

1995

Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities and Modified Endowment Contracts

3805P

For calendar year 1995, or fiscal year beginning, 1995, ending, 19. First name and initial, Last name, Your social security number. Present home address (number and street, or rural route). Check this box if this is an amended return. City, town or post office, state, ZIP code.

1 Early distribution included in gross income. See instructions. 1
2 Distributions excepted from additional tax. See instructions. Enter the appropriate number for exception from instructions. 2
3 Amount subject to additional tax. Subtract line 2 from line 1. 3
4 Tax due. Multiply line 3 by 2 1/2% (.025). Enter here and on Form 540, line 36, or Form 540NR, line 45. If you are not required to file a California income tax return, sign this form below and refer to the instructions. 4

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. It is unlawful to forge a spouse's signature.

Your signature, Spouse's signature (if filing jointly, both must sign), Date. X, X. Signature of paid preparer (declaration of preparer is based on all information of which preparer has any knowledge.), Preparer's SSN/FEIN.

Firm's Name (or yours if self-employed) and address, Date.

For Privacy Act Notice, see Form FTB 1131.

General Information

References in these instructions are to the Internal Revenue Code (IRC) as of January 1, 1993.

Purpose of Form

Use this form to report any additional tax you may owe on the early distribution from a qualified retirement plan, an annuity or a modified endowment contract.

Early Distribution. Generally, any distribution from your qualified retirement plan, annuity, or modified endowment contract that you receive before you reach age 59 1/2 is an early distribution. The portion of the early distribution that is included in income is subject to a 2 1/2 percent tax.

Qualified Retirement Plan. A qualified retirement plan includes:

- a qualified pension, profit-sharing, and stock bonus plan (including a Keogh plan and a qualified cash or deferred arrangement (CODA) under IRC section 401(k));
a qualified pension, profit-sharing plan or stock bonus plan, including a Keogh plan;
a qualified annuity plan;
a tax sheltered annuity; or
an individual retirement account or an individual retirement annuity (IRA).

Who Must File

You must file form FTB 3805P if you:

- have a distribution code 1 shown in box 7 of Form 1099-R;
owe the tax on early distributions from your qualified retirement plan (including IRA), annuity, or modified endowment contract, but distribution code 1 is not shown in box 7 of Form 1099-R;
meet an exception to the tax on early distributions and the exception (distribution code 2, 3 or 4) is NOT shown or is incorrect on

Form 1099-R. (You must file even if you do not owe any tax).

You do not have to file form FTB 3805P if:

- you rolled over the entire taxable portion of the distributions you received into another qualified plan within 60 days of receipt; or
you received an early distribution from your plan, but meet an exception to the tax (distribution code 2, 3, or 4 must be correctly shown on federal Form 1099-R).

California and federal laws are the same (except for the amount of an IRA or Keogh distribution included in income and the rate of tax assessed) for tax on early distributions. However, California does not have taxes similar to the excess contributions tax for IRAs, tax on excess accumulations in IRA plans, or tax on excess distributions from qualified retirement plans.

Such taxes are figured on federal Form 5329, Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities and Modified Endowment Contracts, Part II, Part III and Part IV, respectively.

Joint Returns. Each spouse must complete a separate form FTB 3805P for taxes attributable to his or her distribution from a qualified retirement plan as described above. If both spouses owe a tax on early distributions, enter the combined tax from both forms on Form 540, line 36, or Form 540NR, line 45.

IRA contributions. Do not file form FTB 3805P to report a deduction for contributions to your IRA or Keogh plan. See the instructions for Schedule CA (540), California Adjustments - Residents or Schedule CA (540NR), California Adjustments - Nonresident or Part-Year Resident.

If you made a nondeductible IRA or Keogh contribution in prior years refer to FTB Pub. 1005, Pension and Annuity Guidelines, for information on how to compute the taxable portion of your IRA distribution subject to the additional tax.

When to File

If you are required to file a 1995 Form 540, California Resident Income Tax Return, or Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, you must attach your 1995 form FTB 3805P to your return. If you are paying tax for prior years, you must complete that year's version of form FTB 3805P.

