

2020 Instructions for Form FTB 3540

Credit Carryover and Recapture Summary

What's New

Credit Limitation – For taxable years beginning on or after January 1, 2020, and before January 1, 2023, there is a \$5,000,000 limitation on the application of business credits for taxpayers. 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 tax filers, or the “tax”, for corporate filers, by more than \$5,000,000. For taxpayers included in a combined report, the limitation is applied at the group level. The business credits disallowed due to the limitation may be carried over. The carryover period for disallowed credits is extended by the number of taxable years the credit was not allowed. This limitation does not apply to the Low-Income Housing Credit.

General Information

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

You must keep your old tax returns along with the appropriate information to substantiate that you are entitled to the credits claimed, and/or recaptured on this form. The Franchise Tax Board (FTB) can request that information even on tax returns for years that are past the statute of limitations.

Part I Credit Carryover

A Purpose

Use form FTB 3540, Credit Carryover and Recapture Summary, Part I, to figure a prior year credit carryover of one or more repealed credits that no longer have separate credit forms. Credit carryovers may **not** be carried back and applied against a prior year's tax. The repeal dates have passed for the credits listed on this form, however, these credits have carryover provisions. You may claim these credits **only** if carryovers are available from a prior year.

Do not use form FTB 3540 to claim the following carryover credits:

- Natural Heritage Preservation Credit (Code 213)
- California Motion Picture and Television Production Credit (Code 223)
- Enterprise Zone Hiring and Sales or Use Tax Credit Carryover (Code 176)
- Local Agency Military Base Recovery Area (LAMBRA) Hiring and Sales or Use Tax Credit Carryover (Code 198)
- Manufacturing Enhancement Area Hiring Credit (Code 211)
- Targeted Tax Area (TTA) Hiring and Sales or Use Tax Credit Carryover (Code 210)

Get form FTB 3541, California Motion Picture and Television Production Credit; FTB 3805Z, Enterprise Zone Business Booklet; FTB 3807, Local Agency Military Base Recovery Area Business Booklet; FTB 3808, Manufacturing Enhancement Area Business Booklet; or FTB 3809, Targeted Tax Area Business Booklet, to determine the amount of credit carryover you may claim.

For taxable years beginning on or after January 1, 2008, and before January 1, 2010, business tax credits could only offset 50% of the tax (corporations) or net tax (individuals), if a corporation's taxable income was \$500,000 or more, or if an individual's net business income was \$500,000 or more. Business tax credits disallowed due to the 50% limitation may be carried over. The carryover period for disallowed credits was extended by the number of taxable years the credits were not allowed.

You do not need to complete this form if you file Schedule P (100, 100W, 540, 540NR, or 541), Alternative Minimum Tax and Credit Limitations. However, complete this form if you are required to report a credit recapture on Part II.

B Assignment of Credits

Assigned Credits to Affiliated Corporations – Credits earned by members of a combined reporting group may be assigned to an affiliated corporation that is an eligible member of the same combined reporting group. A credit assigned may only be applied by the affiliated corporation against their tax liability.

For more information, get form FTB 3544, Assignment of Credit, or go to ftb.ca.gov and search for **credit assignment**.

C Credit Carryover

Use the credit code number listed to the left of the credit name when you enter the credit amount on your tax return.

Code 175 – Agricultural Products Credit Carryover

You may claim a credit carryover if you donated agricultural products to a nonprofit organization under **former** R&TC Sections 17053.12 and 23608, only if a carryover is available from taxable years 1989 through 1991.

Code 196 – Commercial Solar Electric System Credit Carryover

You may claim a credit carryover for the costs of installing commercial solar electric systems under **former** R&TC Sections 17052.5 and 23601.5, only if a carryover is available from taxable years 1990 through 1993.

Code 181 – Commercial Solar Energy Credit Carryover

You may claim a credit carryover for the costs of installing commercial solar energy systems under **former** R&TC Sections 17052.4 and 23601.4, only if a carryover is available from taxable years 1987 through 1988.

Credit 209 – Community Development Financial Institution Investment Credit Carryover

You may claim a credit carryover for any qualified investment made into a community development financial institution under **former** R&TC Sections 17053.57 and 23657, only if a carryover is available from taxable years 1997 through 2016. This credit is subject to recapture.

Limitation: The credit may be carried forward for up to four years from the year in which the credit was incurred, or until exhausted, whichever occurs first.

