



Process for Hiring Independent Contractors through Auxiliary Services Funds at Santa Ana College

NOTE: All Independent Contractors (IC), including guest lecturers with fees of \$15,000 or more **must** be Board approved prior to commencement of services.

Prior to requesting payment for an Independent Contractor services the following packet must be completed and turned into the Student Business Office:

- Fourteen (14) calendar days prior to the start of work for requests under \$15,000
- Thirty (30) calendar days prior to the start of work for requests of \$15,000 and over

The Requestor must complete the following requirements, forms are found in this packet:

1. Generate Request – Complete the **RSCCD Request for Independent Contractor/Guest Lecturer Certification form**.
2. Determine Possible Conflict as an Employee – Complete the Questionnaire to determine if proposed contractor is classified as a contractor as defined by the Internal Revenue Service. The requestor shall be held responsible should any conflict of classification be determined.
3. Request IC Cost/Service Information – Three steps are required from the proposed contractor:
 - Complete and sign the **Tentative Agreement**. Depending on the nature of work to be provided submission of insurance coverage may be required. All services to be rendered on District property shall require the contractor to procure, maintain and keep in full force and effect insurance meeting the District's requirements.
 - Provide a Cost Proposal. Complete and sign the District's **Cost Proposal Form** or, if the vendor has a similar form that includes cost proposal and description of proposed services(s), this will be acceptable. If expenses will be paid in addition to the negotiated fee, an estimated, itemized breakdown of such expenses must be included in the Cost Proposal. If the cost proposed exceeds \$15,000, a biography must accompany the Cost Proposal for inclusion in the Board request for approval Docket item.
 - Fill out and submit form **W-9** and form **590** (if applicable).
4. Submit Documents – Upon receipt of the documents requested from the proposed IC, the requestor shall:
 - Generate a Purchase Order or Check Request for the full amount of the project and submit to the Student Business Office
 - Submit IC packet and PO or Check Request to the Student Business Office

Questions regarding verification of employee vs Independent Contractor, contact Alistair Winter:

Winter_Alistair@rsccd.edu

Questions regarding timelines, processes, and funding please contact Gilbert Cossio: Cossio_Gilbert@sac.edu

Once received the Student Business Office will forward the packet to Human Resources for review.

Following HR review the Student Business office will complete the process and any associated check requests or purchase orders.

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

Request for Independent Contractor/Guest Lecturer Certification Form
(To be submitted for Board approval prior to date(s) of service if over \$15,000)

NOTE: This form is to be completed by the requisitioner, not the Independent Contractor

To: Student Business Office • 1530 W. 17th Street, Santa Ana, CA 92706 • (714) 564-6430

From (Print name): _____ Ext: _____

Department: _____

E-Mail: _____

Fill this section out in accordance with how the Independent Contractor fills out their W9 and 590:

Consultant Name: (Please Print): _____
Business Name -OR- First Name M.I. Last

Mailing Address: _____

City State Zip Code E-Mail

Social Security #: - - **OR** Employer #: -

Consultant's Phone Number: (____) _____ Fax: (____) _____

Date(s) of Service: _____

Description of Services (Must attach a Cost Proposal with a detailed scope of service and if applicable, a Biography must be provided for services of \$15,000 or more).

Payments- Will be made within 30 days of receipt of invoice unless a date is specified for justifiable reasons:

Service Cost \$ _____ Plus Expenses? Yes ____ No ____ Maximum Amount of Expenses: \$ _____
(Price Estimate & Breakdown of such expenses must be included in the Cost Proposal)

Is it possible that this Independent Contractor/Guest Lecturer may provide future services in the amount of \$600.00 or more in the current or next calendar year? Yes ____ No ____

Account Number: - - - -
(Datatel String) Fund Project Tops Department Object

Requested by: _____ Date: _____
Signature of Person Initiating Project Print Name Ext.

Approved by: _____ Date: _____
Administrator/Manager Print Name Ext.

