

California's Nonwage Withholding

October 16th, 2013 Broadcast

Script

Slide #1:

Hello. Welcome to the Franchise Tax Board's California's Nonwage Withholding webinar. Today's presentation is scheduled to be an hour long, and includes a Q&A session. The audience can submit their questions in the question field located in the upper-right-hand side of the webinar control panel. We will do our best to answer everyone's questions within the allotted time. However, if we are unable to get to everyone's questions, we will follow-up and respond individually after the broadcast. So, without further ado, let's proceed with our presentation.

Slide #2:

Today, we will look at "What Is California Nonwage Withholding," and its various programs. We will also cover:

- How to compute nonresident withholding.
- How to complete Form 592, 592-V and 592-B.
- The consequences that result from a failure to withhold.
- How a payee can claim Nonresident and Backup Withholding credits.
- And our Withholding Voluntary Compliance Program.

Lastly, before our Q&A session, we will present available online resources and contact information.

Slide#3:

First, the Franchise Tax Board administers three different nonwage withholdings. They are:

- Nonresident Withholding.
- Backup Withholding.
- Real Estate Withholding, which will not be covered in today's presentation.

Slide #4:

So, what distinguishes FTB's nonwage withholdings from other withholdings?

FTB's nonwage withholding programs do **NOT** apply to:

- Wages paid to employees. This is handled by Employment Development Department, which is EDD.
- Payments for goods and materials.

- Payments for services performed outside of California, unless backup withholding applies.
- Sale of real estate located outside of California.

Slide #5:

Nonresident withholding is a prepayment of the income (or franchise) tax due from nonresidents on the payments or distributions of California-source income. It is similar to an estimated tax payment or wage withholding.

Slide #6:

California law, Revenue & Taxation Code Section 17951, requires nonresidents to be taxed on all income from California sources. This ensures that the nonresident will file a California nonresident return to claim their withholding credits.

Slide #7:

So, what is California source income? It is defined as income derived from:

- Services performed in California.
- Endorsement income from activities in California.
- Rents or royalties from assets located in California.
- Prizes and winnings from contests in California.
- Distributions from pass-through entities (partnerships, estates and trusts, S corps, etc.).
- Other income from California sources.

Slide #8:

Nonresident withholding requires withholding agents to withhold 7 percent from all payments or distributions of California source income made to nonresident payees, unless an exception applies. The first \$1,500 is optional per calendar year.

Slide #9:

So, who is considered a withholding agent? A withholding agent is any individual or entity that is responsible for payments or distributions of California-source income. FTB refers to withholding agents as “payers.” Withholding agents can be business owners, sports sponsors, and promoters, just to name a few.

For an audience member who may not be sure if s/he is a withholding agent and/or if withholding is required, the Franchise Tax Board has designed an online self-test. It takes only a couple minutes to complete and the results are immediate.

Slide #10:

Now, who is the Payee? We use the term payee to describe any individual or entity that receives California-source income from a withholding agent. Payees may be independent contractors, shareholders, and property owners, just to name a few.

Slide #11:

Withholding is NOT required if one of the following applies:

- Form 590, Withholding Exemption Certificate is completed and is on file prior to making payment to the nonresident payee.
- Form 588, Nonresident Withholding Waiver is completed and is approved by FTB prior to making payment to the nonresident payee.

For reduced withholding:

- Form 589, Nonresident Reduced Withholding is completed and is approved by FTB prior to making payment to the nonresident payee. For a faster approval process, Form 589 may also be submitted electronically.

Slide #12:

Now, let's look at backup withholding. There is Federal backup withholding if:

A payee submits a Form W-9 that:

- Does not provide a taxpayer identification number.
- Provides an invalid taxpayer identification number.
- Fails to certify exemption from backup withholding.

Slide #13:

For California Backup Withholding is required:

When there is a Federal requirement on income sourced to California. Some things to remember about back up withholding:

- It applies to California **residents** and **nonresidents**.
- California conforms to Federal with certain exceptions.
- No waivers or reductions are available for backup withholding.
- Withholding is not optional for the first \$1,500.
- The withholding rate is 7 percent.

Slide #14:

Now, let's take a look at three scenarios that are uniquely different and we will put our earlier discussions into perspective.

Slide #15:

For Scenario #1, we have:

- Go Alden St8 Property Management, Inc., which manages The Building located in California.
- The Building is owned by Elmo, a nonresident of California.
- Go Alden St8 Property Management Inc., collected \$10,000 from the tenant and charged a \$500 management fee.
- There is no waiver, reduction, or exemption authorized and on file.

Three questions must be asked for this scenario:

- Is nonresident withholding required?
- If yes, why?
- Who is responsible for the withholding?

To find out, let's take a look at our next slide.

Slide #16:

For Scenario #1, withholding is required because:

- The payment is to a nonresident for the rental property.
- The rental property is located in California.
- The payment is California source income.
- The payment is more than \$1,500.

