2020 Instructions for Form FTB 3801

Passive Activity Loss Limitations

These instructions are based on the Internal Revenue Code (IRC) as of **January 1, 2015,** and the California Revenue and Taxation Code (R&TC).

What's New

Excess Business Loss Limitation – The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act made amendments to Internal Revenue Code Section 461(l) ~~and eliminated~~ the excess business loss limitation of noncorporate taxpayers for taxable year 2020, and retroactively ~~removed~~ the limitation for taxable years 2018 and 2019. California does **not** conform. For taxable year 2020, complete form FTB 3461, California Limitation on Business Losses, if you are a noncorporate taxpayer and your net losses from all of your trades or businesses are more than $259,000 ($518,000 for married taxpayers filing a joint return). For more information regarding California treatment of excess business loss, see General Information, Excess Business Loss section.

General Information

In general, for taxable years beginning on or after January 1, 2015, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2015. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to **ftb.ca.gov** and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540), California Adjustments - Residents, or Schedule CA (540NR), California Adjustments - Nonresidents or Part-Year Residents, and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the instructions. Taxpayers should not consider the instructions as authoritative law.

Excess Business Loss

For taxable years beginning after December 31, 2018, California law generally conforms to the changes under the Tax Cuts and Jobs Act (TCJA) in regard to the disallowance of excess business loss deductions of non-corporate taxpayers. For California purposes, any disallowed loss will be treated as a carryover excess business loss for the subsequent taxable year.

If you have allowable business losses after taking into account first the at-risk limitations and then the passive loss limitations (this form), your losses may be subject to the excess business loss limitation. After taking into account all the other loss limitations, complete form FTB 3461 to figure the amount of your excess business loss limitation.

Registered Domestic Partners (RDP)

For purposes of California income tax, references to a spouse, husband, or wife also refer to a California RDP, unless otherwise specified. When we use the initials RDP they refer to both a California registered domestic "partner" and a California registered domestic "partnership," as applicable. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

Military Personnel

Servicemembers domiciled outside of California, and their spouses/RDPs, may exclude the servicemember's military compensation from gross income when computing the tax rate on nonmilitary income. Requirements for military servicemembers domiciled in California remain unchanged. Military servicemembers domiciled in California must include their military pay in total income. In addition, they must include their military pay in California source income when stationed in California. However, military pay is not California source income when a servicemember is permanently stationed outside of California. Beginning in 2009, the Military Spouses Residency Relief Act may affect the California income tax filing requirements for spouses of military personnel. For more information, get FTB Pub. 1032, Tax Information for Military Personnel.

Nonresident

In determining California taxable income, nonresidents compute prior year items by taking into account only those items with a California source, subject to any limitations provided by law. For example, passive losses are limited to passive gains (IRC Section 469 and R&TC Sections 17551 and 17561). Make this computation whether you were always a nonresident or a former resident who moved out of California.

Part-Year Resident

California taxes part-year residents as residents for the period of the year they were California residents and as nonresidents for the period of the year they were nonresidents. Therefore, a part-year resident must compute any suspended passive losses as if they were a California resident for all prior years and as if they were a nonresident for all prior years. These amounts must then be prorated based upon the period of California residency and the period of nonresidency for the year.

For more information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

Renewal Communities

California law does not conform to the tax incentives related to "renewal communities."

Expense treatment for small business – IRC Section 179(b)(1)

California law generally conforms to the federal rules for expensing IRC Section 179. However, federal limitation amounts may be different than California limitation amounts. For California purposes, the maximum IRC Section 179 expense deduction allowed for 2020 is $25,000.

Material Participation in Real Property Business – IRC Section 469(c)(7)

Beginning in 1994, and for federal purposes only, rental real estate activities of taxpayers engaged in real property business are not automatically treated as passive activities. California did not conform to this provision. For California purposes, all rental activities are passive activities. Therefore, an election under IRC Section 469(c)(7) is inapplicable for purposes of California personal income or franchise tax and taxpayers should group rental activities without regard to IRC Section 469(c)(7). Get federal Form 8582, Passive Activity Loss Limitations, for general rules regarding grouping of activities.

Disclosure Requirements for Groupings

On January 24, 2010, the Internal Revenue Service issued Revenue Procedure 2010-13 regarding disclosure requirements for groupings. California generally conforms to Revenue Procedure 2010-13, which is effective for tax years beginning on or after January 25, 2010. A separate disclosure statement is not required for state purposes. Get federal Form 8582 for more information.