CURRENT EMPLOYEES OF THE DISTRICT AND THOSE EMPLOYED BY THE DISTRICT WITHIN THE SAME CALENDAR YEAR AND/OR WITHIN THE LAST SIX MONTHS, MAY NOT BE EMPLOYED AS INDEPENDENT CONTRACTORS/GUEST LECTURERS

ATTENTION - Human Resources: Once review has been completed, please return the packet and certification to the Student Business Office.

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

QUESTIONNAIRE – INDEPENDENT CONTRACTOR OR EMPLOYEE

You are required to provide a “yes” or “no” answer for each question. If you feel that further explanation is necessary to support your answer, please attach additional information.

Name of proposed contractor: _____

Title or skill level required for assignment: _____

PART I

YES | NO

1. Has this category of worker already been classified an "employee" by the IRS? * YES NO

The IRS has held that the following types of workers are employees: (IRS Pub. SWR-40)

- Administrators
- Substitute teachers/instructors
- Driver education instructors
- Athletic coaches
- Tutors
- Custodians
- Proctors
- Teachers/Instructors
- School bus drivers
- Clerical staff
- Cafeteria workers
- Counselors
- Examination monitors
- Librarians

2. Is the individual already an employee of the District in another capacity? YES NO

3. Has the individual performed substantially the same service for the District as an employee within the past six months?
Is the individual retired, returning to substitute, or train? YES NO

4. Are there currently employees of the District doing the same services as will be required of this individual? YES NO

5. Is the District expected to provide detailed instructions to carry out the task?
In an Independent Contractor relationship, the extent of the District's instructions is to describe the end product and provide the time and the place to perform the engagement. The details of performing the task are left entirely to the discretion of the independent contractor. YES NO

6. Are the services being provided an integral part of school business?
Are the services being provided necessary to the operation of the school, program, project, etc.? This indicates the District has an interest in the method of performance and implies the need for an employee. YES NO

If the answer to any of the above questions is "YES"

STOP HERE

Do not complete the rest of the questions. The individual should be a District employee and must be paid and reported accordingly. If all of the above questions are “NO”, continue

PART II

YES | **NO**

7. Must the required services be performed by this individual?

Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval. Need to correlate with required skill level.

8. Does the District have a continuing relationship with this individual?

Is this a "one shot deal" or will the District continue to use this individual in the future?

If the answer to question 7 or 8 is "YES," there is a good possibility that an employment relationship exists. Questions 7 and 8 are indicators of District control that, in conjunction with other factors, imply an employment relationship. Go back to PART I and re-evaluate each question. If questions 1 - 6 are still all "NO," continue . . .

9. Does the individual operate an independent trade or business that is available to the general public?

A determining factor in judging independence is the performance of services to the general public. NOTE: Possession of a business license or incorporation does not automatically satisfy this requirement. Conversely, there are instances where an individual runs a small business and may not perform services on a full time basis but functions independently and offers services to a wide array of institutions, if needed.

10. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.?

This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss. As in #9, this may be a small business with minimal investment required.

If either 9 or 10 are "NO," there is a strong possibility that the individual does not qualify as an independent contractor and must be paid as a District employee. If this is so, STOP HERE.

If 9 and 10 are both "YES," continue...

11. Does the individual provide all materials and support services necessary for the performance of this service?

The District should not be providing office space, clerical, or any other support for this individual such as materials, copying, printing, office supplies, equipment, etc. Any necessary assistants would be provided by the individual.

12. Is this assignment compensated by measureable completion of duties assigned?

While a flat rate is descriptive of compensation to Independent Contractors, hourly rates may be used to engage certain professionals such as attorneys.

13. Does the individual bear the cost of any travel and business expenses incurred to perform this service?

Generally, these types of expenses are paid by an employer, however, some contracts provide for payment of airfare, mileage, etc. for consultants. The most economical method of travel must be utilized, i.e. lowest airfare, standard lowest rate for hotel rooms, mileage at IRS standard rate, meals by District per diem rate, etc.

