



Disbursements: State Tax Withholding from Nonwage Payments to Nonresidents of California

Responsible Officer:	EVP - Chief Financial Officer
Responsible Office:	FO - Financial Operations
Issuance Date:	7/31/2013
Effective Date:	8/1/2013
Scope:	This policy applies to campuses and the Lawrence Berkeley National Laboratory.

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I. POLICY SUMMARY

It is the policy of the University to comply with California laws and regulations regarding the withholding, reporting and remittance of California Income Tax for individuals and entities who are not residents of California.

II. DEFINITIONS

Franchise Tax Board The Franchise Tax Board (“FTB”) collects California's state personal income tax and corporate income tax.

Payee. Generally, the payee is the person or entity that receives items of income from a payer. It also includes partners, beneficiaries, shareholders, or members that receive payments or distributions from a pass-through entity, estate, or trust. A payee may also include vendors that provide services to the payer.

Payer. Generally, the payer is the person or entity that pays an item of income or makes a distribution to a payee. The payer is also referred to as the “withholding agent.” For purposes of this chapter, the University is the payer.

Withholding Agent. A withholding agent is any person or entity with the control, receipt, custody, disposal, or payment of California source income. The withholding agent is also referred to as the “payer.” For purposes of this chapter, the withholding agent is the University.

Withholding. Withholding is a mechanism for prepayment of California state income or franchise tax (similar to wage withholding).

III. POLICY TEXT

A. Introduction

This policy sets forth the requirements and procedures applicable to withholding California state income tax from nonwage payments made by the University to nonresidents of California (nonresident). The tax treatment of nonwage payments made to U.S. residents of California is covered in Accounting Manual chapter [D-371-12.1](#), *Disbursements: Accounting For and Tax Reporting of Payments Made Through the Vendor System*.

In general, California does not distinguish between U.S. citizens, residents, and non-resident aliens with respect to requiring state income tax withholding. Therefore, for determining whether to withhold taxes, the term “nonresident” also includes residents of a foreign country (see Section III.D.3 for more information). Moreover, California does not generally conform to federal tax treaties; thus, residents of foreign countries who perform services in California or who receive income from California sources are usually subject to state income tax withholding.

The following types of payments are covered in this chapter:

Entertainment:

- Payments to performing entities;

General:

- Compensation for services rendered in California, such as fees for professional services (e.g., honorariums, consulting fees, fees for architectural services, fees for conducting seminars, etc.);
- Prizes and awards, premiums, rewards, and winnings from contests within California;

- Royalties paid for the right to use natural resources located in California, and royalty or residual payments made for services originally performed in California; and
- Scholarship and fellowship grants.¹

Corporate:

- Payments made to corporations, S corporations, partnerships, or limited liability companies (“LLC”) that are not residents of California, i.e., do not have a permanent place of business in the state, and are not qualified through the Office of the Secretary of State to do business in California.

For accounting and payroll procedures related to state income tax withholding from employees, refer to Accounting Manual chapter [P-196-77](#), *Payroll: State Tax Withholding from Employees*.

B. Determination of Nonresident Status

1. INDIVIDUALS

In general, an individual who spends more than nine months of the tax year in California is presumed to be a resident of the state. Refer to FTB [Publication 1031](#) *Guidelines for Determining Resident Status*.

2. CORPORATIONS, PARTNERSHIPS, LLC'S

A corporation, partnership, or LLC is considered to have a permanent place of business in the state if it is organized and existing under the laws of the state or if it is a foreign corporation qualified by the California Secretary of State's Office to transact intrastate business.

C. Tax Withholding Procedures--Performing Entities

The University must withhold state income tax from payments made to a nonresident performing entity for services rendered in California. The withholding rate is 7% of gross income, if the total payments exceed \$1,500 during the calendar year. A waiver or reduced rate may be granted by the FTB if it is determined that the 7% withholding rate results in significant over withholding, e.g., if deductible expenses are likely to be large.

¹ Amounts that represent payment for teaching, research, or other services are subject to tax withholding and are paid through the payroll system. For employees, yes, but not for other services...

1. REQUEST FOR REDUCED RATE OF TAX WITHHOLDING

To obtain a reduced rate, the nonresident entertainer must file FTB [Form 589](#), *Nonresident Reduced Withholding Request*, and submit it to the Franchise Tax Board (FTB) before receiving payment for services from the withholding agent. The entertainer must provide the gross California source payment, any expenses relevant to the services being performed, and calculate a proposed reduced withholding amount.