A Purpose

Individuals, estates, trusts, and S corporations use form FTB 3801, Passive Activity Loss Limitations, to figure both of the following:

- Allowable California passive activity loss (PAL).
- Adjustment you must make to account for any difference between your California PAL and your federal PAL.

Generally, California law is the same as federal law concerning PAL limitations. However, differences, such as the special treatment for real estate professionals (as described in General Information) may cause your California PAL to be different from your federal PAL.

B Who Must File

Form FTB 3801 is filed by individuals, estates, trusts, and S corporations that have losses (including prior year unallowed losses) from passive activities. Additional information for nonresidents, part-year residents, and S corporations is provided below.

Exception. You do not have to file form FTB 3801 if you meet **both** of the following conditions:

- You have a net loss from rental real estate activities that is fully deductible under the special allowance for rental real estate.
- You have no other passive activities.

Full-Year Nonresidents

A full-year nonresident is taxable only on income derived from California sources.

Part-Year Residents

Part-year residents are taxable on all income from all sources while a California resident and only on income derived from California sources while a nonresident.

Full-year nonresidents and part-year residents see **Nonresident and Part-Year Resident Instructions** on page 4.

S Corporations

The PAL rules apply as if the S corporation were an individual. For example, losses from passive activities may not be used to offset other income, except for the $25,000 special allowance for losses from active participation in rental real estate activities. Refer to IRC Section 469. However, the material participation rules apply as if the S corporation were a closely-held C corporation. The material participation rules for closely-held C corporations are explained in the instructions for federal Form 8810, Corporate Passive Activity Loss and Credit Limitations. Refer to IRC Section 469(h)(4) and the regulations for more information.

To compute your California PAL for S corporations, use the worksheets on Side 2 to determine the amounts to enter on form FTB 3801 and the S corporation's allowed loss.

The S corporation's PAL adjustment will be the difference between the current year net income (loss) from all passive activities before application of the PAL rules and the total allowable net income (loss) from all passive activities after application of the PAL rules. Enter the PAL adjustment on Form 100S, California S Corporation Franchise or Income Tax Return, either line 7 or line 12.

C Coordination with Other Limitations

Generally, losses from passive activities are subject to other limitations, such as basis and at-risk limitations, before they are subject to the passive loss limitations. Once a loss becomes allowable under these other limitations, you must determine whether the loss is limited under the passive loss rules. Get federal Form 6198, At-Risk Limitations, for more information on at-risk rules. However, capital losses that are allowable under the passive loss rules may be limited under IRC Section 1211. Similarly, percentage depletion deductions that are allowable under the passive loss rules may be limited under IRC Section 613A(d).

Complete federal Form 6198 **using California amounts** before completing form FTB 3801.

Passive Activity Credit Limitations.

The following credits may be limited by passive activity income:

Credit	Code
Orphan drug credit carryover	185
Low-income housing	172
Research	183

To determine how much credit is allowed for the current year:

- Individuals, estates, trusts, and S corporations get form FTB 3801-CR, Passive Activity Credit Limitations.
- Personal Service Corporations and closely-held corporations subject to the passive loss rules get form FTB 3802, Corporate Passive Activity Loss and Credit Limitations.

D Overview of Form

Form FTB 3801 contains four steps which are briefly described below:

Step 1

Complete form FTB 3801, Side 2, **California Passive Activity Worksheet,** in order to figure your current year California passive activity income (loss) amounts. You must figure the current year California income (loss) amount for each passive activity before application of the PAL rules.

This may require you to figure the California/federal depreciation or amortization adjustment using form FTB 3885A, Depreciation and Amortization Adjustments.

Step 2

Complete form FTB 3801, Side 1. The result will be your total losses allowed from all passive activities for 2020.

Step 3

Carry the amounts from form FTB 3801, Side 1, to the worksheets on form FTB 3801, Side 3 and Side 4. You will use these worksheets to compute the allowable loss for each separate passive activity.

Step 4

The net income (loss) for each passive activity will be carried back to the California form or schedule on which it is usually reported. If there are no California forms to carry these amounts to (i.e., amounts from federal Schedule C, Profit or Loss from Business (Sole Proprietorship), Schedule E, Supplemental Income and Loss, and Schedule F, Profit or Loss From Farming), complete the **California Adjustment Worksheets** on form FTB 3801, Side 2.

