

CALIFORNIA ASSEMBLY BILL – AB 2962

Changes to California Real Estate Withholding Law for 2007

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

- A seller of California real estate may elect an alternative withholding amount by applying the maximum tax rate for individuals, corporations, and banks and financials on the gain of sale.
- If the seller makes this election, the seller certifies the alternative withholding amount in writing under penalty of perjury.
- Franchise Tax Board (FTB) will provide an electronic form on its website (www.ftb.ca.gov) to assist sellers in calculating the amount of gain and the alternative withholding amount.
- The escrow officer's notification to the buyer will include language regarding the alternative withholding amount.
- FTB forms for calculating and electing the alternative withholding amount will state that title and escrow persons are not authorized to provide legal or accounting advice for the purposes of determining the withholding amounts, and that competent tax professionals should be consulted.

| | Escrows Closing Prior to January 1, 2007 | Escrows Closing on or after January 1, 2007 |
|--------------------------------------|--|--|
| Seller Subject to Withholding | Sales by individuals and non-individuals must be withheld unless the seller meets one of the certifiable exemptions (a California street address is no longer a general reason for not withholding). | Current requirements apply. In addition, individuals and non-individuals may elect and certify an alternative withholding amount based on applying the applicable maximum tax rate to the gain on the sale of the property. |
| Rate | The withholding rate is 3 1/3% of the total sales price. | Withhold at 3 1/3% of the sale price or make an election to withhold on gain of sale as follows: 9.3% for individuals, 8.84% for corporations, 10.84% for banks and financial corporations, 1.5% for S Corporations and 3.5% for Financial S Corporations. |
| Forms | 593, 593-B, 593-C, 593-I, and 593-L | 593, 593-B, 593-C, 593-E, and 593-I |
| Threshold | Withholding is only required if the sales price exceeds \$100,000. | No change. |
| Small Gain | Withholding is required unless there is a loss on the sale for California income tax purposes. Sellers cannot request a waiver or a reduced rate based upon a small gain. | FTB will provide an electronic form on its website (www.ftb.ca.gov) to assist sellers in calculating the amount of gain and the alternative withholding amount. |
| Multiple Seller | Withholding according to the seller's interest in the property of the total sale price. | Withhold at 3 1/3% of the sale price or make an election to withhold on gain of sale as follows: 9.3% for individuals, 8.84% for corporations, 10.84% for banks and financial corporations, 1.5% for S Corporations and 3.5% for Financial S Corporations. |
| Exchange | Individuals and non-individuals can certify, under penalty of perjury, the transfer is part of an IRC Section 1031 exchange. | No change. |

The title insurance industry leader since 1847!



Chicago Title

www.ChicagoTitle.com