

2005 Real Estate Withholding Certificate

593-C

Part I Seller's Information

Return this form to your escrow company.

Name (including spouse, if jointly owned – see instructions – type or print) Seller Name		SSN, FEIN or CA Corporation no.
Address (number and street) 123 Any Street	Private Mailbox no.	Spouse's SSN (if jointly owned)
City Any City	State CA	ZIP Code 92614
Property address (if no street address, provide parcel number and county) 123 Any Street, Any City, CA 92614		Ownership percentage %

Note: If you do not furnish your tax ID number this certificate is void.

Read the following and check the appropriate boxes. (See line-by-line instructions.)

Part II – Certifications which fully exempt the sale from withholding:

YES NO

- Does the property qualify as the seller's (or decedent's, if being sold by the decedent's estate) principal residence within the meaning of Internal Revenue Code (IRC) Section 121? YES NO
- Did the seller (or decedent, if being sold by the decedent's estate) last use the property as the seller's (decedent's) principal residence within the meaning of IRC Section 121 without regard to the two-year time period? YES NO
- Will the seller have a loss or zero gain for California income tax purposes on this sale? (To check "YES", you must complete Form 593-L, Real Estate Withholding – Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16.) YES NO
- Is the property being compulsorily or involuntarily converted and does the seller intend to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC Section 1033? YES NO
- Will the transfer qualify for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest)? YES NO
- Is the seller a corporation (or an LLC classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State or has a permanent place of Business in California? YES NO
- Is the seller a partnership (or an LLC that is not a disregarded single member LLC and is classified as a partnership for federal and California income tax purposes) with recorded title to the property in the name of the partnership or LLC? (If yes, the partnership or LLC must withhold on nonresident partners or members as required.) YES NO
- Is the seller a tax-exempt entity under either California or federal law? YES NO
- Is the seller an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust? YES NO

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

Escrow Officer: See instructions for amounts to withhold.

- Will the transfer qualify as a simultaneous like-kind exchange within the meaning of the IRC Section 1031? YES NO
- Will the transfer qualify as a deferred like-kind exchange within the meaning of IRC Section 1031? YES NO
- Will the transfer of this property be an installment sale that you will report as such for California tax purposes and has the buyer agreed to withhold on each principal payment instead of withholding the full amount at the time of transfer? YES NO

Part IV – Seller's Signature

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent. I understand that completing this form does not exempt me from filing a California income or franchise tax return to report this sale.

Seller's Name and Title _____ Seller's Signature _____ Date _____
 Spouse's Name _____ Seller's Signature _____ Date _____

Seller: If you checked "YES" to any question in Part II, you are exempt from real estate withholding.
 If you checked "YES" to any question in Part III, you may qualify for a partial or complete withholding exemption.
 If you checked "NO" to all of the questions in Part II and Part III, the withholding will be 3 1/3 percent of the total sales price.
 If you are withheld upon, the withholding agent should give you two copies of Form 593-B, Real Estate Withholding Tax Statement. Attach one copy to the lower front of your California income tax return and keep the other copy for your records.

2005 California Forms 593-C, 593-L, and Instructions

Form 593-C, Real Estate Withholding Certificate and

Form 593-L, Real Estate Withholding – Computation of Estimated Gain or Loss

*Use this booklet for real estate sales or transfers closing in 2005
(For individual and non-individual sellers).*

What's New

Due to passage of AB 1338; Stats. 2004, CH. 04-528, effective January 1, 2005:

- The waiver process for a non-individual is replaced with a self-certification process. Non-individuals will now use Form 593-C instead of Form 593-W. Non-individuals may no longer request reduced withholding on small gains. They can self-certify on Form 593-C that they are exempt from withholding if they will have a loss on the sale, are doing an IRC Section 1031 exchange, or the property is being involuntarily converted and the seller intends to replace it to meet the requirements of IRC Section 1033.
- The exemption for the sale of a principal residence is expanded to include sellers who last used the property as their principal residence even though they do not meet the "two out of the last five years" requirement or one of the special circumstances.
- The exemption for the sale of a principal residence is also expanded to include sales by estates when the property was the decedent's principal residence.
- There is no longer an exemption for estates when the decedent was a California resident.
- There is no longer an exemption for irrevocable trusts that have a California resident trustee.
- Both individuals and non-individuals will use the 2005 Form 593-C/Form-L Booklet.

