2008 California Forms 593-C, 593-E, and Instructions

FRANCHISE TAX BOARD

Form 593-C, Real Estate Withholding Certificate
and
Form 593-E, Real Estate Withholding — Computation of Estimated Gain or Loss

Use this booklet for real estate sales or transfers closing in 2008.
(For individual and non-individual sellers)

What's New

The Franchise Tax Board (FTB) has modified the real estate withholding forms to make them easier for our customers. For transactions occurring on or after January 1, 2008 that require withholding, the Real Estate Escrow Person (REEP) will no longer be required to complete and submit both a Form 593, Real Estate Withholding Remittance Statement, and a 593-B, Real Estate Withholding Tax Statement, to the FTB. The Form 593-B is being renumbered to Form 593, and the previous Form 593, Real Estate Withholding Remittance Statement, is being eliminated. Beginning in 2008, the REEP need only complete the new streamlined Form 593 (formerly 593-B) for each escrow. In addition, we have made minor changes to the other real estate withholding forms in an effort to streamline their appearance and make them easier to use.

Registered Domestic Partners (RDP) – Effective for taxable years beginning on or after January 1, 2007, RDPs under California law must file their California income tax returns using either the married/RDP filing jointly or married/RDP filing separately filing status. RDPs will have the same legal benefits, protections, and responsibilities as married couples unless otherwise specified.

If you entered into in a same sex legal union in another state, other than a marriage, and that union has been determined to be substantially equivalent to a California registered domestic partnership, effective for taxable years beginning on or after January 1, 2007, you are required to file a California income tax return using either the married/RDP filing jointly or married/RDP filing separately filing status. For more information on what states have legal unions that are considered substantially equivalent, go to our Website at **www.ftb.ca.gov** and search for **RDP**.

For purposes of California income tax, references to a spouse, a husband, or a wife also refer to a California Registered Domestic Partner (RDP), unless otherwise specified. When we use the initials (RDP) they refer to both a California Registered Domestic "Partner" and a California Registered Domestic "Partnership", as applicable. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

Purpose

Withholding is required when California real estate is sold or transferred. The amount withheld from the seller or transferor is sent to the FTB as required by California Revenue and Taxation Code Section 18662.

Withholding is **not** required if any of the following apply:

- The total sales price is $100,000 or less.
- The property is being foreclosed upon (sold pursuant to a power of sale under a mortgage or deed of trust, sold pursuant to a decree of foreclosure, or by a deed in lieu of foreclosure).
- The transferor is a bank acting as a trustee other than a trustee of a deed of trust.
- The seller certifies to an exemption.

If you are a seller:

- Use Form 593-C, Real Estate Withholding Certificate, to determine whether you qualify for a full or partial withholding exemption. Keep this form for five years.
- Use Form 593-E, Real Estate Withholding — Computation of Estimated Gain or Loss, to determine your gain or loss on the sale and to calculate the optional gain on sale withholding amount. Keep this form for five years.

What is Real Estate Withholding?

Real estate withholding is:

- A prepayment of estimated income tax due from the gain on a sale of California real estate. If the amount withheld is more than the income tax liability, we will refund the difference when you file a tax return after the end of the taxable year.
- Not an additional tax on the sale of real estate. It is your obligation to file a California tax return, pay any tax due, and claim any real estate withholding payment on your California tax return.

Who Must Withhold?

Although the law requires the buyer to withhold, the buyer can request the REEP to do the withholding. We use the term REEP throughout this publication to refer either to the REEP or the buyer, whoever is taking responsibility for withholding.

Why Do We Withhold?

We withhold to:

- Ensure payment of income tax owed on the taxable gain from the sale.
- Reduce the likelihood of penalties charged to the seller for underpayment of estimated tax.