Such requests should be made as early as possible before a payment is due to be made, ideally at least 21 business days prior to payment for the services performed. The FTB will reply in writing. If the FTB approves the request, the FTB provides the payer (withholding agent) and the payee (entertainer) a letter stating the reduced withholding amount. If the FTB denies the request, then the FTB provides the payee a letter of denial.

a) Submit by Mail

Allow 21 business days for processing FTB Form 589 mail filings. Mail the completed FTB Form 589 to:

WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

b) Submit Online

Allow 10 business days for processing FTB Form 589 online filings. FTB Form 589 will no longer be accepted by fax. If the entertainer files Form 589 online and needs to submit additional documentation, (i.e. federal Form 8804-C, federal Schedule E (Form 1040), expense breakdown, etc.), the entertainer must fax the documentation to the FTB at (916) 845-9512.

On the fax containing the entertainer's documentation, the entertainer must include the entertainer's name, TIN, and the confirmation number of the entertainer's online Form 589 submission.

2. REQUEST FOR WAIVER OF TAX WITHHOLDING

To obtain a waiver, the nonresident payee (entertainer) or withholding agent should complete FTB Form 588, *Nonresident Withholding Waiver Request*, and submit to the FTB with any attachment containing pertinent facts to support the request. If sufficient information is not provided, the FTB may request additional information or deny the request.

Such requests should be made as early as possible before a payment is due to be made, ideally at least 21 business days prior to payment for the services performed. The FTB issues a determination letter for each waiver request. A withholding agent must have received the determination letter authorizing a waiver of withholding before eliminating withholding on payments made to nonresidents. The withholding agent must retain the determination letter and waiver for a minimum of four years and must furnish the form to the FTB upon request.

a) Submit by Mail

Allow 21 business days for processing FTB Form 588 mail filings. Mail the completed FTB Form 588 to:

WITHHOLDING SERVICES AND COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

b) Submit by Fax

Allow 21 business days for processing FTB Form 588 fax filings. Form 588 can be faxed to (916) 845-9512.

D. Tax Withholding Procedures--All Other Payees

The following types of payments are covered in this section: general; corporate, partnership, or LLC; and scholarship and fellowship grants.

1. GENERAL

The University must withhold state income tax if it is expected that the total payments will exceed \$1,500 during the calendar year. Seven percent (7%) should be withheld from the first payment, unless the Disbursements Officer **reasonably** believes that payments will not exceed that amount during the year. The withholding agent or the payee may request a waiver by completing a Form 588, *Nonresident Withholding Waiver Request*. Only the payee may request a reduced rate by completing a Form 589, *Nonresident Reduced Withholding Request*. The instructions for filing Form 588 and Form 589 are the same as the instructions for entertainers (refer to Section III.C for instructions).

2. DOMESTIC (NON-FOREIGN) CORPORATIONS

Domestic (non-foreign) corporations that do not have a permanent place of business in California and are not qualified through the Office of the Secretary of State (“SOS”) to do business in California are subject to state tax withholding from payments made for the performance of services within the state in accordance with the withholding requirements detailed in Section III.D.1. above.

The above type of entity **cannot** obtain an exemption from withholding, **unless** it is included in the combined report of a corporation that does have a permanent place of business in California. This type of entity payee may request a waiver from the FTB using FTB Form 588, *Nonresident Withholding Waiver Request*.

3. S CORPORATIONS, PARTNERSHIPS, OR LLC'S

S Corporations, partnerships, or LLC's that do not have a permanent place of business in California and are not registered through SOS to do business in California are subject to state tax withholding from payments made for the performance of services within the state in accordance with the withholding requirements detailed in Section III.D.1. above. However, *there is no provision in the law to allow waivers or reduced withholding on payments to foreign nonresident partners or members*. The state income tax withholding rate on *foreign nonresident partners that are not corporations or banks* is 9.3 percent of gross income.

[Form 590-P](#), *Nonresident Withholding Exemption Certificate for Previously Reported Income*, is used by the above types of entities eligible to obtain an exemption from withholding on distributions of prior year California source income. Form 590-P certifies that the S corporation shareholder or partner previously reported the income on the S corporation shareholder's or partner's California tax return. The S corporation or partnership may rely on this certification to waive the withholding obligation on that prior year income for that S corporation shareholder or partner.

