

# BUSINESS ALERT

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## **CHANGE IN CALIFORNIA WITHHOLDING RULES ON THE SALE OF REAL ESTATE**

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California Assembly Bill 2962 (AB 2962) modified the rules pertaining to required tax withholding on sales of California real estate occurring after December 31, 2006. For a more detailed discussion, the California Franchise Tax Board has issued Publication 1016 (Real Estate Withholding Guidelines), which can be found on their website at <http://www/ftb.ca.gov/forms/misc/1016.pdf>.

While there were (and still are) exceptions to the forced withholding (e.g., sales below \$100,000, sale of the taxpayer's primary residence, like-kind exchanges and involuntary conversions), the old rules nevertheless resulted in many taxpayers effectively making a substantial tax payment even when their expected tax on the gain was considerably smaller than the required payment.

The new law permits taxpayers the option (and only if they elect to do so) to calculate the reportable gain, if any, on the sale of the property and be subjected to withholding only on the expected gain (at the rate of 9.3% for individuals, 1.5% for S corporations, and 3.5% for financial S corporations).

As part of qualifying for this alternative, the seller must certify to the Franchise Tax Board on Form 593-E that the alternative withholding amount (and the gain upon which it is calculated) is accurate under penalty of perjury.

If you are considering selling real property, please call us to discuss how to minimize or avoid any potential California withholding, as well as structuring the transaction in a favorable manner.

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