Withholding Agent Instructions

- Unless the sale qualifies for an automatic exclusion (the sales price is $100,000 or less, the transferor is a bank acting as a trustee other than a trustee of a deed of trust, or the property is being foreclosed upon), provide Forms 593, 593-C, and 593-E with instructions to each seller as soon as escrow opens. We update our forms and instructions annually; therefore make certain you use the correct form. The year on the form should be the year that escrow will close.
- Instruct the seller to complete and sign Form 593-C and return it to you by the close of escrow. Incomplete or improperly completed forms may not exempt the seller from withholding. You cannot submit Form 593-C after the close of escrow.
  - ☐ If the seller checked YES to any item in Part II, the seller is exempt from withholding. You are relieved of the real estate withholding requirements if, based on all the information that you have knowledge of, you certify an exemption from withholding.
  - ☐ If the seller checked YES to any item in Part III, the seller may qualify for a partial or complete withholding exemption. Read the specific line instructions to determine the amount to withhold and any additional requirements.
  - ☐ If the seller checked NO to all of the items in Part II and Part III, you are required to withhold 3 1/3% of the total sales price or the optional gain on sale withholding amount from line 5 of the certified Form 593.
  - ☐ If the seller does not return the completed Form 593 and Form 593-C by the close of escrow, you are required to withhold 3 1/3% of the total sales price.
- If you are required to withhold, complete Form 593, Real Estate Withholding Tax Statement, for each seller that was withheld upon. Give one copy of Form 593 to the seller. We suggest that, after the close of the month, you mail one copy of all of the Forms 593 completed during the month to us with the total amount withheld for all transactions that closed during the month. However, you have the option to send in one payment and the related Form 593 for each escrow. Regardless of whether you send one payment for the month or one payment for each escrow, Forms 593 and the withholding payment are due to the FTB by the 20th day of the month following the month you closed escrow.
- Do not send Form 593-C to the FTB. You should keep Form 593-C for five years following the close of the transaction. You must furnish the form to the FTB upon request.

Contacting the Franchise Tax Board

TO ORDER CALIFORNIA TAX FORMS

By Internet: You can download, view, and print California income tax forms and publications from our Website at **www.ftb.ca.gov**.

By automated phone service: Use this service to order California tax forms. Have a paper and pencil ready to take notes.

From within the United States . . . . (800) 338-0505
From outside the United States (not toll-free) . . . . (916) 845-6600

Follow the recorded instructions. This service is available 24 hours a day, 7 days a week, except 10:00 p.m. Sunday to 5:00 a.m. Monday.

By mail: Allow two weeks to receive your order. If you live outside California, allow three weeks to receive your order. Write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

In person: Many libraries and post offices provide free California tax booklets during the filing season. Most libraries have forms and schedules for you to photocopy (a nominal fee may apply).

Employees at libraries and post offices cannot provide tax information or assistance.

CONTACT US WITH REAL ESTATE WITHHOLDING QUESTIONS

(888) 792-4900 or (916) 845-4900 (not toll-free)

Telephone assistance is available from 8 a.m. until 5 p.m., Monday through Friday.

TELEPHONE AND INTERNET ASSISTANCE
(For state income tax issues unrelated to real estate withholding)

From within the United States . . . . (800) 852-5711
From outside the United States (not toll-free) . . . . (916) 845-6500

Website at **www.ftb.ca.gov**

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments, please call TTY/TDD (800) 822-6268.

ASISTENCIA TELEFONICA Y EN EL INTERNET

Dentro de los Estados Unidos, llame al …………………….. (800) 852-5711
Fuera de los Estados Unidos, llame al (cargos aplican) ….. (916) 845-6500

Sitio en el Internet **www.ftb.ca.gov**

Asistencia para personas discapacitadas: Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos o dificultad con el habla pueden llamar a TTY/TDD (800) 822-6268.

YEAR **2008**

Real Estate Withholding Certificate

CALIFORNIA FORM **593-C**

Part I – Seller's Information **Return this form to your escrow company.**

Name (including spouse/RDP, if jointly owned - see instructions - type or print)	☐ SSN or ITIN ☐ FEIN ☐ CA Corp no.
Address (including suite, room, PO Box, or PMB no.)	Spouse's/RDP's SSN or ITIN (if jointly owned)
City / State / ZIP Code	Ownership Percentage . %
Property address (if no street address, provide parcel number and county)	

Read the following and check the appropriate boxes. (See line-by-line notes in the instructions).