If 9 and 10 are "YES," 11 through 13 should also be "YES" and are items that should be written into the contract. This individual is an independent contractor.

Signature of Person Completing Questionnaire

Print Name

Date

Signature of Approving Administrator/Manager

Print Name

Date

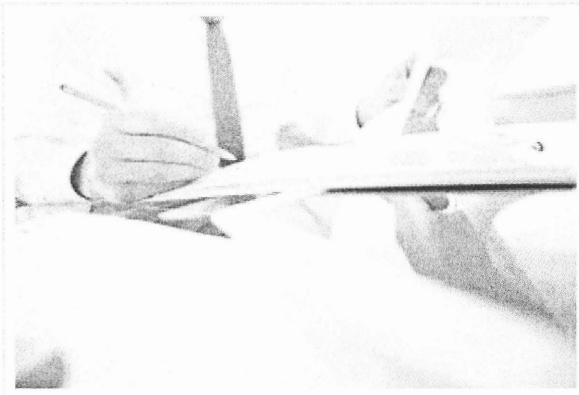
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(Do not submit this document)

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LCW LIEBERT CASSIDY WHITMORE

California Supreme Court Adopts New “ABC Test” for Classification of Independent Contractors: Potential Risk and Impact on Public Agencies

By Guest Author on May 9, 2018



This post was authored by Richard C. Bolanos and Michael J. Le.

On April 30, 2018, the California Supreme Court issued a decision in the case of *Dynamex Operations West, Inc. v. Superior Court* (S222732), in which it established a new and more streamlined legal test to determine whether a worker should be classified as an independent contractor or employee. This test applies to California’s Industrial Welfare Commission (IWC) Wage Orders which regulates wages, hours, and working conditions.

The Court rejected the application of the longstanding and flexible multifactor standard in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal. 3d 341, which was used by California courts for years.

The new worker-friendly standard presumes all workers are employees and places the burden on an employer to establish that a worker satisfies the three independent conditions of the “ABC Test” for an independent contractor.

Factual Background and the “ABC Test”

Dynamex is a national same-day courier service that operates a number of business centers in California. The company hires delivery drivers to transport letters and packages to its customers. Initially, Dynamex classified its California drivers as employees, but then later converted all of its drivers from employees to independent contractors in an effort to save costs. This lawsuit was subsequently filed by Dynamex drivers alleging that the company misclassified them because their job responsibilities as independent contractors were the same as when they were classified as employees.

Following an extensive analysis of California case law on the legal test for determining whether a worker is an employee or, instead, an independent contractor, the Supreme Court held that it was appropriate for employers to

look to a standard commonly referred to as the “ABC test,” that is utilized in other jurisdictions. Under that test a worker is properly considered an independent contractor to whom a wage order does not apply, only if the employer establishes:

- A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B) that the worker performs work that is outside the usual course of the hiring entity’s business; and
- C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Failure to establish all of the above three factors results in a determination that a worker is an employee and thus not an independent contractor.

How Is It Relevant to Public Agencies?

The Dynamex decision affirms the general legal rule that it is the employer’s responsibility to correctly classify a worker as an independent contractor. Failure to meet the legal test will expose your agency to back pay and fines for failure to pay federal Social Security and payroll taxes, unemployment insurance, workers compensation benefits, and for violation of various federal and state statutes and regulations governing retirement, wages, hours, and working conditions. And while the Dynamex ruling is limited to an analysis of the California Wage Orders (Cal. Code Regs. § 11010 *et seq.*), it provides clear guidance for applying the independent contractor test. Public agencies are well advised to review all independent contractor arrangements under the “ABC test” and reclassify such arrangements if necessary. LCW is available to assist your agency in conducting such a review.

Liebert Cassidy Whitmore
California Public Agency Labor & Employment Blog
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Independent Contractors

On April 30, 2018, in the *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County*, the California Supreme Court established stricter tests for an employer to ensure that employees are not misclassified as independent contractors, and thereby, not receiving benefits to which employees are entitled and not generating employment taxes.