Slide #17:

Therefore, this means:

- Go Alden St8 Property Management, Inc., is the withholding agent.
- Go Alden St8 Property Management, Inc., is responsible for withholding 7 percent of all California source payments to the nonresident property owner (Elmo).
- To compute the withholding amount, the property management company deducts the \$500 from the \$10,000 rent payment and multiplies that by 7 percent, which results in \$665. \$665 is the withholding amount.

Slide #18:

For Scenario #2, we have:

- Sharon who is a nonresident partner of Fratabo Partnership.
- Fratabo Partnership distributes \$25,000 to Sharon.
- Fratabo Partnership is located and doing business in California.
- There is no waiver, reduction, or exemption authorization for Sharon.

Three questions must be asked for this scenario:

- Is nonresident withholding required?
- If yes, why?
- Who is responsible for the withholding?

To find out, let's take a look at our next slide.

Slide #19:

For Scenario #2, withholding is required because:

- The distribution is to a nonresident partner.
- Fratabo Partnership is doing business in California.
- The payment is California source income.
- The payment is more than \$1,500.

Slide #20:

Therefore, this means:

- Fratabo Partnership is the withholding agent.
- Fratabo Partnership is responsible to withhold 7 percent of all California source payments distributed to the nonresident partner, Sharon.
- To compute the withholding amount, Fratabo Partnership takes the distribution amount of \$25,000 multiplies it by 7 percent and that results in \$1,750. \$1,750 is the withholding amount.

Slide #21:

For our final Scenario we have:

- Clera who owns the All Zportz Arena (venue) located in San Jose, California.
- Clera rented the All Zportz Arena to Lizzie, a boxing promoter.

- Lizzie hired John, a nonresident boxer, to perform at the All Zportz Arena and paid \$200,000 for the service.
- There is no waiver, reduction or exemption authorized.

Again, the three important questions are:

- Is nonresident withholding required?
- If yes, why?
- Who is responsible for the withholding?

Let's take a look at our next slide.

Slide #22:

For Scenario #3, again, withholding is required. The reasons are:

- The payment is to a nonresident to perform a service.
- The service is performed in California.
- The payment is California source income.
- The payment is more than \$1,500.

Slide #23:

In this scenario, Lizzie, the promoter, is the withholding agent, as she rented the venue from Clera.

Lizzie is required to withhold 7 percent of all California source payments to John, the nonresident boxer.

To compute the withholding amount, Lizzie takes the \$200,000 multiplies it by 7 percent which results in \$14,000. The withholding amount is \$14,000.

Slide #24:

So, here are things a withholding agent must know and/or do:

- Withhold the correct amount of withholding and send to Franchise Tax Board.
- Remit the withholding using the correct forms.
- Must remit the withholding by the due dates.

Slide #25:

Furthermore, the withholding agent:

- Must provide the nonresident payee with the Form 592-B to claim credit for the withholding on their California tax return.

- May be assessed a liability and/or penalties for failure to withhold or remit withholding.
 - There is no Statute of Limitations for assessing failure to withhold liabilities and penalties.

Slide #26:

It is important for the withholding agent to know the due dates to report and remit withholding payments to FTB. Let's say withholding occurred on May 1st, 2013, based on the chart shown, the due date to report and remit the payment to FTB is June 15th, 2013.

Slide #27:

There are consequences for failing to withhold or remit withholding. Withholding agents are subject to:

- 100% withholding liability.
- Interest on late payments.
- Penalty for failing to file complete, correct, and timely information returns (Information Return Penalty).
- Penalty for failing to furnish correct and timely Form(s) 592-B to payees.

Slide #28:

The 100% withholding liability applies when the withholding agent fails to withhold and/or fails to remit withholding. The withholding agent is liable for the greater of:

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

Also, interest is assessed on late withholding payments from the due date to the date paid.

Slide #29:

An Information Return Penalty is assessed when there is a failure to file complete, correct, and timely information returns. The penalty for filing late within 30 days is \$15 per payee. From 31 days to 6 months late, the penalty is \$30 per payee. More than 6 months, the penalty is \$50 per payee.

If there is an intentional disregard the penalty is \$100, or 10 percent of the amount required to be reported (whichever is greater).

Slide #30:

The penalty for failure to furnish a correct and timely form 592-B to a payee is:

- \$50 per payee statement.
- Again, if there is an intentional Disregard it is \$100, or 10 percent of the amount required to be reported (whichever is greater).

Slide #31:

The three forms used to report and remit nonresident and backup withholding are:

- Form 592, Resident and Nonresident Withholding Statement
 - This form is used to report withholding information to FTB.
- Form 592-V, Payment Voucher for Resident and Nonresident Withholding
 - This is a voucher used to remit the payment to FTB.
- Form 592-B, Resident and Nonresident Withholding Tax Statement
 - This is a year-end information statement provided to the payee.

Slide #32:

Now, let's do a walk through on how to complete the three forms that we just mentioned. We will use Scenario #3 from our earlier part of this presentation.

- Lizzie's Promoting Inc is the withholding agent.
- John Boxer is the nonresident payee.
- Total California source payment is \$200,000.
- Total withholding to remit and report is \$14,000.
- Withholding was done on May 1st, 2013.
- There is no waiver, reduction, or exemption authorization.