Purpose

When California real estate is sold, 3 1/3 percent of the total sales price must be withheld from the seller and sent to the California Franchise Tax Board (California Revenue and Taxation Code Section 18662).

Withholding of 3 1/3 percent is not required if: the total sales price is \$100,000 or less; the property is being foreclosed upon; the transferor is a bank acting as a trustee other than a trustee of a deed of trust; or the seller meets certain requirements.

If you are a seller:

- Use Form 593-C, Real Estate Withholding Certificate, to determine whether you qualify for a full or partial withholding exemption.
- Use Form 593-L, Real Estate Withholding – Computation of Estimated Gain or Loss, to determine if you will have a loss or zero gain on the sale.

Who Must Withhold?

Although the law requires the buyer to withhold, the buyer can request the escrow person to do the withholding. We use the term *withholding* agent throughout these instructions to refer to either the escrow person or the buyer, whoever is taking responsibility for withholding.

What is Real Estate Withholding?

Real estate withholding is:

- A prepayment of estimated income tax due from the gain on a sale of California real estate. If the amount withheld is more than the income tax liability, we will refund the difference when you file a tax return after the end of the year.
- Not an additional tax on the sale of real estate.

Why Do We Withhold?

We withhold to:

- Ensure payment of income tax owed on the taxable gain from the sale.
- Reduce the likelihood of penalties charged to the seller for underpayment of estimated tax.

Withholding Agent Instructions

- Unless the sale qualifies for an automatic exclusion (sales price is \$100,000 or less, the transferor is a bank acting as a trustee other than a trustee of a deed of trust or the property is being foreclosed upon), provide Forms 593-C and 593-L with instructions to each seller as soon as escrow opens. We update our forms and instructions annually, so please make certain you use the correct form. The year on the form should be the year that escrow will close.
- Instruct the seller to complete and sign Form 593-C, then return it to you by the close of escrow. Incomplete or improperly completed forms may not exempt the seller from withholding.
 - q If the seller checked "YES" to **any** item in **Part II**, the seller is exempt from withholding. You are relieved of the real estate withholding requirements if you rely in good faith on the completed and signed form, certifying an exemption from withholding.
 - q If the seller checked "YES" to **any** item in **Part III**, the seller may qualify for a partial or complete withholding exemption. Read the specific line instructions to determine the amount to withhold and any additional requirements.
 - q If the seller checked "NO" to **all** of the items in Part II and Part III, you **must** withhold 3 1/3 percent of the total sales price.
 - q If the seller does not return the completed Form 593-C by the close of escrow, you **must** withhold 3 1/3 percent of the total sales price.
- If you must withhold, complete Form 593-B, Real Estate Withholding Tax Statement, for each seller that was withheld upon. Give two copies of Form 593-B to the seller. We suggest that, after the close of the month, you attach one copy of all of the Forms 593-B completed during the month to Form 593, Real Estate Withholding Remittance Statement, and mail it to us with the total amount withheld for all transactions that closed during the month. However, you have the option to send in one payment and one Form 593 with the related Forms 593-B for each escrow instead of sending one total payment for all escrows that closed during the month. Regardless of whether you send one payment for the month or one payment for each escrow, Form 593 and 593-B, and the withholding payment are due to the Franchise Tax Board by the 20th day of the month following the month that escrow closed.
- **Do not** send Forms 593-C or 593-L to the Franchise Tax Board. You should retain Form 593-C for five years following the close of the transaction. You must furnish the form to the Franchise Tax Board upon request. Usually the seller will retain Form 593-L. However, if the seller gives your Form 593-L, you should also retain it for five years.

