

# 2024 Instructions for Form FTB 3870

## Election for Refundable Credit

### What's New

**Credit Limitation** – For taxable years beginning on or after January 1, 2024, and before January 1, 2027, there is a \$5,000,000 limitation on the application of business credits. The total of all business credits including the carryover of any business credit for the taxable year may not reduce the “net tax”, for personal income filers, or “tax”, for corporate filers, by more than \$5,000,000. Business credits should be applied against “net tax” before other credits. For taxpayers included in a combined report, the limitation is applied at the group level. This credit limitation does not apply to the Low-Income Housing Credit.

For each taxable year of the limitation, taxpayers may make an irrevocable election to receive an annual refundable credit amount for business credits disallowed due to the \$5,000,000 limitation.

Taxpayers may claim 20% of this refundable credit in each year of a five-year refundable period. The refundable period begins the third taxable year after the taxable year in which the election is made.

To make this irrevocable election, taxpayers must submit form FTB 3870, Election for Refundable Credit, with an original, timely filed return.

If a taxpayer does not choose to make the election outlined above, business credits disallowed due to the limitation may be carried over. The carryover period for disallowed credit is extended by the number of taxable years the credit was not allowed. For more information, refer to California Revenue and Taxation (R&TC) Sections 17039.4, 17039.5, 23036.4, and 23036.5.

### General Information

#### A Purpose

Use this form to make an irrevocable election to receive an annual refundable credit for business credits disallowed due to the current \$5,000,000 credit limitation.

#### B Definitions

**Annual refundable credit amount** means 20 percent of the credit amount being elected to be refundable for the taxable year.

**Credit amount** means the amount of the qualified credits that would have otherwise been available to reduce net tax in the taxable year of the election but for the limitation under R&TC Sections 17039.4 and 23036.4 for taxable years beginning on or after January 1, 2024, and before January 1, 2027.

In the case of a pass-thru entity, the credit amount refers to the pro rata share, or distributive share of the credit passed through to the partner or shareholder of the qualified taxpayer that would have otherwise been available to reduce the net tax in the taxable year of election but for the current \$5,000,000 credit limitation.

In the case of an assigned credit, the “credit amount” refers to the credit amount that was assigned to the taxpayer. In the case of taxpayers required to be included in a combined report under Section 25101 or 25110, or taxpayers authorized to be included in a combined report under Section 25101.15, the “credit amount” refers to the credit amount of all members of the combined report.

**Qualified credits** mean credits subject to the \$5,000,000 credit limitation under R&TC Sections 17039.4 and 23036.4 for taxable years beginning on or after January 1, 2024, and before January 1, 2027.

**Refundable period** means the first five consecutive taxable years beginning the third taxable year after the taxable year that the taxpayer makes an election under R&TC Sections 17039.4 or 23036.4.

### C Election for Refundable Credit Examples

#### Example 1

In taxable year 2024 Erin, a personal income tax payer, has \$8,000,000 in available qualified credits. Erin's 2024 tax liability exceeds her credits. Typically, Erin would be able to claim all \$8,000,000 in credits on her tax return.

However, due to the credit limitation, Erin may claim only \$5,000,000 in credits. The remaining \$3,000,000 credit is disallowed in this taxable year. When completing the credit form(s) for the credits that included amounts disallowed due to the \$5,000,000 credit limitation, Erin enters the amount she intends to elect for refundability in the line for, “credits to be elected as refundable credits in future years.” Erin also adds those amounts to form FTB 3870 on line 1, column (c) and files it with her timely filed, original 2024 tax return. Her form FTB 3870 is the election for the \$3,000,000 in disallowed credit to be refundable during the refundable period.

Erin will claim 20% of the \$3,000,000 refundable credit every taxable year for five taxable years starting three taxable years after the election is made. Erin will claim a \$600,000 refundable credit ( $\$3,000,000 \times 20\%$ ) on her tax return for each taxable year 2027 through 2031.

#### Example 2

Corporation ABC is a combined reporting group and has \$8,000,000 in available qualified credits between all its entities. In total, the combined group only has \$7,000,000 in tax liability. Any credits limited by tax liability cannot be elected as a refundable credit. However, those credits are available for carryover in future years. Corporation ABC carries over the \$1,000,000 that was limited by its tax liability. The carryover amount is properly reported on the credit form(s) of the credit(s) the taxpayer chooses to allocate the credit carryover to.