Part II – Certifications which fully exempt the sale from withholding: YES NO

1. Does the property qualify as the seller's (or decedent's, if being sold by the decedent's estate) **principal residence** within the meaning of Internal Revenue Code (IRC) Section 121? ☐ ☐
2. Did the seller (or decedent, if being sold by the decedent's estate) last use the property as the seller's (decedent's) principal residence within the meaning of IRC Section 121 without regard to the two-year time period? ☐ ☐
3. Will the seller have a loss or zero gain for California income tax purposes on this sale? (To check YES, you must complete Form 593-E, Real Estate Withholding — Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16). ☐ ☐
4. Is the property being compulsorily or involuntarily converted and does the seller intend to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC Section 1033? ☐ ☐
5. Will the transfer qualify for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest)? ☐ ☐
6. Is the seller a corporation (or an LLC classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State or has a permanent place of business in California? ☐ ☐
7. Is the seller a partnership (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a disregarded single member LLC) with recorded title to the property in the name of the partnership or LLC? (If yes, the partnership or LLC must withhold on nonresident partners or members as required). ☐ ☐
8. Is the seller a tax-exempt entity under either California or federal law? ☐ ☐
9. Is the seller an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust? ☐ ☐

Part III – Certifications that may partially or fully exempt the sale from withholding:

Real Estate Escrow Person: See instructions for amounts to withhold.

10. Will the transfer qualify as a simultaneous like-kind exchange within the meaning of IRC Section 1031? ☐ ☐
11. Will the transfer qualify as a deferred like-kind exchange within the meaning of IRC Section 1031? ☐ ☐
12. Will the transfer of this property be an installment sale that you will report as such for California tax purposes **and** has the buyer agreed to withhold on each principal payment instead of withholding the full amount at the time of transfer? ☐ ☐

Part IV – Seller's Signature

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent. I understand that the Franchise Tax Board may review relevant escrow documents to ensure withholding compliance and that completing this form does **not** exempt me from filing a California income or franchise tax return to report this sale.

Seller's Name and Title ______________ Seller's Signature ______________ Date ________

Spouse's/RDP's Name ______________ Spouse's/RDP's Signature ______________ Date ________

Please verify that the SSN or ITIN listed above in Part I of this form is correct.

Seller: If you checked **YES** to **any** question in Part II, you are exempt from real estate withholding.

If you checked **YES** to **any** question in Part III, you may qualify for a partial or complete withholding exemption.

If you checked **NO** to **all** of the questions in Part II and Part III, the withholding will be 3 1/3% (.0333) of the total sales price or the optional gain on sale withholding amount certified by seller on Form 593.

If you are withheld upon, the withholding agent should give you one copy of Form 593, Real Estate Withholding Tax Statement. Attach a copy to the lower front of your California income tax return and make a copy for your records.

You should keep Form 593-C for five years following the close of the transaction. You must furnish the form to the FTB upon request.

Instructions for Form 593-C

Real Estate Withholding Certificate

Purpose

Use this form to determine whether you qualify for a full or partial withholding exemption.

Qualifying for an exemption from withholding or being withheld upon does not relieve you of your obligation to file a California tax return and pay any tax due on the sale of California real estate.

This form must be submitted before the close of escrow to prevent withholding on the transaction. After escrow has closed, amounts withheld may be recovered only by claiming the withholding as a credit on the appropriate year's tax return.

Part I Seller's Information

Name, Address, and Taxpayer Identification Number
Enter the name, address, and tax identification number of the seller or other transferor. If the seller does not provide a tax identification number, then Form 593-C is void, and withholding is required.

If the seller is an **individual**, enter the social security number (SSN) or individual taxpayer identification number (ITIN). If the sellers are spouses/registered domestic partners (RDPs) and plan to file a joint return, enter the name and SSN or ITIN for each spouse/RDP. Otherwise, do not enter information for more than one seller. Instead, complete a separate Form 593-C for each seller.

If you do not have a SSN because you are a nonresident or a resident alien for federal tax purposes, and the IRS issued you an ITIN, enter the ITIN in the space provided for the SSN.

