2003 Instructions for Form FTB 3801-CR

Passive Activity Credit Limitations

These instructions are based on the Internal Revenue Code (IRC) as of **January 1, 2001** and the California Revenue and Taxation Code (R&TC).

What's Changed?

The California Legislature enacted SB 615 (Stats. 2004 CH. 388), which makes California law compatible with the Servicemembers Civil Relief Act (Public Law 108-189). This means that servicemembers domiciled outside of California, and their spouses, may exclude the member's military compensation from gross income when computing the tax rate on nonmilitary income.

Requirements for military servicemembers domiciled in California remained 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.

Amended Returns – If you are an active duty military member domiciled outside California and you included your military compensation in income from all sources, you may file an amended return for tax years with an open statute of limitations. Get FTB Publication 1032, Tax Information for Military Personnel and Form 540X, Amended Individual Income Tax Return, for additional information.

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2001. However, there are continuing differences between California and federal law. It should be noted that California does not always conform to the entire provisions of a public law. California has conformed to some of the changes made to the IRC after January 1, 2001, including some provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134), and the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147). California has not conformed to any of the provisions of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27) and the Military Family Tax Relief Act of 2003 (Public Law 108-121).

For taxable years beginning on or after January 1, 2002, California law was changed to clarify the method used to calculate loss carryovers, deferred deductions, and deferred income for nonresident and part-year resident taxpayers. This law changed the tax computation to recognize those items, and established a new method to determine percentages for computing tax for all nonresidents and part-year residents. The nonresident tax forms (Long and Short Form 540NR) have been revised to more clearly show that nonresidents pay tax to California only on their California taxable income.

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). You must make this computation whether you were always a nonresident or a former resident who moved out of California.

Part-Year Resident

California taxes residents as if they were residents for all prior years. Therefore, a nonresident who becomes a resident must restate all prior year items using the total taxable income for all prior years.

For further 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." California law does provide a variety of independent, state-only economic development area tax incentives to encourage revitalization of special designated areas. The Government Code provides for the designation of enterprise zones, Local Agency Military Base Recovery Areas (LAMBRAs), a Targeted Tax Area (TTA), and Manufacturing Enhancement Areas (MEAs). California law does not provide for a lower capital gains rate in any situation. California law generally conforms to the federal rules for expensing IRC Section 179 property with the exception that California law allows a maximum deduction of $25,000. In lieu of this deduction, the California Personal Income Tax law allows a taxpayer with a business in an "Economic Development Area" to elect to expense $20,000 to $40,000 (depending on the designation) of certain specified equipment used in the business.

Expense treatment for small business, IRC Section 179(b)(1): California law generally conforms to the federal rules for expensing IRC Section 179 property with the exception that California law allows a maximum deduction of $25,000.

The following may affect the computation of your passive activity credit limitations:

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. California did not conform to this provision. For California purposes, all rental activities are treated as passive activities.

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. However, for California purposes, in the case of IRC Section 197 property acquired before January 1, 1994, the California adjusted basis as of January 1, 1994, must be amortized over the remaining federal amortization period. Therefore, you may have a difference in net income (loss) from passive activities which involve amortization of certain intangibles.

A Purpose

Use form FTB 3801-CR to determine whether you have a passive activity credit for the current taxable year and, if so, how much of the credit is allowed for the current year. The amount of the credit that is unallowed is carried forward.

B Special Note

Generally, California law is the same as federal law concerning passive activity credit limitations. See the instructions for federal Form 8582-CR, Passive Activity Credit Limitations, for definitions.

Personal service corporations and closely held corporations subject to the passive activity rules must use form FTB 3802, Corporate Passive Activity Loss and Credit Limitations, instead of form FTB 3801, Passive Activity Loss Limitations, and form FTB 3801-CR.

S Corporations

The passive activity loss (PAL) rules apply as if the S corporation was an individual. This means that losses from passive activities may **not be** used to offset nonpassive income, except for $25,000 in losses from rental real estate activities. See IRC Section 469(i). However, the material participation rules apply as if the S corporation was a closely held corporation. The material participation rules for closely held corporations are explained in the instructions for federal Form 8810, Corporate Passive Activity Loss and Credit Limitations. See IRC Section 469(h)(4) and the related regulations for more information.

To compute your California passive activity credit limitations for S corporations, use the worksheets in the instructions for federal Form 8582-CR using California amounts. Enter the amount from line 21 of Form 100S, California S Corporation Franchise or Income Tax Return, on line 10 and line 22 of form FTB 3801-CR in place of the federal modified adjusted gross income.