If you are completing the **California Adjustment Worksheets,** include any nonpassive activities that are reported on the same federal schedules as the passive activities for which you are completing these worksheets. For example, if you have both passive and nonpassive Schedule E activities, you will include all of them on your **California Adjustment Worksheet, Schedule E Activities.**

By including both your passive and nonpassive activities on the **California Adjustment Worksheets,** you will be able to compute a single adjustment amount to transfer to Schedule CA (540), Part I or Schedule CA (540NR), Part II, Section B, line 3, line 5, or line 6.

General Instructions

Step 1 — Figuring your California Passive Activity Income (Loss)

Use the **California Passive Activity Worksheet** on form FTB 3801, Side 2, to determine the current year California net income or net loss from each passive activity before application of the PAL rules. Enter information for each passive activity on the schedule separately. The amount to enter in column (d) of the schedule is on the federal form on which the activity is reported. If you need more space, attach additional sheets.

Example: You reported a rental loss on federal Schedule E. The amount of this loss before the application of the PAL rules is on federal Schedule E, line 21. Enter this amount in column (d) of the worksheet.

Note for partners, members of limited liability companies (LLCs), and shareholders of S corporations: If you do not materially participate in the activity of a partnership, LLC, or S corporation in which you hold an interest and you determine the activity is passive, skip Step 1 and use the California amount from your Schedule K-1 (565, 568, or 100S), column (d), to complete Worksheet 1 and Worksheet 2 on form FTB 3801, Side 3.

Step 2 — Completing Form FTB 3801, Side 1

Use the amount from the **California Passive Activity Worksheet,** Side 2, column (f) to complete form FTB 3801, Side 3, Worksheet 1 and Worksheet 2. These worksheets will determine the amounts to enter on form FTB 3801, Side 1, lines 1a, 1b, 1c, 2a, 2b, and 2c. Complete form FTB 3801, Side 1 as follows:

Part I

Enter the amounts from form FTB 3801, Side 3, Worksheet 1 and Worksheet 2.

Get federal Form 8582 for specific line instructions and examples.

Line 3

If line 3 shows income, all of your losses are allowed, including any prior year unallowed losses entered on line 1c or line 2c. Transfer the income and losses to the form or schedule on which you normally report them. See Step 4 – Figuring the California Adjustment.

Part II

Enter all numbers in Part II as positive amounts. Get federal Form 8582 for line instructions and examples.

Trusts: You do not qualify for the $25,000 special allowance for rental real estate with active participation.

Estates: If the taxpayer actively participated in rental real estate before death, you may use the $25,000 special allowance for rental real estate for two years. The $25,000 special allowance is reduced by the amount used by the surviving spouse/RDP.

Line 5

If you are married/RDPs filing separate tax returns who lived apart at all times during the year, enter $75,000 on line 5 instead of $150,000. If you are married/RDPs filing separate tax returns who lived together at any time during the year, you are not eligible for this special allowance. You must enter -0- on line 9 and go to line 10.

Line 6

If you have not already done so, complete federal Form 8582 to figure your modified adjusted gross income.

If you are a military servicemember domiciled outside of California, subtract your military pay from your modified federal adjusted gross income.

Enter your modified federal adjusted gross income from federal Form 8582, line 7. For RDPs, enter your federal modified adjusted gross income from your refigured federal Form 8582, line 7.

S Corporations: Enter the amount from Form 100S, line 20 computed without regard to any passive income (loss).

Publicly Traded Partnerships (PTPs)

A PTP is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market (or the substantial equivalent). See the information provided for PTPs in the instructions for federal Form 8582 for an explanation of established securities market and secondary market. Information which you receive from your partnership will usually indicate whether or not your partnership interest is an interest in a PTP. If you have income or loss from a PTP, see below. All others go to Step 3.

Passive Activity Loss Rules for Partners in PTPs

Passive losses from a PTP can only offset income from the same PTP. Therefore, **do not** include passive income, gains, or losses from a PTP on form FTB 3801, Side 1. Instead, use the following steps to figure and report your income, gains, and losses from PTPs:

1. Combine current year income, gains, losses, and prior year unallowed losses from each activity of the PTP. Determine whether you have an overall gain (total gain/income minus total losses) or an overall loss.
2. If you have an overall gain, the overall gain is nonpassive income. The remaining gain is gain or income from a passive activity and the total loss is a loss from a passive activity.
3. If you have an overall loss (but did not dispose of your interest in the PTP to an unrelated person in a fully taxable transaction during the year), the net loss is disallowed and carried to the next year. All income or gain is income or gain from a passive activity and losses equal to the amount of income or gain reported is loss from a passive activity.
4. Report all gain or income and any allowed losses on the forms or schedules where the type of gain, income, or loss would usually be reported. For example, a gain from the sale of business property (IRC Section 1231 gain) would be reported on California Schedule D-1, Sales of Business Property. Write "From PTP" to the left of the amount or include it according to your software's instructions.