An ITIN is a tax processing number issued by the IRS to individuals who have a federal tax filing requirement and do not qualify for a SSN. It is a nine-digit number that always starts with the number 9.

If the seller is a **grantor trust**, enter the grantor's individual name and SSN. For tax purposes, the grantor trust is disregarded for tax purposes and the individual seller must report the sale and claim the withholding on their individual tax return. If the trust was a grantor trust that became irrevocable upon the grantor's death, enter the name of the trust and the trust's federal employer identification number (FEIN). **Do not enter the decedent's or trustee's name or SSN.**

If the seller is a **non-grantor trust**, enter the name of the trust and the trust's federal employer identification number (FEIN). **Do not enter trustee information.**

If the seller is a **single member disregarded LLC**, enter the name and tax identification number of the single member.

Real Estate Escrow Person: If you choose to provide a copy of Form 593-C to the buyer, delete the seller's tax identification number on the buyer's copy.

Ownership Percentage
Enter your ownership percentage rounded to two decimal places (e.g. 66.67%). If you are on the title for incidental purposes and you have no financial ownership, enter 0.00 and skip to Part IV. You will not be withheld upon.

Examples of sellers who are on title for incidental purposes are:

- Co-signors on title (e.g., parents co-signed to help their child qualify for the loan).
- Family members on title to receive property upon the owner's death.

Part II Certifications That Fully Exempt Withholding

Line 1 – Principal Residence
To qualify as your principal residence under Internal Revenue Code (IRC) Section 121, you (or the decedent) generally must have owned and lived in the property as your main home for at least two years during the five-year period ending on the date of sale. Military and Foreign Service, get FTB Pub. 1032, Tax Information for Military Personnel.

You can have only one main home at a time. If you have two homes and live in both of them, the main home is the one you lived in most of the time.

There are exceptions to the two-year rule if the primary reason you are selling the home is for a change in the place of employment, health, or unforeseen circumstances such as death, divorce or termination of registered domestic partnership, or loss of job, etc. For more information about what qualifies as your principal residence or exceptions to the two-year rule, get federal Publication 523, Selling Your Home. You can get this publication by accessing the Internal Revenue Service's Website at **www.irs.gov**, or by calling the IRS at (800) 829-3676.

If only a portion of the property qualifies as your principal residence, insert the percentage allocated to the principal residence in the space above line 1 and inform the REEP.

The allocation method should be the same as the seller used to determine depreciation.

Line 2 – Property last used as your principal residence
If the property was last used as the seller's or decedent's principal residence within the meaning of IRC Section 121 without regard to the two-year time period, no withholding is required. If the last use of the property was as a vacation home, second home, or rental, you do not qualify. You must have lived in the property as your main home. If you have two homes and live in both of them, the main home is the one you lived in most of the time.

Line 3 – Loss or Zero Gain
You have a loss or zero gain for California income tax purposes when the amount realized is less than or equal to your adjusted basis. **You must complete Form 593-E, Real Estate Withholding — Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16 to certify that you have a loss or zero gain on this sale.**

You may not certify that you have a net loss or zero gain just because you do not receive any proceeds from the sale or because you feel you are selling the property for less than what it is worth.

Line 4 – Involuntary Conversion
The property is being involuntarily or compulsorily converted when both of the following apply:

- The California real property is transferred because it was (or threatened to be) seized, destroyed, or condemned within the meaning of IRC Section 1033.
- The transferor (seller) intends to acquire property that is similar or related in service or use in order to be eligible for nonrecognition of gain for California income tax purposes.

Get federal Publication 544, Sales and Other Dispositions of Assets, for more information about involuntary conversions.

Line 5 – Non-recognition Under IRC Section 351 or 721
The transfer must qualify for nonrecognition treatment under IRC Section 351 (transferring to a corporation controlled by transferor) or IRC Section 721 (contributing to a partnership in exchange for a partnership interest).