Contacting the Franchise Tax Board

TO ORDER CALIFORNIA TAX FORMS

By Internet: You can view, download, and print California income tax forms and publications from our Website at:

www.ftb.ca.gov

By automated phone service: Use this service to order California tax forms. Have a paper and pencil ready to take notes.

From within the United States (800) 338-0505

From outside the United States (not toll-free) (916) 845-6600

Follow the recorded instructions. This service is available 24 hours a day, seven days a week.

By mail: Please allow two weeks to receive your order. If you live outside California, please allow three weeks to receive your order. Write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

In person: Many libraries and post offices provide free California tax booklets during the filing season. Most libraries and some quick-print businesses have forms and schedules for you to photocopy (a nominal fee may apply). **Note:** Employees at libraries, post offices, and quick-print businesses cannot provide tax information or assistance.

CONTACT US WITH REAL ESTATE WITHHOLDING QUESTIONS

(888) 792-4900 or (916) 845-4900 (not toll-free)

Telephone assistance is available from 8 a.m. until 5 p.m. Monday through Friday. We may modify these hours without notice to meet operational needs.

TELEPHONE AND INTERNET ASSISTANCE

(For state income tax issues unrelated to real estate withholding)

From within the United States (800) 852-5711

From outside the United States (not toll-free) (916) 845-6500

Website at: **www.ftb.ca.gov**

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments, please call TTY/TDD (800) 822-6268.

ASISTENCIA TELEFONICA Y EN EL INTERNET

Dentro de los Estados Unidos, llame al (800) 852-5711

Fuera de los Estados Unidos, llame al (cargos aplican) (916) 845-6500

Sitio en el Internet: **www.ftb.ca.gov**

Asistencia para personas discapacitadas: Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos pueden llamar al TTY/TDD (800) 822-6268.

Instructions for Form 593-C

Withholding Exemption Certificate

What's New

Due to passage of AB 1338; Stats. 2004, Ch. 04-528, effective, January 1, 2005:

- The waiver process for a non-individual is replaced with a self-certification process. Non-individuals will now use Form 593-C instead of Form 593-W. Non-individual may no longer request reduced withholding on small gains. They can self-certify on Form 593-C that they are exempt from withholding if they will have a loss on the sale, are doing an IRC Section 1031 exchange, or the property is being involuntarily converted and the seller intends to replace it to meet the requirements of IRC Section 1033.
- The exemption for the sale of a principal residence is expanded to include sellers who last used the property as their principal residence even though they do not meet the "two out of the last five years" requirement or one of the special circumstances.
- The exemption for the sale of a principal residence is also expanded to include sales by estates when the property was the decedent's principal residence.
- There is no longer an exemption for estates when the decedent was a California resident.
- There is no longer an exemption for irrevocable trusts that have a California resident trustee.
- Both individuals and non-individuals will use the 2005 Form 593-C/Form 593-L Booklet.

Purpose

Use this form to determine if you meet any of the exemptions to withholding. For sales closing in 2005, this form is to be used for both individual and non-individual sellers.

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

Part I Seller's Information

Name, Address, and Taxpayer Identification Number

Enter the name, address, and tax identification number of the seller or other transferor. If the seller is an individual, enter the social security number (SSN). If the sellers are husband and wife and plan to file a joint return, enter the name and SSN for each spouse. Otherwise, do not enter information for more than one seller. Instead, complete a separate Form 593-C for each seller.

If the seller is a revocable trust, enter the grantor's individual name and SSN. For tax purposes, the revocable trust is transparent and the individual seller must report the sale and claim the withholding on their individual tax return.

If the seller is an irrevocable trust, enter the name of the trust and the trust's federal employer identification number (FEIN).

Do not enter trustee information

If the seller is a single member, disregarded LLC, enter the name and tax identification number of the single member.

Escrow Officer: If you choose to provide a copy of Form 593-C to the buyer, you may delete the seller's tax identification number on the buyer's copy.