4. SCHOLARSHIP AND FELLOWSHIP GRANTS²

California tax treatment of a scholarship or fellowship grant is as follows:³

a) Degree Candidates

Amounts spent for tuition, fees, and course-related expenses (books, supplies, and equipment required for courses of instruction) are excludible from the recipient's gross income. All other amounts (e.g., room and board, transportation, and other general living expenses) are includible in the gross income of the recipient.

b) Non-Degree Candidates

The state of California does not permit an exclusion for scholarship and fellowship payments made to non-degree candidates (e.g., postdoctoral fellows); therefore, the total amount awarded for services performed in California is taxable.

Payments of non excludable portions (room, board, etc.) are taxable to nonresidents but are not subject to reporting and withholding by the University.

E. Tax Remittance

1. NONRESIDENTS (EXCEPT FOREIGN PARTNERS OR MEMBERS)

The University uses [Form 592](#), *Resident and Nonresident Withholding Statement*, to report resident and nonresident withholding payments. [Form 592-V](#), *Payment Voucher for Resident and Nonresident Withholding*, must be filed along with the tax withholding payments when there is a balance due on Form 592. Payments can be made by check, money order, or electronic funds transfer (EFT) automatically withdrawn from the bank account.

Due dates for Forms 592 and 592-V, and the associated taxes must be made within quarterly payment periods:

For the Payment Period	Due Date
January 01 through March 31	April 15
April 01 through May 31	June 15
June 01 through August 31	September 15
September 01 through December 31	January 15

² The provisions in this section apply to grants received after January 1, 1987.

³ See Accounting Manual chapter [T-182-77](#), *Taxes: Taxation of Scholarship and Fellowship Grants and Educational Assistance*, for more information.

An electronic submission of Form 592 must be submitted using the FTB's Secure Web Internet File Transfer (SWIFT) when the number of payees on Form 592 is 250 or more (cannot be submitted by mail).⁴ Form 592 can be submitted by mail if the number of payees on Form 592 is less than 250. A Form 592-V voucher **must** be mailed, along with check or money order payments⁵ and Form 592,⁶ to the following address:

WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Do **not** staple Form 592, Form 592-V, and check or money order payments together when mailing.

A [Form 592-B](#), *Resident and Nonresident Withholding Tax Statement*, should be provided to the payees to report the amount of payment or distribution subject to withholding and tax. The University must retain the original copy of Form 592-B for a minimum of four years and must provide it to the FTB upon request. This form can be provided to the payee electronically.⁷

2. FOREIGN PARTNERS OR MEMBERS

The University may not use Form 592 and Form 592-V to report tax withheld on *foreign partners or members*. [Form 592-F](#), *Foreign Partner or Member Annual Return*, is used by pass-through entities to flow-through withholding credit to their foreign partners or members (California Revenue and Taxation Code (R&TC) Section 18666). For withholding on foreign partners or members, file Form 592-F on or before the 15th day of the 4th month following the close of the partnership's or LLC's taxable year. If all the partners or members are foreign, Form 592-F must be filed on or before the 15th day of the 6th month after the close of the partnership's or LLC's taxable year. The University retains this form for a minimum of four years and must provide it to the FTB upon request.

Form 592-F information must be filed with the FTB electronically, using FTB's Secure Web Internet File Transfer (SWIFT), instead of by mail when the number of payees on Form 592-F is 250 or more.⁸ The University must continue to provide payees with paper copies of Form 592-B, as described in Section III.E.1., "Nonresidents (EXCEPT FOREIGN PARTNERS OR MEMBERS)."

⁴ For guidance on using SWIFT, please see Franchise Tax Board Publications 923 and 1023S.

⁵ If payment is made by EFT, do not mail check or money order.

⁶ Do not mail Form 592 if Form 592 has been electronically submitted.

⁷ For more information go to <http://www.ftb.ca.gov> and search for electronic form 592-B requirements.

⁸ For guidance on using SWIFT, please see Franchise Tax Board Publications 923 and 1023S.hyperlink

Make the installment tax payments with the vouchers of [Form 592-A, Payment Voucher for Foreign Partner or Member Withholding](#), to the FTB. The first four vouchers are submitted on the 15th day of the 4th, 6th, 9th, and 12th month of the partnership's or LLC's taxable year. The fifth voucher is a supplemental payment voucher, which is only submitted when Form 592-F, line 8, has a balance due. Use black or blue ink to write the check or money order, payable to "Franchise Tax Board." Mail Form 592-F,⁹ the Supplemental Payment Voucher from Form 592-A,¹⁰ and check or money order payment to:

WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Do **not** staple Form 592-F, Form 592-A, and check or money order payments together when mailing.