If you are subject to the tax on early distributions and:

- you do not have enough income to require you to file a California Form 540 or Form 540NR; or
you are filing for prior years,

file only form FTB 3805P at the time you would be required to file Form 540 or Form 540NR. Include a check or money order payable to the "Franchise Tax Board" for the tax shown on line 4 of form FTB 3805P. Include your social security number on your check or money order. You must sign this form if you are filing it separately from Form 540 or Form 540NR. See the "Specific Line Instructions" for line 4 for information about where to file form FTB 3805P.

Definitions

Early Distributions. Generally, if you receive a distribution from your qualified retirement plan before you reach age 59 1/2, the portion of the distribution that is included in income is subject to a 2 1/2 percent tax.

Prohibited Transactions. Generally, transactions such as borrowing from your IRA or annuity or using your IRA as a basis for obtaining a benefit are prohibited transactions. They cause the IRA or annuity to no longer be considered an IRA or annuity as of the first day of your taxable year in which the transaction occurs and the fair market value of all the assets in the account are deemed to be distributed on that day.

Pledging of Account. If, during your taxable year, you use any part of your IRA as security

for a loan, that part is treated as being distributed to you.

If, during your taxable year, you use all or any part of your individual retirement annuity contract as security for a loan, the total value of that contract is treated as being distributed to you as of the first day of your taxable year.

Also, if you are under age 59½ when the account or annuity is treated as being distributed to you, the taxable portion of the distributions is subject to the tax on early distributions. See the "Specific Line Instructions" for pledging accounts as security.

Collectibles. If your IRA trustee invested your funds in collectibles, you are considered to have received a distribution equal to the cost of any "collectible." Collectibles include works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages and certain other tangible personal property.

Tax on Early Distributions. The tax on early distributions from qualified retirement plans does not apply to:

- 1995 IRA contributions withdrawn during the year or 1994 excess contributions withdrawn in 1995 before the filing date (including extensions) of your 1994 income tax return;
- excess IRA contributions for years before 1994 that were withdrawn in 1995, and 1994 excess contributions withdrawn after the due date (including extensions) of your 1994 income tax return, if no deduction was allowed for the excess contributions, and the total IRA contributions for the tax year for which the excess contributions were made were not more than \$2,250 (or if the total contributions for the year included employer contributions to a SEP, \$2,250 increased by the smaller amount of the employer contributions to the SEP or \$30,000);
- the part of your IRA distributions that represents a return of nondeductible IRA contributions figured on federal Form 8606;
- distributions rolled over to another retirement arrangement or plan;
- a distribution of excess contributions from a qualified cash or deferred arrangement;
- a distribution of excess aggregate contributions to meet nondiscrimination requirements for employer matching and employee contributions;
- a distribution of excess deferrals; and
- amounts distributed from unfunded deferred compensation plans of tax-exempt or state and local government employers.

See the "Specific Line Instructions" for line 2 for other distributions which are excepted from the tax.

Specific Line Instructions

Line 1 – Early Distributions Included in Gross Income

Qualified Retirement Plans (including IRAs).

Enter the amount of distributions included in gross income you received from a qualified retirement plan, including your IRAs (and income earned on excess contributions to your IRAs), before you reached age 59½. The amount of the early distributions you must include in gross income for California purposes may differ from the amount reported on your federal return if the amount of contributions you deducted for California was different than the federal amount. You must report the difference on Schedule CA (540) or Schedule CA (540NR).

For Form 540NR filers, the amount entered on line 1 is the taxable amount of early distributions

reported on Schedule CA, line 15, column e, IRA distribution or Schedule CA, line 16, column e, Pensions and Annuities.

Annuity contracts. If you receive any amounts under an annuity contract from distributions made before reaching age 59½, such amounts may also be subject to an additional 2½ percent tax on the portion which is includible in gross income. Refer to IRC Section 72(q) and IRS Publication 575 for details. Enter the distribution included in gross income on line 1.