Slide #33:

This table shows the withholding calculation for scenario #3. The 7 percent of the gross \$200,000 is \$14,000. The nonresident withholding amount is \$14,000. The net payment to John Boxer is \$186,000.

Now, let's see how to complete the forms.

Slide #34:

For Form 592, the withholding agent must complete this form to report the withholding. It is important the correct tax year form is used and the correct due date is checked. Since the withholding was done on May 1st, 2013, the June 17, 2013 checkbox needs to be checked.

Part I, since Lizzie's Promoting Inc is the withholding agent. Lizzie's Promoting Inc. information is completed in this area.

Part II, check the correct type of income. Since John Boxer was a nonresident independent contractor, box A "payment to independent contractor" should be checked. Also, the total amount withheld should be reported on line 1, which is carried over from side 2. We will show that in our next slide.

Slide #35:

This is side 2 of the same Form 592. This page is the Schedule of Payees. This page can handle multiple payees; however, for our scenario, we only have one payee. So, John Boxer's information, total income, and the amount of tax withheld are completed by the withholding agent.

Slide #36:

Back to side 1 of Form 592. In Part III, the withholding agent must complete and sign the perjury statement. It is important the information in this area is legible and complete.

Slide #37:

After completing Form 592, the withholding agent must complete a 592-V. This is the voucher that will accompany the completed Form 592 and payment to FTB. Remember, the 592-V should be completed with the withholding agent's information, not the payee.

Slide #38:

For Form 592-B, the withholding agent needs to complete this form and send it to the payee.

Part I, Lizzie's Promoting Inc information goes in the Withholding Agent section.

Part II, John Boxer, the nonresident boxer, information goes in the Recipient section.

Part III, Box G is checked, since it is a payment to independent contractor.

Part IV, This is where you input the total income subject to withholding and the total amount withheld.

Slide #39:

So, what does the payee do with the completed 592-B from the withholding agent? The payee files the appropriate California tax return and attaches the 592-B to claim the withholding. John Boxer, is a nonresident of California so he would file a 540NR along with his 592-B to the Franchise Tax Board.

Slide #40:

Effective July 1st, 2013 FTB is offering a Withholding Voluntary Compliance Program. The WVCP is a voluntary program for eligible withholding agents to remit past-due, nonwage withholding for the previous two calendar years, plus interest.

If FTB approves the WVCP Application, it will waive withholding penalties for the requested and approved calendar years.

FTB cannot waive interest.

To apply for this program, FTB 4827, Withholding Voluntary Compliance Program Application needs to be completed and submitted to FTB.

Slide #41:

Under this program, all withholding agents are eligible, except if the withholding agent:

- Participated in the 2008 Nonresident Withholding Incentive Program.
- Has been audited by FTB for nonwage withholding.
- Has ever been assessed a withholding liability or information return penalty for nonwage withholding.

Slide #42:

The benefits that come with this program are:

- If the Applicant qualifies, the program offers the opportunity to become current on the withholding obligation.
- In exchange for the withholding agent voluntarily coming forward, we agree to:
 - Waive information return penalties for the required look-back periods.
 - Eliminate withholding audits prior to the look-back period.
 - Limit the unpaid withholding liability to the look-back period.

Slide #43:

For an example of the look back period, let's take a look at Sunny Productions. Sunny Productions is coming into the program on 6/1/2014. The look back period will be two full calendar years, 2012 and 2013, plus the quarter past due in 2014.

Slide #44:

We do have online resources available at your finger tips.

First, we have the Withholding Forms and Publications webpage. This webpage contains all the withholding forms and publications such as:

- Forms 592, 592-V, and 592-B.
- FTB 4827, Withholding Voluntary Compliance Program Application.

- Publication 1018, Small Business Withholding Tool, which is an excellent tool to have. It maps out the forms used in each phase of the withholding process.
- Publication 1017, Resident and Nonresident Withholding Guidelines.
- Publication 1023S, Resident and Nonresident Withholding Electronic Submission Requirements.

We have a YouTube video designed to clarify if you could be a withholding agent.

We have an interactive self test to see if you should withhold on payments made to others.

We have a webinar webpage that lists upcoming webinars and a library of past recorded events

Lastly, to stay informed you may sign-up for our subscription services. It is easy to sign-up.

Slide #45:

If you need assistance, there are additional resources available at the Franchise Tax Board's Withholding webpage. Just go to our homepage at www.ftb.ca.gov and type "nonresident withholding" in the search field; or, you can email us by going to our homepage and select "Contact Us" under "Contact Information." You may also call us at (916) 845-4900; or (888) 792-4900. Our telephone staff is available to take your calls Monday through Friday, from 8am to 5pm, Pacific Time.

Now, we will take your questions and do our best to answer as many of them as we can in the time allotted. Again, if we are unable to get to all of your questions, we will respond individually after the broadcast. . . So our first question is . . .

(Q&A SESSION)

This concludes our presentation. On behalf of the California Franchise Tax Board, thank you for viewing this webinar. We hope it was helpful to you.