Remember to **use California amounts**. Include only the same types of income and losses you would include in figuring your net income or loss from a non-PTP passive activity. For amounts reportable on Schedule E, you will need to use **California Adjustment Worksheet**, Schedule E Activities. See Step 4 – Figuring the California Adjustment.

Example: You own an interest in a PTP. The PTP reports ordinary income of $8,000 for federal purposes and ordinary income of $7,000 for California purposes. The PTP has a prior year IRC Section 1231 unallowed loss of $3,500 for federal purposes and a prior year IRC Section 1231 (California conforming R&TC Section 18151) loss of $5,000 for California purposes. You have an overall gain of $4,500 (8,000 - 3,500) for federal purposes and overall gain of $2,000 (7,000 - 5,000) for California purposes. You would report "From PTP" $5,000 loss on California Schedule D-1. The difference between the California loss of $5,000 and the federal loss of $3,500 would be included in the California adjustment on Schedule D (540 or 540NR), California Capital Gain or Loss Adjustment, or California Schedule D-1. You would report the following on your **California Adjustment Worksheet**, Schedule E Activities (FTB 3801, Side 2):

(a) Schedule E Activities	(b) Passive or Nonpassive	(c) California Amount	(d) Federal Amount
"From PTP"	Nonpassive	$2,000	$4,500
"From PTP"	Passive	$5,000	$3,500

Step 3 — Completing the Worksheets on Form FTB 3801, Side 3 and Side 4

After you have completed form FTB 3801, Side 1, complete Worksheets 3, 4, and 5 or 6.

How to Report Allowed Losses

Get federal Form 8582, follow the instructions and use Worksheet 5 and Worksheet 6 to identify the amount of allowed losses from each activity.

Step 4 — Figuring the California Adjustment

After you have completed the Worksheets on Side 3 and Side 4 of form FTB 3801 and you have determined the amount allowed for each activity, you will need to figure your California adjustment.

If California has a separate form or schedule to figure the California adjustment, use it to compute the amount of the California adjustment. Include the allowed losses from Worksheet 5 or Worksheet 6 on the California form(s) or schedule(s) on which they are normally reported. For example, California Schedule D (540 or 540NR) is comparable to federal Schedule D, Capital Gains and Losses, and California Schedule D-1 is comparable to federal Form 4797, Sales of Business Property.

Where there are no comparable California forms or schedules, use the **California Adjustment Worksheets** on form FTB 3801, Side 2. Specifically, California does not have forms or schedules comparable to federal Schedules C, E, or F. Each passive activity that has no comparable California form or schedule should be listed on the **California Adjustment Worksheet** corresponding to the federal schedule where it was reported.

Remember to include nonpassive activity amounts when the nonpassive activities are reported on the same federal schedule as those activities that are passive for California.

Using the California Adjustment Worksheets: Complete column (a) through column (d) of each worksheet. Group all activities from each type of federal schedule on the appropriate worksheet as indicated in column (a). If you need more space, attach additional sheets.

Column (a): Enter a description of the activity. Include **passive and nonpassive activities** that are reported on the same federal schedule. For example, if you have one federal Schedule E activity that is passive for California and one Schedule E activity that is nonpassive for California, include both activities and their corresponding amounts on the **California Adjustment Worksheet, Schedule E Activities.**

Column (b): Enter the character of the activity for California purposes as passive or nonpassive.

Column (c): Enter your California net income (loss) from this activity **after** application of the PAL rules. This will be the amount of any overall gain from Worksheet 1 and Worksheet 2 and allowed losses from Worksheet 5 and Worksheet 6.

Column (d): Enter the federal net income (loss) from this activity **after** application of the PAL rules (e.g., federal Schedule C, line 31; Schedule E income, line 21; Schedule E loss, line 22; and Schedule F, line 34).