Real Estate Escrow Person: If, during the escrow, an individual seller transfers title to a corporation or partnership and then the corporation or partnership transfers title to the buyer, then there are two transfers for withholding purposes. Accordingly, two separate Forms 593-C should be completed for withholding purposes. The individual must complete one form for the transfer to the corporation or partnership. The corporation or partnership must complete the other form for the transfer to the buyer.

Line 6 – Corporation
A corporation has a permanent place of business in California if any of the following apply:

- It is organized and existing under the laws of California.
- It is qualified to transact business in California through the California Secretary of State.
- It will maintain and staff a permanent office in California.

S corporations must withhold on nonresident S corporation shareholders. Get FTB Pub. 1017, Nonresident Withholding Guidelines, for more information.

Line 7 – Partnership or Limited Liability Company (LLC)
Withholding is not required if the recorded title to the property being transferred is in the name of a partnership. However, partnerships must withhold on nonresident partners. Get FTB Pub. 1017 for more information.

Withholding is not required if the recorded title to the property is in the name of an LLC that meets both of the following requirements:

- The LLC is classified as a partnership for federal and California income tax purposes.
- The LLC is **not** a single member LLC that is disregarded for federal and California income tax purposes.

If the LLC meets these conditions, the LLC must still withhold on nonresident members. Get FTB Pub. 1017 for more information.

If the LLC is a single member LLC that is disregarded for federal and California income tax purposes, then that single member is considered to be the seller and the one on title for withholding purposes. If the member is an individual, complete the form as that individual. If the member is a corporation, complete the form as that corporation. If the member is a partnership or LLC, complete the form as that partnership or LLC, etc.

When completing Form 593-C as the single member of a disregarded LLC, write on the bottom of the form that the information on the form is for the single member of the LLC so the REEP will understand why it is different from the recorded title holder.

If the LLC is classified as a corporation for federal and California income tax purposes, then the seller is considered to be a corporation for withholding purposes. Refer to line 6.

Line 8 – Tax-Exempt Entity
Withholding is not required if the seller is tax-exempt under either California or federal law (e.g., religious, charitable, educational, not for profit organizations, etc.).

Line 9 – Insurance Company, Individual Retirement Account, Qualified Pension or Profit-Sharing Plan, or Charitable Remainder Trust
Withholding is not required when the seller is an insurance company, individual retirement account, qualified pension or profit-sharing plan, or a charitable remainder trust.

Part III Certifications That May Partially or Fully Exempt Withholding

Complete Part III only if you did not meet any of the exemptions in Part II. If you met an exemption in Part II, skip to Part IV.

Line 10 – Simultaneous Exchange
If the California real property is part of a simultaneous like-kind exchange within the meaning of IRC Section 1031, the transfer is exempt from withholding. However, if the seller receives taxable proceeds (boot) exceeding $1,500 from the sale, the withholding agent must withhold on the boot.

Line 11 – Deferred Exchange
If the California real property is part of a deferred like-kind exchange within the meaning of IRC Section 1031, the sale is exempt from withholding at the time of the initial transfer. However, if the seller receives taxable proceeds (boot) exceeding $1,500 from the sale, the withholding agent must withhold on the boot.
The intermediary or accommodator must withhold on all cash or cash equivalent (boot) it distributes to the seller if the amount exceeds $1,500. If the exchange does not take place or if the exchange does not qualify for nonrecognition treatment, the intermediary or accommodator must withhold 3 1/3% of the total sales price.

Line 12 – Installment Sale
To comply with an installment sale agreement, the buyer agrees to withhold on the principal portion of each installment payment. If the buyer chooses this method, the buyer must agree either to withhold on the principal portion of each installment payment either 3 1/3% or the installment withholding percentage specified by the seller according to Form 593-I, Real Estate Withholding Installment Sale Agreement. **The buyer must also complete Form 593-I.** See Form 593-I and the instructions for withholding and remitting the applicable amount on each installment payment.

Form 593-I must be attached to Form 593, Real Estate Withholding Tax Statement, when the withholding on the first installment payment is sent to the FTB.

If you do not wish to defer withholding, do not ask the buyer to complete Form 593-I.