The 1989 California Supreme Court ruling originally defined workers as contractors by applying these tests:

- Is the work an integral part of the local educational agency (LEA)?
- Does the worker's managerial skill affect the profit or loss opportunity for the contractor?
- How does the worker's investment compare to the LEA investment?
- Does the work require special skill and initiative?
- Is the relationship between the contractor and the district permanent or indefinite?
- What is the nature and degree of the district's control?

In *Dynamex Operations West, Inc.*, the California Supreme Court established the ABC test in which a worker is presumed to be an employee unless the employer can show that:

- A. The worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity's business ("independent, separate, and distinct business from that of the employer"), regardless of where the work occurs; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The new ABC test applies only to Industrial Welfare Commission Wage Orders. The Court's opinion did not include a ruling about whether the test would also apply to other wage and hour laws. The new California Supreme Court ruling makes it significantly more challenging for entities to classify workers as independent contractors rather than employees. LEAs should review their independent contractor relationships to determine if any of their workers should be reclassified.

—*Jamie Metcalf and Kathleen Spencer*

posted 05/11/2018

**INFORMATION FOR PROSPECTIVE
INDEPENDENT CONTRACTOR**

Tentative Agreement

1. Service to be provided (**Attach a Cost Proposal with a detailed scope of service and if applicable, a Biography must be provided for services \$15,000 or more**):
 2. Service Cost: _____ Plus Expenses? Yes ___ No ___ Maximum Amount of Expenses: \$ _____
(Price Estimate and Breakdown of such expenses must be included in the Cost Proposal)
 3. Date(s) of Service: _____.
 4. Is it possible that this Independent Contractor may provide future services in the amount of \$600.00 or more in the current or next calendar year?
Yes _____ No _____
 5. Independent Contractor shall assume all expenses unless otherwise noted.
 6. All services rendered on District Property shall require the contractor to procure, maintain, and keep in full force and effect the following types of insurance:
 - **Comprehensive general liability** - No less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - **Auto Liability** - For vendors who will drive on District property, Automobile Liability in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage, including owned, hired and non-owned vehicle coverage.
 - **Workers' Compensation** as required by California State Law. The vendor/contractor shall provide a waiver of subrogation. Workers' Compensation is required if a supplier has any employees. If a supplier does not have any employees then the supplier is exempt from this requirement.
 - **Professional liability insurance (Errors and Omissions)**, shall be for no less than \$1,000,000 per occurrence to be maintained for the duration of the agreement and three years following its termination. This insurance requirement applies when a supplier has a professional designation or license and/or is providing professional services. Service providers not providing a professional service are exempt from this requirement.
- CONTRACTOR agrees to name DISTRICT and its Board of Trustees, officers, agents and employees as additional insured on its general liability insurance policy and must provide a separate written endorsement.
7. Independent Contractor shall indemnify and/or hold harmless the District, its officers and agents employees and volunteers by reason of liability for damages for (a) death or bodily injury to persons, (b) injury to, loss, or theft of property, and (c) any other damage or expense arising under the above sustained by the Independent Contractor.
 8. Independent Contractor affirms that no Rancho Santiago Community College District employee shall be hired as a subcontractor while working for the District.

The above are excerpts from the District's standard Independent Contractor agreement and are intended to be used during the negotiation process with the prospective contractor. A signature or initial attached hereto means simply that the prospective Independent Contractor acknowledges that the District's requirements are understood and that after the District's Board approval if required, a signature on the Independent Contractor agreement shall be executed.

INDEPENDENT CONTRACTOR

Signature

Printed Name

Title

Street Address

City, State and Zip Code

Email Address

Date _____

DISTRICT REQUESTOR

Signature

Printed Name

Title

Date

Date Mailed: ___/___/___

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

Other entities. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Withholding Exemption Certificate

(This form can only be used to certify exemption from nonresident withholding under California R&TC Section 18662. This form cannot be used for exemption from wage withholding.)

