



UNDERSTANDING REAL ESTATE WITHHOLDING TAX IN CA

California has been withholding the prepayment of taxes for real estate transactions involving non-residents for many years. As of January 1, 2003, the withholding laws were amended to also apply to the dispositions of California real estate by both residents and non-residents.

The State regulations regarding withholdings on real property sales is a little different from the Federal withholding of foreigners under the FIRPTA guidelines. For the State, the law is written such that all real property being sold requires the payment of tax at the close of escrow in an amount equal to 3.33% of the Sales Price. An Alternative Calculated Amount can also be used. The amount is withheld by the Settlement Agent from the Seller's account at the closing of the transaction and sent to the Franchise Tax Board (FTB).

The withholding applies to all Sellers, whether they are U.S. citizens, permanent residents with green card, foreigners, individuals who live out-of-state, or individuals who live in the State.

WITHHOLDING AMOUNT

The standard Withholding Amount is 3.33% of the Sale Price. Sellers may request that the Settlement Agent send in a Withholding Amount for you (amount must be more than 3.33%, not less), even though it is not required by regulation. This amount will be considered a "prepayment" of your income tax return to be filed for the year.

EXEMPTIONS

There are many exemptions from withholding. The most common exemptions are as follows:

- If the sales price is \$100,000.00 or less, the exemption is automatic, no form needs to be completed
- The Seller has owned and used the property as his principal residence at least 2 out of the 5 year period right before the sale
- The Seller is a California corporation, limited liability company or partnership that is NOT a single member entity (the ownership is one sole individual) and which is registered to do business in California
- Sale of property for an amount that equals a taxable loss or zero gain
- Tax deferred exchanges

The exemptions, with the exception of the first one, are not automatic.

The Settlement Agent must provide Seller the 593 form to be reviewed, completed and signed. If the Seller can check any one of the boxes on Part III or IV, under penalty of perjury, then the transaction is exempt.

Contact us with any questions:

"The responsibility for the withholding requirement falls on the Buyer. However, the Franchise Tax Board realizes that the Buyer may not know what to do so they put the responsibility on the Settlement Agent to obtain the signatures on the correct withholding forms and send the amounts to the FTB as the "Remitter"."