Part IV Seller's Signature

You must sign this form and return it to your REEP by the close of escrow for it to be valid. Otherwise, the withholding agent must withhold the full 3 1/3% of the total sales price or the optional gain on sale withholding amount from line 5 of Form 593 that is certified by the seller.

Any transferor (seller) who, for the purpose of avoiding the withholding requirements, knowingly executes a false certificate is liable for a penalty of $1,000 or 20% of the required withholding amount, whichever is greater.

YEAR **2008**

Real Estate Withholding — Computation of Estimated Gain or Loss

CALIFORNIA FORM **593-E**

(You are required to complete this form if you claim an exemption due to a loss or zero gain or if you elect an optional gain on sale withholding amount.)

Name	Seller or Transferor: ☐ SSN or ITIN ☐ FEIN ☐ CA Corp. No.
Address (including suite, room, PO Box, or PMB no.)	
City	State / ZIP Code
Property address (if not street address, provide parcel number and county)	

1 **Selling price** . . . . . 1 ______
2 Selling expenses . . . . . 2 ______
3 **Amount Realized.** Subtract line 2 from line 1 . . . . . 3 ______
4 Enter the price you paid to purchase the property (If you acquired the property other than by purchase, see page 9, Table 1 to determine your basis.) . . . . . 4 ______
5 Seller-paid points . . . . . 5 ______
6 Depreciation . . . . . 6 ______
7 Other decreases to basis . . . . . 7 ______
8 Total decreases to basis. Add line 5 through line 7 . . . . . 8 ______
9 Subtract line 8 from line 4 . . . . . 9 ______
10 Cost of additions and improvements . . . . . 10 ______
11 Other increases to basis . . . . . 11 ______
12 Total increases to basis. Add line 10 and line 11 . . . . . 12 ______
13 **Adjusted basis.** Add line 9 and line 12 . . . . . 13 ______
14 Enter any suspended passive activity losses from this property . . . . . 14 ______
15 Add line 13 and line 14 . . . . . 15 ______
16 **Estimated Gain or Loss on Sale.** Subtract line 15 from line 3 and enter the amount here. If you have a loss or zero gain, skip lines 17 and 18. Complete the Seller's Signature area below and check the Yes box on Form 593-C, line 3. If you have a gain, go to line 17 . . . . . 16 ______
17 **Optional Gain on Sale Withholding Amount.** Check the applicable box for the filing type.
☐ Individual 9.3% ☐ Corporation 8.84% ☐ Bank and Financial Corporation 10.84%
☐ S Corporation 1.5% ☐ Financial S Corporation 3.5%
Multiply the amount on line 16 by the tax rate for the filing type selected above and enter the result on line 17. This is the optional gain on sale withholding amount.
If you elect the optional gain on sale withholding amount on line 17, check the appropriate box on line 4 (Boxes B-F) for the Optional Gain on Sale Election on Form 593, and transfer the amount on line 17 to Form 593, line 5. Sign Form 593 to certify the election . . . . . 17 ______
18 **Total Sales Price Withholding Amount.** Multiply the selling price on line 1 by 3 1/3% (.0333) and enter the amount on line 18. This is the total sales price withholding amount.
If you select the **total sales price withholding amount** on line 18, check Box A **"3 1/3% (.0333) x Total Sales Price"** on line 4 of Form 593, and transfer the amount on line 18 to Form 593, line 5 . . . . . 18 ______

Seller's Signature

Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose.

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. I understand that I must retain this form in my records for 5 years and that the Franchise Tax Board may review relevant escrow documents to ensure withholding compliance and if conditions change, I will promptly inform the withholding agent. I understand that completing this form does not exempt me from filing a California income tax return to report this sale.

Seller's Name (type or print) ______

Seller's Signature ______ Date: ______

Spouse's/RDP's Name (if jointly owned) ______

Spouse's/RDP's Signature (if jointly owned) ______ Date: ______

Instructions for Form 593-E

Real Estate Withholding – Computation of Estimated Gain or Loss

Purpose

This form is used for sales closing in 2008 and can be used by both individual and non-individual sellers. It allows you to estimate the amount of your gain or loss for withholding purposes and calculate an optional gain on sale withholding amount.