F. Franchise Tax Board Information

Copies of the FTB forms and the publications referred to in this chapter are available from the FTB Website at the following address: <http://www.ftb.ca.gov>. Payments are to be made to:

WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

IV. COMPLIANCE / RESPONSIBILITIES

A. Campus Disbursements Office

The campus disbursements offices must determine the tax status of payments to nonresidents (as described herein) to properly withhold tax at the appropriate rate, and to use the appropriate tax code for each transaction.

The disbursements office must prepare and transmit Forms 592, 592-V, 592-F, 592-A, and 592-B to the FTB as specified in section V of this chapter.

B. Departments or Hiring/Contracting Units

Departments or hiring/contracting units are responsible for obtaining the information necessary to determine whether a payee is a nonresident of California.

⁹ Unless Form 592-F was submitted electronically using SWIFT.

¹⁰ Check the appropriate box for **Electronic** or **Paper** to reflect how Form 592-F is being submitted.

V. RELATED INFORMATION

California Revenue and Taxation Code:

- Section 17016, Presumption as to Residence; Evidence to Overcome
- Section 17041(d), Imposition of Tax
- Section 18662, Withholding of Tax From Payments; Transmission to FTB

Franchise Tax Board, Letter to the University of California, Office of the President, on Withholding of Tax at Source Requirements, January 5, 2000.

Franchise Tax Board, Letter to the University of California, Office of the President, rescinding earlier letter that directed the University to withhold on nonqualified portion of scholarships and fellowships awarded to nonresident students, May 5, 2011.

Related Accounting Manual Chapters

D-371-35	Disbursements: Honorarium Payments
D-371-12.1	Disbursements: Accounting For and Tax Reporting of Payments Made Through the Vendor System
P-196-77	Payroll: State Tax Withholding from Employees
T-182-27	Taxes: Federal Taxation of Aliens
T-182-77	Taxes: Taxation of Scholarship and Fellowship Grants and Educational Assistance

Franchise Tax Board Publications:

- [Publication 923](#), Secure Web Internet File Transfer (SWIFT) Guide for Resident, Nonresident, and Real Estate Withholding.
- [Publication 1017](#), Resident and Nonresident Withholding Guidelines.
- [Publication 1023](#), Nonresident Withholding--Independent Contractor, Rent & Royalty Guidelines.
- [Publication 1023F](#), Nonresident Withholding--Magnetic Media Guidelines.
- [Publication 1023S](#), Resident and Nonresident Withholding Electronic Submission Requirements.
- [Publication 1031](#), Guidelines for Determining Resident Status.

Forms

- FTB Form 588, Nonresident Withholding Waiver Request
- FTB Form 589, Nonresident Reduced Withholding Request
- [FTB Form 590-P](#), Nonresident Withholding Exemption Certificate for Previously Reported Income
- [FTB Form 592](#), Resident and Nonresident Withholding Statement
- [FTB Form 592-A](#), Payment Voucher for Foreign Partner or Member Withholding
- [FTB Form 592-B](#), *Resident and Nonresident Withholding Tax Statement*

- [FTB Form 592-F](#), *Foreign Partner or Member Annual Return*
- [FTB Form 592-V](#), *Payment Voucher for Resident and Nonresident Withholding*

VI. FREQUENTLY ASKED QUESTIONS

Not applicable

VII. REVISION HISTORY

6/15/81: First Published

Revised :

6/15/83

7/1/83

9/1/83

6/15/84

1/15/88

12/1/92

12/30/96

9/30/99: Minor technical corrections.

12/30/99: Revised to reflect change in withholding and reporting requirements for nonresidents.

6/30/00: Updated to reflect FTB requirement to file Form 592-B by magnetic media.

6/30/03: Minor technical corrections.

12/31/04: Revised to clarify reporting requirements for scholarship and fellowship grant payments to nonresidents.

11/1/2012: Updated to include revised filing procedures for performers, and domestic corporations' eligibility & procedure to obtain withholding exemption. Also updated to include the procedures for S-corporations, partnerships, and LLCs to obtain exemption. Referenced May 2011 letter from FTB regarding nonqualified portion of scholarship and fellowship grant payments to nonresidents, and reformatted policy into the new template.