Code 202 – Contribution of Computer Software Credit Carryover (Corporations only)

You may claim a credit carryover if you contributed computer software under **former** R&TC Section 23606.1, only if a carryover is available from taxable years 1986 through 1987.

Code 224 - Donated Fresh Fruits or Vegetables Credit Carryover

You may claim a credit carryover if you donated fresh fruits or vegetables to a California food bank under **former** R&TC Sections 17053.88 and 23688, only if a carryover is available from taxable years 2012 through 2016.

Limitation: The credit may be carried forward for up to seven years from the year in which the credit was incurred, or until exhausted, whichever occurs first.

Code 189 – Employer Childcare Program Credit Carryover

You may claim a credit carryover if you were an employer and previously established a qualified employee childcare program, constructed a childcare facility in California under **former** R&TC Sections 17052.17, 17052.18, and 23617, only if a carryover is available from taxable years 1994 through 2011.

Code 190 – Employer Childcare Contribution Credit Carryover

You may claim a credit carryover if you contributed to California childcare information and referral services in California under **former** R&TC Sections 17052.18 and 23617.5, only if a carryover is available from taxable years 1994 through 2011.

Code 194 – Employee Ridesharing Credit Carryover
(Individuals only)

You may claim a credit carryover for the costs paid or incurred as an employee for non-employer sponsored vanpool subscription costs under **former** R&TC Section 17053.1, only if a carryover is available from taxable years 1989 through 1995.

Code 191 – Employer Ridesharing Credit Carryover (Large)

You may claim a credit carryover for the cost of sponsoring a ridesharing program for your employees or for operating a private, third-party ridesharing program under **former** R&TC Sections 17053 and 23605, only if a carryover is available from taxable years 1989 through 1995.

Use Code 191 if, in the year in which the credit was generated, your available credit was computed using the Large Employer Program because you were an employer with 200 or more employees.

Code 192 – Employer Ridesharing Credit Carryover (Small)

You may claim a credit carryover for the cost of sponsoring a ridesharing program for your employees or for operating a private, third-party ridesharing program under **former** R&TC Sections 17053 and 23605, only if a carryover is available from taxable years 1989 through 1995.

Use Code 192 if, in the year in which the credit was generated, your available credit was computed using the Small Employer Program because you were an employer with fewer than 200 employees.

Code 193 – Employer Ridesharing Credit Carryover
(Transit passes)

You may claim a credit carryover for the costs paid or incurred for providing subsidized public transit passes to your employees under **former** R&TC Sections 17053 and 23605, only if a carryover is available from taxable years 1989 through 1995.

Code 182 – Energy Conservation Credit Carryover

You may claim a credit carryover for the costs of installing energy conservation measures under **former** R&TC Sections 17052.4, 17052.8, and 23601.5, only if a carryover is available from taxable years 1981 through 1986.

Credit 218 - Environmental Tax Credit Carryover

Small refiners of ultra low sulfur diesel fuel may claim a credit carryover for qualified capital costs incurred under **former** R&TC Sections 17053.62 and 23662, only if a carryover is available from taxable years beginning on or after July 1, 2005, and before January 1, 2018. This credit is subject to recapture.

Limitation: The credit may be carried forward for up to 11 years from the year in which the credit was incurred, or until exhausted, whichever occurs first.

Code 207 – Farmworker Housing Credit Carryover – Construction

You may claim a credit carryover for the eligible costs to construct or rehabilitate qualified farmworker housing under **former** R&TC Sections 17053.14 and 23608.2 only if a carryover is available from taxable years 1997 through 2008. This credit is subject to recapture.

Code 160 – Low-Emission Vehicles Credit Carryover

You may claim a credit carryover for the amount that was authorized by the CA Energy Commission under **former** R&TC Sections 17052.11 and 23603, only if a carryover is available from taxable years 1991 through 1995.

Code 220 – New Jobs Credit Carryover

You may claim a credit carryover for each increase in qualified full-time employees hired under **former** R&TC Sections 17053.8 and 23623, only if the carryover is available from taxable years 2009 through 2013.

Limitation: The credit may be carried forward for up to eight years from the year in which the credit was incurred, or until exhausted, whichever occurs first.

Code 185 – Orphan Drug Credit Carryover

You may claim a credit carryover for expenses related to qualified clinical testing under **former** R&TC Sections 17057 and 23609.5, only if a carryover is available from taxable years 1987 through 1992.

