

1996

3802

Attach to Form 100 (personal service corporations and closely held corporations only).

Name(s) as shown on return California corporation number

Part I 1996 Passive Activity Loss

Caution: Complete federal Worksheet 1 and Worksheet 2 in the instructions for federal Form 8810 using California amounts before completing Part I.

Table with 4 rows and 2 columns. Row 1: 1a Current year income from federal Worksheet 2, column (a). Row 2: 1b Current year deductions and losses from federal Worksheet 2, column (b). Row 3: 1c Prior year unallowed losses from federal Worksheet 2, column (c). Row 4: 1d Combine line 1a, line 1b and line 1c. If the result is net income or zero, see instructions. Below this are lines 2, 3, and 4 for total deductions and losses allowed.

Part II 1996 Passive Activity Credits

Caution: Complete federal Worksheet 5 in the instructions for federal Form 8810 using California amounts before completing Part II.

Table with 9 rows and 2 columns. Row 1: 5a Current year passive activity credits from federal Worksheet 5, column (a). Row 2: 5b Prior year unallowed credits from federal Worksheet 5, column (b). Row 3: 6 Combine line 5a and line 5b. Row 4: 7 Enter the tax attributable to net active income and net passive income. Row 5: 8 Unallowed passive activity credit. Row 6: 9 Allowed passive activity credit.

Part III Election to Increase Basis of Credit Property

- 10 If the corporation disposed of its entire interest in a passive activity or former passive activity in a fully taxable transaction, and it elects to increase the basis of credit property used in that activity by the unallowed credit that reduced the property's basis, check here.
11 Name of activity disposed of.
12 Description of the credit property for which the election is being made.
13 Amount of unallowed credit that reduced the property's basis for California purposes.

General Instructions

In general, California did not conform its law to changes made to the Internal Revenue Code (IRC) by the federal Revenue Reconciliation Act of 1993 (Public Law 103-66). California legislation during 1994 and 1996 did adopt a few specific provisions of the 1993 federal changes. All other references in these instructions are to the IRC as it existed on January 1, 1993.

Passive loss rules (IRC Section 469(c)(7)): Beginning in 1994, and for federal purposes only, rental real estate activities of taxpayers engaged in a real property business are not automatically treated as a passive activity.

Recovery period for nonresidential real property placed in service on or after May 13, 1993 (IRC Section 168): The California recovery period is 31.5 years; the federal recovery period is 39 years.

Amortization of certain intangibles (IRC Section 197): Property classified as IRC Section 197 property under federal law is also IRC Section 197 property for California purposes; there is no separate California election required or allowed.

A Purpose

Form FTB 3802 is used by personal service corporations and closely held corporations and personal service corporations to figure the amount of any passive activity loss (PAL) or credit for the current income year and the amount of losses and credits from passive activities allowed on the corporation's tax return.

A personal service corporation has passive activity credits if the passive activity credits (including prior year unallowed credits) exceed the tax attributable to net passive income.

Form FTB 3802 closely follows federal Form 8810, Corporate Passive Activity Loss and Credit Limitations. In general, if you completed federal Form 8810 to determine the amount of the federal PAL and credit limitations, you must also complete form FTB 3802.

Using California amounts and federal Worksheet 1 through Worksheet 6 in the instructions for federal Form 8810, determine the amounts to enter

on form FTB 3802. Keep both the California and federal worksheets for your records. The following information provides instructions for figuring the PAL for California purposes.

B Special Notes

S Corporations

S corporations must use form FTB 3801, Passive Activity Loss Limitations, and form FTB 3801-CR, Passive Activity Credit Limitations, instead of form FTB 3802 to compute the California PAL and credit limitations.

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 its substantial equivalent).

Because California and federal laws differ, PTPs may have different income amounts for state and federal purposes (see form FTB 3801). However, when computing PALs, California PTPs are treated the same as federal PTPs.

C Who Must File

Personal service corporations and closely held corporations that have losses or credits from passive activities must file form FTB 3802. See the instructions for federal Form 8810 for the definitions of personal service corporations and closely held corporations.

D Coordination With Other Limitations

Losses from passive activities generally are subject to other limitations (for example, basis and at-risk limitations) before they are subject to the passive loss limitations. Once a loss becomes allowable under these other limitations, the corporation must determine whether the loss is limited under the passive loss rules. For details on at-risk rules, get federal Form 6198, At-Risk Limitations. Complete federal Form 6198 using California amounts before completing form FTB 3802.

E Special Rules for Corporations Filing a Combined Report

The passive activity loss and passive activity credit of a corporation filing a combined report are determined by taking into account the following items of all members of the group:

- Passive activity gross income and deductions;
- Gain or loss on dispositions;
- Net active income (in the case of a corporation filing a combined report treated as a closely held corporation); and
- Credits from passive activities.

Specific Instructions

The PAL rules of IRC Section 469 apply to closely held corporations and personal service corporations. Corporations subject to the PAL rules must complete form FTB 3802 to compute the allowable PAL and credit limitations. Before completing form FTB 3802, see the instructions for federal Form 8810, Federal Worksheet 1 through Worksheet 6 in the instructions for federal Form 8810 must be completed for California purposes using California amounts.

Also, see Temporary Treasury Regulations Section 1.163-8T, which provides rules for allocating interest expense among activities. The interest offset computation should be made before allocating this interest expense among activities. Get Schedule R, Apportionment and Allocation of Income, for more information. A corporation subject to the PAL limitations may also be required to adjust credits attributable to passive activities. If the corporation's PALs consist only of losses from the sale or exchange of capital assets or trade or business assets or involuntary conversions, no adjustment to net income (loss) for state purposes (Form 100, California Franchise or Income Tax Return, line 18) is necessary.