File this form with your withholding agent.
(Please type or print)

Withholding agent's name

Vendor/Payee's name

Vendor/Payee's Social security number
 SOS. no. California corp. no. FEIN

Note:
Failure to furnish your identification number will make this certificate void.

Vendor/Payee's address (number and street)

APT no. Private Mailbox no. Vendor/Payee's daytime telephone no.

City

State

ZIP Code

I certify that for the reasons checked below, the entity or individual named on this form is exempt from the California income tax withholding requirement on payment(s) made to the entity or individual. Read the following carefully and check the box that applies to the vendor/payee:

Individuals — Certification of Residency:

I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly inform the withholding agent. See instructions for Form 590, General Information D, for the definition of a resident.

Corporations:

The above-named corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State to do business in California. The corporation will withhold on payments of California source income to nonresidents when required. If this corporation ceases to have a permanent place of business in California or ceases to be qualified to do business in California, I will promptly inform the withholding agent. See instructions for Form 590, General Information E, for the definition of permanent place of business.

Partnerships:

The above-named partnership has a permanent place of business in California at the address shown above or is registered with the California Secretary of State, and is subject to the laws of California. The partnership will file a California tax return and will withhold on foreign and domestic nonresident partners when required. If the partnership ceases to do any of the above, I will promptly inform the withholding agent. **Note:** For withholding purposes, a Limited Liability Partnership is treated like any other partnership.

Limited Liability Companies (LLC):

The above-named LLC has a permanent place of business in California at the address shown above or is registered with the California Secretary of State, and is subject to the laws of California. The LLC will file a California tax return and will withhold on foreign and domestic nonresident members when required. If the LLC ceases to do any of the above, I will promptly inform the withholding agent.

Tax-Exempt Entities:

The above-named entity is exempt from tax under California or federal law. The tax-exempt entity will withhold on payments of California source income to nonresidents when required. If this entity ceases to be exempt from tax, I will promptly inform the withholding agent.

Insurance Companies, IRAs, or Qualified Pension/Profit Sharing Plans:

The above-named entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

California Irrevocable Trusts:

At least one trustee of the above-named irrevocable trust is a California resident. The trust will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required. If the trustee becomes a nonresident at any time, I will promptly inform the withholding agent.

Estates — Certification of Residency of Deceased Person:

I am the executor of the above-named person's estate. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required.

CERTIFICATE: Please complete and sign below.

Under penalties of perjury, I hereby certify that the information provided herein is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent.

Vendor/Payee's name and title (type or print) _____

Vendor/Payee's signature ► _____ Date _____

Instructions for Form 590

Withholding Exemption Certificate

References in these instructions are to the California Revenue and Taxation Code (R&TC).

General Information

A Purpose

Use Form 590 to certify an exemption from nonresident withholding. Complete and present Form 590 to the withholding agent. The withholding agent will then be relieved of the withholding requirements if the agent relies in good faith on a completed and signed Form 590 unless told by FTB that the Form 590 should not be relied upon.

Important – This form cannot be used for exemption from wage withholding. Any questions regarding wage withholding should be directed to the California Employment Development Department.

Do not use Form 590 if you are a seller of California real estate. Sellers of California real estate should use Form 593-W, Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individuals Sellers.

B Law

R&TC Section 18662 requires withholding of income or franchise tax on payments of California source income made to nonresidents of this state.

Withholding is required on:

- Payments to nonresidents for services rendered in California;
- Distributions of California source income made to domestic nonresident partners and members and allocations of California source income made to foreign partners and members;
- Payments to nonresidents for rents if the payments are made in the course of the withholding agent's business;
- Payments to nonresidents for royalties for the right to use natural resources located in California;
- Distributions of California source income to nonresident beneficiaries from an estate or trust; and
- Prizes and winnings received by nonresidents for contests in California.

For more information on withholding and waiver requests, get FTB Pub. 1017, Nonresident Withholding Partnership Guidelines, and FTB Pub. 1023, Nonresident Withholding Independent Contractor, Rent and Royalty Guidelines. To get a withholding publication see General Information G.