Code 184 – Political Contributions Credit Carryover
(Individuals only)

You may claim a credit carryover for political contributions you made prior to January 1, 1992, under **former** R&TC Section 17053.14, only if a carryover is available from taxable years 1987 through 1991.

The political contribution credit was the smaller of one of the following:

- 25% (.25) of the amount contributed.
- \$50 (\$25 for married filing separately and single).

Code 174 – Recycling Equipment Credit Carryover

You may claim a credit carryover for the purchase of qualified recycling equipment, which was certified by the California Integrated Waste Management Board, under **former** R&TC Sections 17052.14 and 23612.5, only if a carryover is available from taxable years 1989 through 1993.

Code 186 – Residential Rental and Farm Sales Credit Carryover
(Individuals only)

You may claim a credit carryover if you had a gain from the sale of residential rental or farm property under **former** R&TC Section 17061.5, only if a carryover is available from taxable years 1987 through 1991.

Code 171 – Ridesharing Credit Carryover (Pre-1989)

You may claim a credit carryover for the cost of sponsoring a ridesharing program for your employees, or for operating a private, third-party ridesharing program under **former** R&TC Sections 17053 and 23605, only if a carryover is available from taxable years 1981 through 1986.

Use Code 171 **only** for employer ridesharing credit carryovers from pre-1989 taxable years. If you are claiming a credit carryover from the employer ridesharing vehicle credit available in taxable years 1989 through 1995, see codes 191 through 193 to determine which code to use.

Code 200 – Salmon and Steelhead Trout Habitat Restoration Credit Carryover

You may claim a credit carryover for the cost associated with salmon and steelhead trout habitat restoration and improvement projects under **former** R&TC Sections 17053.66 and 23666, only if a carryover is available from taxable years 1995 through 1999.

The credit amount is the lesser of 10% of qualified costs, or other amounts determined by the California Department of Fish and Game.

Code 180 – Solar Energy Credit Carryover

You may claim a credit carryover for the costs of installing solar energy systems under **former** R&TC Sections 17052.5 and 23601, only if a carryover is available from taxable years 1985 through 1988.

Code 179 – Solar Pump Credit Carryover

You may claim a credit carryover for the cost of installing a solar pump system under **former** R&TC Sections 17052.1, 17052.4, 17052.8, and 23607, only if a carryover is available from taxable years 1981 through 1983.

Code 201 – Technology Property Contribution Credit Carryover (Corporations only)

You may claim a credit carryover if you contributed technological property under former R&TC Section 23606, only if a carryover is available from taxable years beginning on or after January 1, 1983, and before July 1, 1984, and beginning on or after January 1, 1985, and before January 1, 1987.

Code 178 – Water Conservation Credit Carryover (Individuals, Estates, and Trusts only)

You may claim a credit carryover for the costs of installing water conservation measures under former R&TC Section 17052.8, only if a carryover is available from taxable years 1980 through 1982.

Code 161 – Young Infant Credit Carryover (Individuals only)

You may claim a credit carryover for a dependent under 13 months of age under former R&TC Section 17052.20, only if a carryover is available from taxable years 1991 through 1993.

D Limitations

For taxable years beginning on or after January 1, 2020, and before January 1, 2023, there is a \$5,000,000 limitation on the application of business credits, including carryover. For taxpayers included in a combined report, the limitation is applied at the group level. The limitation does not apply to the Low-Income Housing Credit.

In general, a credit carryover cannot reduce the minimum franchise tax (corporations and S corporations), the annual tax (limited partnerships, limited liability companies (LLCs) classified as partnerships, limited liability partnerships), the alternative minimum tax (corporations, exempt organizations, individuals, and fiduciaries), the built-in gains tax (S corporations), or the excess net passive income tax (S corporations).

Alternative Minimum Tax (AMT) may be reduced by the following credit carryovers: solar energy and commercial solar energy credit. Get Schedule P (100, 100W, 540, 540NR, or 541).

If the available credit carryover for the current taxable year exceeds the current year tax, any unused amount may be carried over to succeeding years unless the credit carryover period has expired. Apply the carryover to the earliest taxable year.

In no event can a credit carryover be carried back and applied against a prior year's tax.

Single Member LLC (SMLLC)

If a taxpayer owns an interest in a disregarded business entity [a single member limited liability company (SMLLC) not recognized by California, and for tax purposes treated as a sole proprietorship owned by an individual or a branch owned by a corporation], the credit amount received from the disregarded entity that can be utilized is limited to the difference between the taxpayer's regular tax figured **with** the income of the disregarded entity, and the taxpayer's regular tax figured **without** the income of the disregarded entity.