Note: A state adjustment may be required on Form 100, line 7 or line 15, if the corporation uses the "federal reconciliation" method to file Form 100 (see Instruction I in the Form 100 booklet).

Specific Line Instructions

See the instructions for federal Form 8810, Part I and Part II, for specific line instructions for completing form FTB 3802, Part I and Part II.

Part I — Passive Activity Loss.

Line 1d and Line 3 — If line 1d or line 3 shows net income or zero, all of the deductions and losses are allowed, including any prior year unallowed losses entered on line 1c. Compare the California amount on form FTB 3802, line 1d or line 3 to the amount on federal Form 8810, line 1d or line 3. Enter the difference as a state adjustment on Form 100, line 7 or line 15, whichever is applicable, if the "federal reconciliation" method was used to complete Form 100.

Line 2 — Closely held corporations. Closely held corporations can offset the loss, if any, on line 1d with net active income. Net active income is the corporation's taxable income for the income year, determined without regard to the following items:

- Net passive income or loss;
- Portfolio income;
- Deductions attributable to portfolio income described in Temporary Treasury Regulations Section 1.469-2T(d)(2)(i), (ii) and (iv);
- Interest expense allocated under Temporary Treasury Regulations Section 1.163-8T to a portfolio expenditure (within the meaning of Section 1.163-8T(b)(6));
- Gain on the disposition of substantially appreciated property formerly held for investment. See Temporary Treasury Regulations Section 1.469-2T(c)(2)(iii)(F);
- Gross income from certain oil or gas properties treated under Temporary Treasury Regulations Section 1.469-2T(c)(6) as not from a passive activity;
- Gross income and deductions from any trade or business activity of trading certain personal property described in Temporary Treasury Regulations Section 1.469-1T(e)(6), but only if the corporation does not materially participate in the activity for the income year.

Net active income includes an overall loss from a passive activity if there is a fully taxable disposition of an entire interest in a passive activity. Include the overall loss to the extent that it exceeds net passive income. If there is a net passive loss, include all of it.

Figure any contribution deduction by taking 10% of net active income (computed without the contribution deduction) and subtract the smaller of that amount or the contribution deduction from the net active income (computed without the contribution deduction).

Line 4 — Use Worksheet 3 and Worksheet 4 in the instructions for federal Form 8810 to figure the unallowed deductions and losses to be carried forward and the allowed deductions and losses to report on the forms for 1996. Federal Worksheet 2, columns (d) and (e), will show whether an activity had an overall gain or loss. If an activity has an overall gain on Worksheet 2, column (d), report all of the deductions and losses listed in Worksheet 1 and any prior year unallowed losses in Worksheet 2 for those activities on the appropriate lines of Form 100.

Use Worksheet 3 and Worksheet 4 for activities in Worksheet 2 that show an overall loss in column (e).

Part II — Passive Activity Credits. Use form FTB 3802, Part II to determine the amount of credits allowed from passive activities for the current income year and the amount that is unallowed and carried forward.

The following credits from passive activities are included on form FTB 3802:

- Orphan drug credit carryover;
- Low-income housing credit; and
- Research credit.

Credits Subject to Other Limitations

The research credit is limited to the amount of tax on the income from those activities. Since this limitation is applied before the passive credit limitations, figure it before completing form FTB 3802.

Caution: In computing the special allowance for rental real estate activities with active participation, the dollar limitation for the low-income housing credit is greater than the amount allowed under federal law. The California limitation is \$75,000.

Note: The federal transitional rules related to low-income housing also apply to California.

Line 7 — If any of the following apply, enter -0- on line 7 and do not complete Part I or Part II of the computation for Line 7 in the instructions for federal Form 8810:

- The corporation is a personal service corporation with a loss on form FTB 3802, line 1d; or
- The corporation is a personal service corporation with net passive income on form FTB 3802, line 1d and the corporation had an overall loss from the entire disposition of a passive activity that was equal to or greater than the net income on line 1d; or
- The corporation is a closely held corporation with a loss on form FTB 3802, line 1d and the corporation had no net active income; or
- The corporation is a closely held corporation with net passive income on form FTB 3802, line 1d, and had an overall loss from an entire disposition that was equal to or greater than the amount on form FTB 3802, line 1d, and the corporation had no net active income.

See the instructions for federal Form 8810, line 7 for more information.

Line 8 — Unallowed Passive Activity Credit. If line 8 is zero, all of the passive activity credits on line 6 are allowed. See the instructions for line 9 for how to report the credits.

Line 9 — Allowed Passive Activity Credit. If the credits allowed on line 9 do not have to be allocated between activities or different types of credits, report the amount on line 9 on the appropriate credit form.

If the credits allowed on line 9 must be allocated between activities or different types of credits, use federal Worksheet 6 to determine the amount allowed for each activity.

Part III — Election to Increase Basis of Credit Property. When a taxpayer disposes of an entire interest in a passive activity through a taxable transaction, the taxpayer may elect to increase the basis of credit property immediately before the disposition under the following circumstances:

- The taxpayer was required to reduce the property's basis by the amount of the credit; and
- The taxpayer was not able to apply all or part of the credit against tax liability because of the limitations imposed by the passive activity rules.

Refer to IRC Section 469(j)(9) for more information. The amount of the unallowed credit which a taxpayer may elect to add back to the basis of property for California tax purposes may differ from the amount of unallowed credit entered on federal Form 8810, Part III because of differences in California and federal law. Complete Part III to make the election for California tax purposes.