C Who can Execute this Form

Form 590 can be executed by the entities listed on this form.

Note: In a situation where payment is being made for the services of a performing entity, this form can only be completed by the performing entity or the performing entity's partnership or corporation. It **cannot** be completed by the performing entity's agent or other third party.

Note: The grantor of a revocable/grantor trust shall be treated as the vendor/payee for withholding purposes. Therefore, if the vendor/

payee is a revocable/grantor trust and one or more of the grantors is a nonresident, withholding is required. If all of the grantors of a revocable/grantor trust are residents, no withholding is required. Resident grantors can check the box on Form 590 labeled "Individuals — Certification of Residency."

D Who is a Resident

A California resident is any individual who is in California for other than a temporary or transitory purpose or any individual domiciled in California who is absent for a temporary or transitory purpose.

An individual domiciled in California who is absent from California for an uninterrupted period of at least 546 consecutive days under an employment-related contract is considered outside California for other than a temporary or transitory purpose.

Note: Return visits to California that do not total more than 45 days during any taxable year covered by the employment contract are considered temporary.

This provision does not apply if an individual has income from stocks, bonds, notes, or other intangible personal property in excess of \$200,000 in any taxable year in which the employment-related contract is in effect.

A spouse who is absent from California for an uninterrupted period of at least 546 days to accompany a spouse who is under an employment-related contract is considered outside of California for other than a temporary or transitory purpose.

Generally, an individual who comes to California for a purpose which will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident. For assistance in determining resident status, get FTB Pub. 1031, Guidelines for Determining Resident Status, or call the Franchise Tax Board (FTB) at (800) 852-5711 or (916) 845-6500 (not toll-free).

E What is a Permanent Place of Business

A corporation has a permanent place of business in California if it is organized and existing under the laws of California or if it is a foreign corporation qualified to transact intrastate business by the California Secretary of State. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains a permanent office in California that is permanently staffed by its employees.

F Withholding Agent

Keep Form 590 for your records. Do not send this form to the FTB unless it has been specifically requested by the FTB.

Note: If the withholding agent has received Form 594, Notice to Withhold Tax at Source, only the performing entity can complete and sign Form 590 as the vendor/payee. If the performing entity completes and signs Form 590 indicating that he or she is not subject to withholding, you must send a copy of Form 590 with Form 594 to the FTB.

For more information, contact the Nonresident Withholding Section. See General Information G. The vendor/payee must notify the withholding agent if:

- The individual vendor/payee becomes a nonresident;
- The corporation ceases to have a permanent place of business in California or ceases to be qualified to do business in California;
- The partnership ceases to have a permanent place of business in California;
- The LLC ceases to have a permanent place of business in California; or
- The tax-exempt entity loses its tax-exempt status.

The withholding agent must then withhold. Remit the withholding using Form 592-A, Nonresident Withholding Remittance Statement, and complete Form 592, Nonresident Withholding Annual Return, and Form 592-B, Nonresident Withholding Tax Statement. Get Instructions for Forms 592, 592-A, and 592-B for due dates and other withholding information.

G Where to get Publications, Forms, and Additional Information

You can download, view, and print FTB Publications 1017, 1023, 1024, and nonresident withholding forms, as well as other California tax forms and publications not related to nonresident withholding from our Website at: www.ftb.ca.gov

You can also have nonresident withholding forms faxed to you by calling (800) 998-3676. To have publications or forms mailed to you or to get additional nonresident withholding information, please contact the Nonresident Withholding Section.

NONRESIDENT WITHHOLDING SECTION
FRANCHISE TAX BOARD
PO BOX 651
SACRAMENTO CA 95812-0651

Telephone: (888) 792-4900
(916) 845-4900 (not toll-free)
FAX: (916) 845-9512 (24 hours a day, 7 days a week)

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

Asistencia bilingüe en español

Para obtener servicios en español y asistencia para completar su declaración de impuestos/formularios, llame al número de teléfono (anotado arriba) que le corresponde.