If the disregarded entity reports a loss, the taxpayer may not claim the credit this year, but can carry over the credit amount received from the disregarded entity.

For more information on SMLLC, get Form 568, Limited Liability Company Income Tax Booklet.

Specific Column Instructions

Column (a) – Enter the code number from the instructions for the carryover credit(s) you are eligible to claim.

Column (b) – Enter the name of repealed credit from the instructions for the carryover credit(s) you are eligible to claim.

Column (c) – Enter the amount of credit carryover available from prior years. This amount is on the prior year credit form or statement that you attached to your previous year's tax return. This amount may also be on the prior year Schedule P (100, 100W, 540, 540NR, or 541), under Credit Carryover, column (d).

Column (d) – Enter the amount of credit carryover claimed on your current year tax return. The credit carryover amount you can claim on your tax return may be limited by tentative minimum tax or your tax liability. Refer to the credit instructions in your tax booklet to determine the amount of credit carryover you can claim and for information on claiming the credit carryover on your tax return. Also see General Information D, Limitations. **Do not** include any assigned credit claimed on form FTB 3544, Part B, List of Assigned Credit Received and/or Claimed by Assignee.

Column (e) – Corporations that assign credit to other corporations within the same combined reporting group must complete form FTB 3544, Part A, Election to Assign Credit Within Combined Reporting Group. Enter the total amount of credit assigned from form FTB 3544, Part A, column (g). If you are not a corporation, enter -0-.

Column (f) – Subtract the amount in column (d) and column (e) from the amount in column (c). Enter the result in column (f). This is the amount of credit that can be carried over to future years. To see if the credit is limited, see General Information D, Limitations.

Part II Credit Recapture

A Purpose

Use form FTB 3540, Credit Carryover and Recapture Summary, Part II to compute any recapture.

B Credit Recapture Definition

Code 207 – Farmworker Housing Credit (FWHC)

If the FWHC was allocated under the former FWHC provision prior to January 1, 2009, and the property is disposed of or stops operating, with respect to the costs of constructing or rehabilitating farmworker housing, within 360 months after completion, the portion of the credit claimed that represents the portion of the 360-month period must be recaptured.

Credit 209 - Community Development Financial Institution Investment Credit

If the qualified investment is withdrawn before the end of the required 60 months and isn't reinvested into another community development financial institution within 60 days, the entire amount of the credit previously allowed must be recaptured. If the qualified investment is reduced before the end of the 60th month, but not below \$50,000, 20% of the total reduction must be recaptured.

Credit 218 - Environmental Tax Credit

If the facility used to produce ultra low sulfur diesel fuel, is sold, transferred, or otherwise disposed of within five years of the taxable year during which the credit was first claimed, the previously allowed credit must be recaptured in the disposition year. The total credit claimed is multiplied by a fraction. The numerator is the remaining term of five years and the denominator is five.

Specific Column Instructions



Column (c) – Include the recaptured amount from Part II, column (c), for each credit on your California tax return or schedule as follows:

- Form 100, California Corporation Franchise or Income Tax Return, Schedule J, line 5
- Form 100S, California S Corporation Franchise or Income Tax Return, Schedule J, line 5
- Form 100W, California Corporation Franchise or Income Tax Return - Water's Edge Filers, Schedule J, line 5
- Form 109, California Exempt Organization Business Income Tax Return, Schedule K, line 4
- Form 540, California Resident Income Tax Return, line 63
- Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, line 73
- Form 541, California Fiduciary Income Tax Return, line 37
- Form 565, Partnership Return of Income, Schedule K, line 20c
- Form 568, Limited Liability Company Return of Income, Schedule K, line 20c.

Indicate that a credit recapture is included on the tax return by writing "FTB 3540" in the space provided or next to the line on the schedule or form.

Estates, trusts, partnerships, and LLCs, classified as partnerships, must identify the recapture amounts for their beneficiaries, partners, and members on Schedule K-1 (541, 565, or 568) Share of Income, Deductions, Credits, etc.

In addition, S corporations must identify recapture amounts for their shareholders on Schedule K-1 (100S), which will differ from the amount recaptured by the S corporation on Form 100S, Schedule J, line 5.

Advance Draft
as of 11/04/20