If you have an activity that is nonpassive for federal purposes and passive for California purposes (as in the case of rental real estate professionals), use the actual federal amounts allowed in column (d) of the **California Adjustment Worksheets.**

Complete each **California Adjustment Worksheet** as follows:

Individuals

1. Add the column (c) amounts and enter the results on the Total line for column (c).
2. Add the column (d) amounts and enter the results on the Total line for column (d).
3. Subtract the Total amount of column (d) from the Total amount of column (c) and enter the difference on the Total line for column (e).
4. California Adjustment column (e):
   - If the Total column (e) amount is **positive**, you have a California **addition**. Enter this amount on Schedule CA (540 or 540NR) as follows:

California Adjustment Worksheet	Sch. CA (540), Part I or Sch. CA (540NR), Part II, Section B
Total, column 1(e) –	line 3, column C.
Total, column 2(e) –	line 5, column C.
Total, column 3(e) –	line 6, column C.

   - If the Total column (e) amount is **negative**, you have a California **subtraction**. Enter this amount on Schedule CA (540 or 540NR) as follows:

California Adjustment Worksheet	Sch. CA (540), Part I or Sch. CA (540NR), Part II, Section B
Total, column 1(e) –	line 3, column B.
Total, column 2(e) –	line 5, column B.
Total, column 3(e) –	line 6, column B.

Enter all amounts on Schedule CA (540 or 540NR) as positive amounts.

S Corporations

1. Add the column (c) amounts and enter the results on the Total line for column (c).
2. Add the column (d) amounts and enter the results on the Total line for column (d).
3. Subtract the Total amount of column (d) from the Total amount of column (c) and enter the difference on the Total line for column (e).
4. Net the column (e) Total amounts [the sum of line 1(e), line 2(e), and line 3(e)].
   - If the result is positive, enter the result on Form 100S, line 7.
   - If the result is negative, enter the result on Form 100S, line 12 as a positive amount.

Nonresident and Part-Year Resident Instructions

Nonresidents and part-year residents must complete form FTB 3801 and the worksheets twice:

- First, to determine the amounts to enter on Schedule CA (540NR), columns B and C.
- Second, to determine the amounts to enter on Schedule CA (540NR), column E.

Completing the Form the First Time – Full-Year Nonresidents and Part-Year Residents

- Follow the General Instructions beginning on page 2.
- Complete the form and worksheets as if you were a California resident for the entire year even though you were a nonresident for all or part of the year. A resident is taxable on all income from all sources, including income from sources outside of California. When completing the forms and worksheets the first time, include your passive activity income and losses from all sources for the entire year.
- Worksheets 1 and 2, column (c) – The amount of prior year unallowed losses is the amount of unallowed losses generated as if you had been a California resident in all prior years.

Completing the Form the Second Time – Full-Year Nonresidents

- Complete the form and worksheets a second time by following the General Instructions beginning on page 2. Complete only Step 1 through Step 3.
- Include only your passive income and losses from California sources.
- Partners, members of a limited liability company (LLC), or shareholders of an S corporation – The note in Step 1 instructs you to use the amount from Schedule K-1 (565, 568, or 100S), column (d). Instead of the amount in column (d), use the amount from Schedule K-1 (565, 568, or 100S), column (e).
- Worksheets 1 and 2, column (c) – The amount of prior year unallowed losses is the amount of prior year unallowed losses from **California sources only** as if you had been a nonresident in all prior years.

Completing the Form the Second Time – Part-Year Residents

- Complete the form and worksheets a second time by following the General Instructions beginning on page 2. Complete only Step 1 through Step 3.
- Include your passive income and losses from all sources for the part of the year you were a resident, plus your California source passive income and losses for the part of the year you were a nonresident.
- For an interest in a non-California source passive activity, you must prorate the income or loss from such activity to be reported during the period you were a resident, unless you have information that specifies when the income or loss was realized. Figure the prorated income or loss as follows:

$$\frac{\text{Number of days you were a California Resident*}}{\text{365 days}} \times \text{Amount of income or loss from your Passive Activity}$$

* If your passive activity is from a fiscal year pass-through entity, enter the number of days you were a California resident during the pass-through entity's fiscal year ending in 2020.

Enter the result in column (f) of the **California Passive Activity Worksheet** on form FTB 3801, Side 2.

When completing column (c), of Worksheets 1 and 2 on form FTB 3801, Side 3, for non-California source activities, use the same formula noted above on this page.

Useful Publications:

- FTB Pub. 1031, Guidelines for Determining Resident Status. This publication provides information on determining residency and whether your income or loss has a California source.
- FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency. This publication discusses the rules for calculating loss carryovers and includes passive activity loss examples.