers' Rights Advocate if you have an ongoing state income tax problem that you have been unable to resolve through normal channels. However, contacting the Taxpayers' Rights Advocate is not a protest or an appeal and does not extend the period of time for filing one.

You have the right to an independent departmental administrative review of specific collection actions that may be taken by FTB. An independent departmental administrative review will only determine if any taxpayer rights were violated during the process of collecting taxes. To request an administrative review of the filing or recording of a tax lien, the request must be made within 30 days of the date of the tax lien notice. Unless you received a jeopardy assessment, you have the right to request an administrative review before a levy (including, for example, a wage garnishment). The request must be made within 30 days of the date of the Final Notice Before Levy of your income or assets. You also have a right to an administrative review of a rejection of your request for an installment agreement, or a termination of an existing installment agreement. We generally may not levy your property during the 30-day period after rejection or termination and, if you file a request for administrative review within 30 days of the rejection or termination, during a review of that rejection or termination. (R&TC Sections 19008, 19225, and 21015.5)

You may contact Executive and Advocate Services for additional information or to submit your request for review.

To request an independent administrative review, call: 800.883.5910, fax: 916.843.6022, or mail: Executive and Advocate Services MS A381, PO Box 157, Rancho Cordova CA 95741-0157.

Additional Information

Withholding Information

Web

Go to **ftb.ca.gov** and search for **withholding requirements**, to download, view, and print California tax forms and publications.

MyFTB offers secure online tax account information and services. For more information and to register, go to **ftb.ca.gov** and log in to **MyFTB**.

Phone

888.792.4900 or 916.845.4900 (from outside the United States), Withholding Services and Compliance phone service.

Mail

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Express Mail/Overnight Delivery

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
SACRAMENTO CA 95827-1500

General Tax Information

For all other questions unrelated to withholding **refer to Connect With Us**.

Connect With Us/Conéctese Con Nosotros

Web:	**ftb.ca.gov**
Phone:	800.852.5711 weekdays, except state holidays/ de lunes a viernes, excepto días feriados 916.845.6500 from outside the United States/ fuera de los Estados Unidos
California Relay Service:	711 or 800.735.2929 for persons with hearing or speaking limitation/para personas con limitaciones auditivas o del habla
Fax:	916.845.9512

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