Modified endowment contracts. In general, if you received any amounts under a modified endowment contract (as defined in IRC Section 7702A), entered into after June 20, 1988, from distributions before reaching age 59½, such amounts are also subject to an additional 2½ percent tax on the part of the distribution that is includible in gross income. Enter the distribution included in gross income on line 1.

Prohibited transaction. If you engaged in a prohibited transaction, you are considered to have received a distribution of the entire value of your account or annuity as of the first day of the taxable year in which any transactions take place. If you are under age 59½ on the first day of the taxable year, enter the distribution included in gross income on line 1.

Pledging accounts as security. If you pledge all or a portion of your individual retirement account as security for a loan, the portion pledged is treated as a distribution to you. If you pledge any portion of your individual retirement annuity contract as security for a loan, the total value of that contract is treated as being distributed on the first day of the taxable year. If you are under age 59½ at the time of the pledge, enter the amount pledged that is included in gross income on line 1.

Cost of collectibles. The cost of any collectible in which you invested funds of your IRA in 1995 is deemed to be a distribution to you in 1995. If you are under age 59½ when the funds were invested, enter the cost of the collectible included in gross income on line 1. Collectibles include works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages and other tangible property. **Exception.** Your IRA trustee may invest your IRA funds in U.S. one, one-half, one-quarter and one-tenth ounce gold coins and one ounce silver coins minted after September 30, 1986.

Line 2 – Distributions Excepted From Tax

The tax on early distributions does not apply to certain distributions that are specifically excepted by the IRC. Enter on line 2 the amount that can be excluded. Enter the number (01 through 07) of the applicable exceptions listed below in the box on line 2.

No. Exception

- 01** Distributions due to death (does not apply to modified endowment contracts).
If you do not owe tax on your early distribution because of this exception, and the Form 1099-R that you received shows distribution code 4, you do not have to file form FTB 3805P unless otherwise required to do so.
- 02** Distribution due to total and permanent disability. To meet this exception, you must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.
See IRS Publication 590. If you do not owe tax on your early distribution because of

this exception, and the Form 1099-R that you received shows distribution code 3, you do not have to file form FTB 3805P unless otherwise required.

- 03** Distribution made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from a qualified employee plan, payments must begin after separation from service).
- 04** Distribution due to separation from service in or after the year of reaching 55 (applies only to qualified employee plans).
- 05** Distribution to the extent you have medical expenses deductible under IRS Section 213 (applies to qualified employee plans).
- 06** Distributions made to an alternate payee under a qualified domestic relations order (applies only to qualified employee plans).
- 07** Other. In addition to exceptions 04 through 06, the tax does not apply to any distributions from a plan maintained by an employer if:
- you separated from service by March 1, 1986;
 - as of March 1, 1986, your entire interest is in pay status under a written election which provides a specific schedule for distribution of the entire interest; and
 - the distribution is actually being made under the written election.

Also, distributions from annuity contracts are not subject to the additional tax on early distributions to the extent that the distributions are allocable to an investment in the contract before August 14, 1982.

Distributions which are dividends paid with respect to stock described in IRC Section 404(k) are not subject to the additional tax.

If any of these exceptions applies, enter the distribution amount on line 2 and the exception number in the box provided. For additional exceptions applicable to annuity contracts, see IRC Section 72(q)(2) and IRS Publication 575.

Also enter on line 2 the amount of a distribution you received when you were age 59½ or older, if you received federal Form 1099-R for that distribution that incorrectly indicated a premature distribution (code 1).

Line 3 – Subtract the amount of distributions excepted from tax on line 2 from the amount of early distributions included on line 1. Enter the amount on line 3. This is the amount of your distribution subject to tax.

Line 4 – Multiply line 3 by 2½ percent. Enter the total on line 4 and on Form 540, line 36, or Form 540NR, line 45. If you are not required to file Form 540 or Form 540NR, send your completed form FTB 3805P to the Franchise Tax Board and enclose your check or money order for the full amount you entered on line 4. Mail to:

**FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001**

Make your check payable to the "Franchise Tax Board." Be sure to write your social security number and "1995 FTB 3805P" on your check or money order.