

CALIFORNIA WITHHOLDING LAW

"NEW 3 1/3 WITHHOLDING BECOMES LAW"



Compliments of

Dispositions of California real estate interests that occur on or after January 1, 2003 will be subject to withholding. As part of the budget solutions proposed by members of the California Legislature, Assembly Bill 2065 (for the complete bill text, see the link at the bottom of this bulletin), requires all real estate transferees (buyers) to withhold 3 1/3% of the sales price of specified California real property. The amount withheld shall be held in trust for the State of California according to the law. The sales price is defined to mean the cash paid, plus the fair market value of property transferred plus any liability assumed. It does not subtract any expenses of the sale.

The law sets forth a notice to be supplied by the escrow agent to the transferee with the escrow agent handling various certifications and, if necessary, the withholding and transmittal of funds to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board.

The provisions in AB 2065 are patterned after Cal-FIRPTA (Foreign Investment in Real Property Tax Act) which became effective in 1988, which was in turn patterned after the federal law first adopted in 1980. Cal-FIRPTA currently relates only to withholding of real estate proceeds of foreign, non-resident aliens. The law amends CAL-FIRPTA to set up withholding requirements relating to three classes of transferors:

- a) Individuals;
- b) Persons (but not certain partnerships, or an individual or a corporation) where the funds are to be distributed to a transferor outside the state or to the financial intermediary of the transferor;
- c) The seller is a corporation with no permanent place of business in California immediately after the sale.

Under the new law, 3 1/3 of the sales price is required to be withheld unless:

1. The property sales price is less than \$100,000; or
2. The property is the principal residence of an individual transferor based on a written certification signed under penalty of perjury; or
3. The property is transferred to a corporate beneficiary by a foreclosure or a deed in lieu; or
4. The property transferred by an individual and will be replaced in a **like-kind exchange**, based on a written certification by the transferor or signed under penalty of perjury; or
5. The property is transferred by an individual as an involuntary conversion and the transferor certifies an intent to acquire replacement property eligible for deferral under Section 1033 of the Internal Revenue Code.
6. The transferor is an individual who certifies under penalty of perjury that the transaction will result in a loss for CA income tax purposes.
7. The transferor is a corporation unless immediately after the transfer, the corporation has no permanent place of business in California.

An escrow agent would:

- a) Provide written notification of the withholding requirements to the parties;
- b) Provide certification forms for the exemptions contained in the bill;
- c) Provide instructions to be signed by the parties authorizing the withholding and remitting of the amount to the Franchise Tax Board along with any charge imposed for withholding and remitting, not to exceed \$45.

There are additional provisions to be aware of covered on the CLTA web site: www.clta.org.

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