You may use estimates when you complete this form, but the estimates must not result in the calculation of a loss when you actually have a gain. Any transferor (seller) who, for the purpose of avoiding the withholding requirements, knowingly executes a false certificate is liable for a penalty of $1,000 or 20% of the required withholding amount, whichever is greater.

This form is signed under penalty of perjury. The seller must keep this form for 5 years and provide it to the FTB upon request. However, the seller is not required to be provide this form to the withholding agent or buyer.

Who can complete this form?

The seller completes this form. Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Sellers are strongly encouraged to consult with a competent tax professional for this purpose.

How can you get federal publications?

Internet: **www.irs.gov**
Phone: (800) 829-1040

Line-by-Line Instructions

Line 1 – Selling Price

The selling price is the total amount you will receive for your property. It includes money, as well as, all notes, mortgages, or other debts assumed by the buyer as part of the sale, plus the fair market value of any other property or any services you receive.

Line 2 – Selling Expenses

Selling expenses include commissions, advertising fees, legal fees, and loan charges that will be paid by the seller, such as loan placement fees or points.

Line 3 – Amount Realized

The amount realized is the selling price minus the selling expenses.

Line 4 – Purchase Price

If you acquired this property by purchase, enter your purchase price. Your purchase price includes the down payment and any debt you incurred; such as a first or second mortgage or promissory notes you gave the seller in payment for the property. If you acquired the property by gift, inheritance, exchange, or any way other than purchase, see page 9, Table 1.

Line 5 – Seller-Paid Points

Points are charges paid to obtain a loan. They may also be called loan origination fees, maximum loan charges, loan discount, or discount points. If the seller paid points for you when you acquired the property, enter the amount paid by the seller on your behalf on line 5, unless you already subtracted this item to arrive at the amount for line 4.

Line 6 – Depreciation

Enter the amount of depreciation you deducted, or could have deducted, on your California income tax return for business or investment use of the property under the method of depreciation you chose. If you took less depreciation on your tax return than you could have under the method chosen, you must enter the amount you could have taken under that method. If you did not take a depreciation deduction, enter the full amount of depreciation you could have taken. Get federal Publication 946, How to Depreciate Property, if you need more information.

Depreciation Option – If you do not know how much depreciation you deducted or were allowed, you can make an estimate of the amount of depreciation (for withholding purposes only). To estimate the depreciation, divide the purchase price plus the cost of additions and improvements by 27.5 and multiply that by the number of years you used the property for business use (up to 27.5 years).

Example: Mary bought a house 20 years ago for $150,000 and has used it as a rental property for the last 18 years. Prior to renting the house, she added a pool which cost her $25,000. Mary's depreciation is estimated as follows:

Cost	$150,000
Plus additions	25,000
Total	175,000
Divided by 27.5 =	6,364
Multiply by 18 years =	$114,552

Mary's estimated depreciation to enter on line 6 is $114,552.

Line 7 – Other Decreases to Basis

Include any other amounts that decrease your basis, such as:

- Casualty or theft loss deductions and insurance reimbursements.
- Energy credits claimed for the cost of energy improvements added to your basis.
- Payments received for granting an easement or right-of-way.

Line 10 – Additions and Improvements

These add to the value of your property, prolong its useful life, or adapt it to new uses. **Examples include:** room additions, landscaping, new roof, insulation, new furnace or air conditioner, remodeling, etc. The cost of repairs may not be included unless they are part of an extensive remodeling or restoration project. Do not include any additions or improvements on line 10 that were included on line 4.

Line 11 – Other Increases to Basis

Include the amounts paid for any other items that increase the basis of the property, such as:

- Settlement fees and closing costs you incurred when you bought the property.
- The amount you paid for special assessments for items such as water connections, paving roads, and building ditches.
- The cost of restoring damaged property from a casualty loss, or cost of extending utility service lines to the property.

Line 14 – Passive Activity Losses

You may only use suspended passive activity losses that directly relate to the property being sold. Other losses such as net operating losses, capital loss carry-forwards, stock losses, and passive activity losses from other properties cannot be used.