Ownership Percentage

Enter your ownership percentage rounded to two decimal places (e.g. 66.67%). If you are on title for incidental purposes

and you have no financial ownership, enter 0.00 and skip to Part IV. You will not be withheld upon.

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

- Co-signors 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.

Part II Certifications That Fully Exempt Withholding

Line 1 – Principal Residence

To qualify as your principal residence under Internal Revenue Code (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, see FTB Pub. 1032, Tax Information for Military Personnel.

You can only have 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 loss of job, etc. For more information about what qualifies as your principal residence or exceptions to the two-year rule, get IRS Publication 523, *Selling Your Home*. You can get this publication by accessing the Internal Revenue Service's Website at www.irs.gov, or by calling the IRS at (800) 829-3676.

Note: If only a portion of the property qualifies as your principal residence, insert the percentage allocated to the principal residence in the space about line 1 and inform the escrow person.

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

Line 2 – Property last used as your principal residence

If the property was last used as the seller'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. 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-L, Real Estate**

Withholding — Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16 to certify that you have a loss or zero gain on this sale.

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:

- The California real property is transferred because it was (or threatened to be) seized, destroyed, or condemned within the meaning of IRC Section 1033, and

- The transferor (seller) 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 IRS Publication 544, *Assets and Other Dispositions of Assets*, for more information about involuntary conversions.

Line 5 – Non-recognition Under IRS Sections 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 if:

- It incorporated in California;
- It is qualified to transact business in California through the California Secretary of State; or
- It will maintain and staff a permanent office in California immediately after the sale.

Line 7 – Partnership or Limited Liability Company (LLC)

Withholding is not required if the recorded title to the property being transferred is in the name of a partnership. However, partnerships must withhold on nonresident partnership. (Get FTB Pub. 1017, *Nonresident Withholding Partnership Guidelines*, for more information.)

Withholding is not required if the recorded title to the property is in the name of an LLC that:

- Is not a single member LLC that is disregarded for federal and California income tax purposes; and
- Is classified as a partnership 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, *Nonresident Withholding Partnership Guidelines*, for more information.)

Note: If the LLC is a single member LLC that is disregarded for federal and California income tax purposes, then that single member is considered to be the seller and the one on title for withholding purposes. If the member is an individual, complete the form as that individual. If the member is a corporation, complete the form as that corporation. If the member is a partnership or LLC, complete the form as that partnership or LLC; etc.

Note: When completing Form 593-C as the single member of a disregarded LLC, indicate on the bottom of the form that the information on the form is for the single member of the LLC so that your escrow officer will understand why it is different from the recorded title holder.

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

Line 8 – Tax-Exempt Entity

Withholding is not required if the seller 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 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 Withholding

Complete Part III only if you did not meet any of the exemptions in Part II. If you met an exemption in Part II, skip to Part IV.

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 receives proceeds (boot) exceeding \$1,500 from the sale, the withholding agent must withhold on all proceeds.

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 receives proceeds (boot) exceeding \$1,500 from the sale, the withholding agent must withhold on all proceeds.

The intermediary or accommodator must withhold on all cash or cash equivalent (boot) it distributes to the seller if the amount exceeds \$1,500. If the exchange does not take place or if the exchange does not qualify for nonrecognition treatment, the intermediary or accommodator must withhold 3 1/3 percent of the total sales price.

Line 12 – Installment Sale

Withholding is required on the total sales price even if the sale is being completed as an installment sale. However, the buyer may agree to withhold on each principal payment instead of withholding the full amount at the time of sale. **The buyer must complete Form 593-I, Real Estate Withholding Installment Sale Agreement to defer any of the withholding.**

Form 593-I must be attached to Form 593-B, Real Estate Withholding Tax Statement, when the withholding on the down payment is sent to the Franchise Tax Board.

Note: If you do not wish to defer withholding, do not ask the buyer to complete Form 593-I.

Part IV Seller's Signature

You must sign this form and return it to your escrow officer by the close of escrow for it to be valid. Otherwise, the withholding agent must withhold the full 3 1/3 percent of the total sales price.

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