In this example, Corporation ABC's amount of total qualified credits that would have otherwise been available to reduce net tax but for the credit limitation, is \$7,000,000. Due to the credit limitation the taxpayer may only claim \$5,000,000 of its credits. Since the credit limitation is applied at the group level, only \$5,000,000 in credit can be claimed between all members of the group. The taxpayer may select which credits are subject to the limitation providing all ordering of credit rules are observed.

Corporation ABC elects to make the \$2,000,000 in disallowed credit, a refundable credit in the refundable period by properly completing its credit form(s) and bringing amounts entered in the line for, “credits to be elected as refundable credits in future years” over to line 1, column (c) of its form FTB 3870, which it filed with its original, timely filed tax return. Corporation ABC attaches a schedule that displays which entities in the combined group generated the credits listed on the form FTB 3870. The schedule includes each entity's name, taxpayer identification number, and the amount of each credit they generated.

Corporation ABC may claim 20% of the \$2,000,000 credit every taxable year for five taxable years starting three taxable years after the election is made, or \$400,000 for each taxable year 2027 through 2031.

#### Example 3 – No election made

Kal has \$15,000,000 in available qualified credit and it is not limited by tax liability. However, the taxpayer does not submit form FTB 3870 with their original, timely filed tax return. The taxpayer will not be able to claim any annual refundable credits in future years. The taxpayer may carryover any amounts disallowed due to the credit limitation.

## D Limitations

The election for refundable credit must be made on an annual basis for each taxable year beginning on or after January 1, 2024, and before January 1, 2027. Each year's election is independent of elections made in other years. If this form is not filed with a original timely filed tax return, you will **not** be eligible to claim the annual refundable credit in future years.

Taxpayers may not elect a partial amount of the disallowed credit to be refundable. The election must be made for the full amount of disallowed credit due to the \$5,000,00 credit limitation, that would have otherwise been able to be claimed, in the taxable year the election is being made.

If you elect to make a credit refundable you must make the same election for all credits disallowed due to the \$5,000,000 credit limitation in the taxable year the election is being made.

Credits that are limited due to tax liability would not otherwise be able to be claimed, regardless of the \$5,000,000 credit limitation, and therefore are not eligible for the election to be refundable. Those amounts must be carried over to future years.

No portion of the annual refundable credit amount can be assigned to another taxpayer.

S corporations cannot elect a refundable credit.

The annual refundable credit will be able to reduce tax below tentative minimum tax.

## Specific Line Instructions

Note: Combined groups completing this form should attach a schedule that lists which members generated each of the credits listed on the form FTB 3870. If more than one member generated a portion of the same credit, please display how much of the credit each member generated on the schedule. Include each members name, taxpayer identification number, and the amount of each credit they generated.

**Name(s) as shown on your California tax return.** Enter the name of the individual or business and the social security number (SSN), individual taxpayer identification number (ITIN), California corporation number, federal employer identification number (FEIN), or the California Secretary of State (SOS) file number as shown on your tax return.

## Part I – Total Available Qualified Credit

### Line 1

**Column (a) – Credit name.** Enter the name of every qualified credit available in taxable year 2024 that was disallowed due to the \$5,000,000 credit limitation that you intend to elect to be refundable credit in future years. List credits that were assigned to you and claimed on form FTB 3544, Assignment of Credit, Part B, List of Assigned Credit Received and/or Claimed by Assignee separately from credits that you generated, carried over from prior years, or passed through to you.

**Column (b) – Credit code.** Enter the credit code number associated with this credit. Refer to the credit form instructions or the credit chart located in the applicable tax booklet.

**Column (c) – Credit amount to be elected as refundable in future years.** Enter the amount from the line on your corresponding credit form(s) for, "credit amounts to be elected as refundable in future years."

**Note:** If you are making an election for credit carryover reported on form FTB 3540, Credit Carryover and Recapture, or credits assigned to you reported on form FTB 3544 to be refundable in future years, you will need to figure your credit amount to be elected as refundable in future years by following the instructions on the respective forms.

**Line 2 – Election for refundable credit amount.** Enter the sum of all amounts entered in line 1, column (c).

You may not elect to have a partial amount of your disallowed credit to be refundable. If you elect to make a credit refundable you must make the same election for all other credits you claimed this taxable year that were also disallowed due to the \$5,000,000 credit limitation.

This is your election for refundable credit. If you do not complete this line you will not be able to claim refundable credit in future years.

**Line 3 – Annual refundable credit amount.** This is the annual refundable credit amount, which is 20% of your total election for refundable credit in line 2, that you can claim in taxable years 2027 through 2031.

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