

Purpose

This publication provides guidance for those making payments to nonresident independent contractors, payments of rents or royalties to nonresidents and distributions to nonresident beneficiaries. The entities making these payments are referred to as withholding agents.

This publication does not cover withholding on:

- distributions made to nonresident partners;
- payments to nonresident sellers of California real estate;
- payments made to nonresident entertainers; or
- wages paid to employees.

For more information on partnership, real estate and entertainment withholding, please refer to Franchise Tax Board Publication 1017, Nonresident Withholding Partnership Guidelines; FTB Pub. 1016, Nonresident Withholding Real Estate Guidelines; and FTB Pub. 1024, Nonresident Withholding Entertainment Guidelines.

For information on employee wage withholding, contact the Employment Development Department.

This publication contains all the forms applicable to withholding on nonresident independent contractors and rent and royalties paid to nonresident entities. The forms in this publication are provided for you to use or photocopy.

Law

California Revenue and Taxation Code Section 18662 and the related regulations (18662-1 through 18662-14) require the withholding of California income or franchise taxes from payments made to nonresident independent contractors performing services in California. Withholding is also required on other payments of California source income to nonresident payees and on distributions of California source income to nonresident beneficiaries.

Revenue and Taxation Code Section 18668 makes the withholding agent liable for any tax required to be withheld.

Revenue and Taxation Code Section 17951 contains the provision requiring nonresidents to be taxed on all income from California sources. Payments made for personal services performed in California are California source income. 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 source of income from personal services is the location where the services are performed. Nonresidents must include in California gross income the gross payments for all services performed in California.

Overview

Withholding is required when making payments to nonresident independent contractors performing services in California and when making payments to nonresidents for California rents and royalties. Withholding is required when making distributions of California source income to nonresident beneficiaries.

We send a letter to new and existing California corporations to explain the general withholding requirements. The letter is titled *Withholding of Tax at Source Requirements - Independent Contractors* (FTB 4086) and its purpose is to help business entities understand the withholding requirements, set up procedures, resolve problems, and answer questions.

This letter should not be confused with *Orders to Withhold* or other collection letters. *Orders to Withhold* give specific instruc-

tions to withhold on a particular individual or business entity for unpaid taxes.

We also send a letter to California estates explaining general withholding requirements. We send this letter to estates that request an Estate Income Tax Certificate from the Franchise Tax Board and indicate on their request that distributions are made to nonresident beneficiaries. This letter is titled *Notice to Withhold* (FTB 2914).

There are samples of the *Withholding of Tax at Source Requirements - Independent Contractors* and the *Notice to Withhold* at the end of this booklet.

Frequently Asked Questions

General Withholding Requirements

1. When are withholding agents required to withhold?

Withholding agents are required to withhold from all payments or distributions of California source income made to a nonresident when the payments or distributions are greater than \$1,500 for the calendar year unless the withholding agent receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board. See responses to questions 45-50 regarding Waivers or Reduced Withholding Rates for more information.

2. What is the withholding rate?

The withholding rate is seven percent of:

- a. ~~Gross payments made to nonresident~~
 - independent contractors for services performed in California.
 - recipients of California rents or royalties.
- b. Distributions of California source income made to nonresident beneficiaries of estates or trusts.

3. Are there exceptions to withholding?

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

- a. The payee meets one of the exemptions on Form 590, Withholding Exemption Certificate. See responses to questions 31-44 regarding Withholding Exemptions for more information about Form 590.
- b. The total payments of California source income to the nonresident are equal to or less than \$1,500 for the calendar year. See responses to questions 12 and 13 regarding Payments of \$1,500 or Less for additional information.
- c. The payment is for goods.
- d. The services provided by the nonresident are not performed in California.
- e. The nonresident or the withholding agent receives written authorization from the Franchise Tax Board waiving the withholding.
- f. The payments are income from intangible personal property, such as interest and dividends, unless the property has acquired a business situs in this state. See Question 9 for additional information.
- g. The payments are compensation from a motor carrier providing transportation in two or more states, subject to section 11504(b) of Title 49 of the United States Code.
- h. The payments are wages paid to employees. For information on employee wage withholding, contact the Employment Development Department.