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Nonresident Property Owner Withholding

find the article at: "<http://www.car.org/legal/legal-questions-answers/2009-qa/nonresident-owner-withholding/>"

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Beginning January 1, 2010, property managers will have to withhold 7% of all income, that exceeds \$1,500, on properties owned by nonresidents to be sent to the nonresident property owner, unless the owner qualifies for reduced or waived withholding.

This brief Legal Q&A and the FTB Summary Chart of the Withholding Process address the most basic questions. Additional guidance is available from the [FTB](#) and tax professionals. (For all the legal citations and FTB authority, see page 4 of [FTB Publication 1017 \(rev 06-09\)](#), [Resident and Nonresident Withholding Guidelines](#).)

Q 1. Who is a California nonresident property owner subject to withholding?

A Nonresident owners include the following:

- Individuals who reside outside of California,
- Corporations, Partnerships and LLCs who do not have a permanent place of business in California or who are not qualified by the Secretary of State to do business in California, or
- Estates and trusts who are nonresidents of California.

Q 2. Who is exempt from withholding?

A Those persons or entities exempt from withholding include the following:

- California residents,
- Corporations, Partnerships and LLCs qualified to business in California or who have a permanent place of business in California,
- Estates where the deceased was a California resident at the time of death,
- Nonresidents when the payments do not exceed \$1,500 in a calendar year,
- Tax exempt organizations,
- California nongrantor trusts,
- A nonresident owner who has received either a Waiver or Reduced Withholding Exemption from the FTB.

NOTE: One fairly simple method for nonresident owners to be exempt from withholding is for them to form a California Corporation, Partnership, or LLC, or to have their foreign (out-of-state) Corporation, Partnership, or LLC qualified to do business in California with the Secretary of State. Depending on the income generated by the rental property, the cost of forming and maintaining such an entity may be justified to avoid withholding.

Q 3. What are the steps in the withholding process?

A The property manager should take the following steps:

Step 1 - BEFORE MAKING A PAYMENT TO THE OWNER

Determine the following:

A. Is the owner eligible for a Withholding Exemption Certificate?

(FTB Form 590 - http://www.ftb.ca.gov/forms/2009/09_590.pdf 📄)

A California resident or a business with resident status can use Form 590 to certify exemption from withholding. No withholding is required with a withholding exemption certificate.

B. Is the owner eligible for Nonresident Withholding Waiver Request?

(FTB Form 588 - http://www.ftb.ca.gov/forms/2009/09_588.pdf 📄)

A nonresident property owner who qualifies can obtain a waiver generally based on prior tax filing history. No withholding is required with a waiver certificate.

C. Is the owner eligible for a Nonresident Reduced Withholding Waiver Request?

(FTB Form 589 - http://www.ftb.ca.gov/forms/2009/09_589.pdf 📄)

The nonresident property owner itemizes expenses and, if approved, the FTB provides the property manager a letter stating the reduced withholding amount.

Step 2 - AT THE TIME OF WITHHOLDING

A. Obtain the consent of the owner to pay the withholding out of the broker trust account, if required. This consent is included in the C.A.R. Property Management Addendum (PMAD). [The property manager can send a [sample letter](#) 📄 and attach C.A.R. form PMAD to obtain the owner's consent.]

B. Withhold 7% of the GROSS payments to the owner that exceed \$1,500. The property manager can deduct direct property management expenses (property management fee) from the payment before calculating the 7% withholding. If the owner wishes to reduce the withholding due to other property expenses they will need to submit FTB Form 589.

Step 3 – AFTER WITHHOLDING AND MAKING PAYMENT TO THE NONRESIDENT OWNER

A. After making the payment to the nonresident owner the property manager files the Quarterly Resident and Nonresident Withholding Statement.

(FTB Form 592 - http://www.ftb.ca.gov/forms/2009/09_592.pdf 📄)

This form is filed quarterly with the forwarding of the withheld amounts to the FTB.

B. By January 31 of the following calendar year, the property manager sends to the nonresident property owner a completed Resident and Nonresident Withholding Tax Statement

(**FTB Form 292-B** - http://www.ftb.ca.gov/forms/2009/09_592b.pdf)

The property owner then files a claim for the withholding when filing their California tax return.

Q 4. What can a property manager do if the nonresident property owner refuses to authorize the withholding?

A This issue was raised at the C.A.R. Property Management Committee meeting that included attendees from both the DRE and FTB. Basically the DRE and FTB are making property managers the enforcers by placing them right in the middle. The DRE says if the property manager withholds without the PMAD (or other authorization), the property manager is violating the trust fund laws and can lose his/her license. The FTB says if the property manager does not withhold, he/she is violating the tax laws and is subject to fines and penalties.

If the owner refuses to sign the C.A.R. form PMAD, or any other written authorization, the property manager has four options:

1. Deduct the withholding without the owner permission and risk violating the Real Estate Law;
2. Refuse to withhold without the owner's permission and risk violating the California Revenue and Tax Code;
3. Convince the owner to form a California corporation, partnership, or LLC, or to have their foreign (out-of-state) corporation, partnership, or LLC qualified to do business in California with the Secretary of State in order to be exempt from withholding;
4. Resign as property manager.

Q 5. Where can I obtain additional information?

A See below for the FTB Summary Chart for Nonresident Withholding and a [sample letter](#) to the nonresident property owner prepared by the Franchise Tax Board and the California Apartment Association.

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The information contained herein is believed accurate as of November 30, 2009. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

A SUMMARY OF FTB's NONRESIDENT WITHHOLDING PROCESS 8/20/09

The chart below briefly outlines the three phases of our withholding process. Please go the ftb.ca.gov and search for withholding for more forms, procedures, and FTB's Publication 1017, *Resident and Nonresident Withholding Guidelines*.

Phase	Forms to Use	Tasks
Before property manager makes payment to nonresident property owner	FTB Form 589, <i>Nonresident Reduced Withholding Request</i>	Property owner can use Form 589 to itemize expenses against the California source income. FTB provides property manager a letter stating the reduced withholding amount.
	FTB Form 588, <i>Nonresident Withholding Waiver Request</i>	Property owner who qualifies can use Form 588 to get a waiver from withholding based generally on California tax filing history. Property manager requests a copy of the waiver certificate to keep in records. No withholding required with a waiver certificate.
	FTB Form 590, <i>Withholding Exemption Certificate</i>	Property owner who is a California resident or a business with resident status can use Form 590 to certify exemption from withholding. No withholding required with a withholding exemption certificate.
At the time property manager makes payment to nonresident property owner	No FTB forms to use, but you will develop your own internal process for withholding	Property manager withholds 7 percent of all payments to nonresident property owner that exceed \$1,500 in a calendar year, unless owner qualifies for reduced or waived withholding.

		Property manager can also deduct direct property management expenses (such as property management fees) from payment before withholding.
After property manager makes payment to nonresident property owner	FTB Form 592, <i>Quarterly Resident and Nonresident Withholding Statement</i>	After making payment to nonresident property owner, property manager sends to FTB a timely, completed Form 592 including the amount withheld for the quarter. Form 592 contains a list of all property owners withheld upon during the quarter. FTB distributes the withholding to the property owners' accounts.
	FTB Form 592-B, <i>Resident and Nonresident Withholding Tax Statement</i>	By January 31 st following the end of the calendar year, property manager sends each property owner a completed 592-B and keeps a copy for records. Property owner claims the withholding by attaching a copy of the 592-B when filing the required California tax return. The 592-B is proof of California source income and withholding.

FOR A SAMPLE LETTER TO SEND TO THE NONRESIDENT OWNER, [click here](#) .