Line 16 – Estimated Gain or Loss on Sale

If you have a zero gain or loss, check the **Yes** box on Form 593-C, line 3. Complete and sign Form 593-C and give it to your REEP. You will not be subject to withholding on this sale. Keep Form 593-E for 5 years to document your calculations and provide to the FTB if requested.

If you have a gain, this is your estimated amount of gain on the sale of your California property. Go to line 17.

Line 17 – Optional Gain on Sale Withholding Amount

Multiply the amount on line 16 by the tax rate for the filing type selected and enter the amount on line 17. You may compare this amount to the withholding amount on the total sales price shown on line 18. If you elect the optional gain on sale withholding amount on line 17, check the appropriate box on line 4 (Boxes B-F) for the Optional Gain on Sale Election on Form 593, then transfer the amount on line 17 to Form 593, line 5. Sign Form 593 to certify the election. Keep Form 593-E for 5 years to document your calculations and provide to FTB upon request.

Line 18 – Total Sales Price Withholding Amount

Multiply the selling price on line 1 by 3 1/3% and enter the amount on line 18. If you select the standard withholding amount on line 18, check Box A "3 1/3% (.0333) x Total Sales Price" on line 4 on Form 593, and transfer the amount on line 18 to Form 593, line 5.

Table 1: How to Figure Your Basis When You Did Not Purchase the Property

The cost or purchase price of property is usually its basis for figuring gain or loss from its sale or other disposition. However, if you acquired the property by gift, inheritance, exchange, or in some way other than purchase, you must use a basis other than its cost. (These procedures only reflect the general rules. Exceptions may apply. Get federal Publication 551, Basis of Assets, for more information on these or other special situations. Sellers are strongly encouraged to consult with a competent tax professional for this purpose).

Property was received as a gift	Usually, your basis is the donor's adjusted basis at the time of the gift. Enter the donor's adjusted basis on line 4. Then complete the rest of the form (except line 5) with your information after you received the property. If the fair market value of the property at the time of the gift was less than the donor's adjusted basis, get federal Publication 551 to determine your basis.
Property was inherited from someone other than your spouse/RDP	Usually, your basis is the fair market value at the date of the individual's death. You can get that valuation from probate documents, or if there was no probate, use the appraised value at the date of death. Enter the fair market value on line 4. Then complete the rest of the form (except line 5) with your information after you received the property. If you or your spouse/RDP originally gave the property to the decedent within one year of the decedent's death, get federal Publication 551 to determine your basis.
You owned the property (as community property) with your spouse/RDP who died	Your basis is the fair market value of the total property at the date of your spouse's/RDP's death. Enter the fair market value on line 4. Then complete the rest of the form (except line 5) with your information after the date of death.
You owned the property (in joint tenancy) with your spouse/RDP who died	Your basis is the sum of: 1) the **fair market value** of your spouse's/RDP's half of the property at the date of your spouse's/RDP's death; and, 2) the **existing basis** of your half of the property at the date of your spouse's/RDP's death. Enter the sum on line 4. Then complete the rest of the form (except line 5) with your information after the date of death.
Property received from your spouse/RDP in connection to your divorce/termination of registered domestic partnership	Usually, your basis is the same as it would have been without this transfer. Complete Form 593-E as if you had been the only owner before and after the transfer. If your spouse/RDP transferred the property to you before July 18, 1984, get federal Publication 551 to determine your basis.
Property received in exchange for other property	Your basis will depend on whether you received the property in a nontaxable, taxable, or partially taxable exchange. Get federal Publication 551 to determine your basis. Enter your basis on line 4. Then complete the rest of the form. However, do not include any amounts on line 5 through line 10 that you included on line 4.
You built the house (or other improvements) on the property being sold	Add the purchase price of the land and the cost of the building. Enter the total on line 4 and complete the rest of the form. If you deferred the gain from a previous home to this property, get federal Publication 551.
You received the property in a foreclosure	Enter your basis in the property after the foreclosure on line 4. (You may need to get a tax professional to help you with this calculation). Then complete the rest of the form (except for line 5) with your information after the foreclosure.