C Who Must File

Form FTB 3801-CR is filed by individuals, estates, trusts, and S corporations with any of the following credits from passive activities:

Credit	Code
Orphan drug credit carryover	185
Low-income housing	172
Research	183
Targeted jobs*	166

*For credit generated prior to January 1, 1996.

Note: Make sure to enter the code number for your credit on your return when you are able to claim the credit.

D Passive Activities

See the instructions for federal Form 8582-CR for information about passive activities and passive activity credits.

Dispositions

Unallowed passive activity credits, unlike unallowed passive activity losses, are not allowable when you dispose of your interest in an activity in a taxable transaction. However, you may elect to increase the basis of the credit property by the amount of the original basis reduction of the property to the extent that the credit has not been allowed under the passive activity rules. No basis adjustment may be elected on a partial disposition of an interest in a passive activity.

Caution: In computing the special allowance for rental real estate activities with active participation, the dollar limitation for the low-income housing credit is more than the amount allowed under federal law. The California limitation is $75,000 ($37,500 if married filing a separate return and you lived apart the entire year).

E Passive Activity Credit Carryovers

Passive activity credits are suspended and carried forward indefinitely. Unlike losses, suspended credits are not allowed when you dispose of the activity. However, you may elect to increase your basis (by the amount of the original basis reduction) to the extent the credit has not been used.

The credit becomes allowable under the passive loss rules when there is sufficient passive income to allow its use or it is within the scope of the rental real estate rule. Once the credit becomes allowable under the passive loss rule, it is subject to the other limitations applicable to the use of credits, such as the limitation that credits may not reduce regular tax below tentative minimum tax.

In addition, the treatment of passive activity credits is determined in all respects by the general rules applicable to those credits, including carryover periods.

F Overview of Form

The form consists of six parts.

Part I — 2003 Passive Activity Credits

Use Part I to combine your credits from passive activities to determine if you have passive activity credits for 2003.

If your credits from all passive activities exceed the tax attributable to net passive income, you may have a suspended passive activity credit for 2003. Generally, you have net passive income if form FTB 3801, line 3 shows income. See the instructions for form FTB 3801-CR, line 6 for details.

Part II — Special Allowance for Rental Real Estate Activities with Active Participation

Use Part II to figure the credit allowed if you have any credits from rental real estate activities in which you actively participated (other than low-income housing credit). See the instructions for federal Form 8582-CR, "Rental Activities."

Part III — Special Allowance for Low-Income Housing Credits for Property Placed in Service Before 1990 (or from Pass-Through Interests Acquired Before 1990)

Use Part III to figure the credit allowed if you have any low-income housing credits for property placed in service before 1990. Also, use this part if your low-income housing credit is from a partnership, S corporation, or other pass-through entity in which you acquired your interest before 1990, regardless of the date the property was placed in service.

Part IV — Special Allowance for Low-Income Housing Credit for Property Placed in Service After 1989

Use Part IV to figure the credit allowed if you have any low-income housing credits for property placed in service after 1989. If you held an indirect interest in the property through a partnership, S corporation, or other pass-through entity, use this part only if your interest in the pass-through entity was also acquired after 1989.

Part V — Passive Activity Credits Allowed

Use Part V to figure the amount of the passive activity credit (as determined in Part I) that is allowed for 2003 for all passive activities.

Part VI — Election to Increase Basis of Credit Property

Use Part VI if you disposed of your entire interest in a passive activity in 2003 and elect to increase the basis of credit property used in a passive activity.

Specific Line Instructions

For purposes of these instructions, "worksheet" refers to Worksheet 1 through Worksheet 9 in the instructions for federal Form 8582-CR. You must use California amounts when completing these worksheets. Use only the credits subject to the California passive credit limitation rules (described in General Information C, Who Must File). Keep these worksheets for your records.

Part I

Computation of 2003 Passive Activity Credits

Line 1a through Line 1c – Individuals and qualifying estates that actively participated in rental real estate activities (other than rental real estate activities with low-income housing credits) should include the credits from these activities on line 1a through line 1c. Use Worksheet 1 to figure the amounts to enter on line 1a and line 1b.

A qualifying estate is one that is treated as actively participating for the two tax years following the death of the taxpayer. The decedent must have actively participated in the rental real estate activity in the tax year he or she died.

Caution: If you were married filing a separate return and lived with your spouse at any time during the year, even if you actively participated in rental real estate activities, include the credits in Worksheet 4 but not on Worksheet 1.

Caution: You may take credits that arose in a prior tax year (other than low-income housing credits) under the special allowance only if you actively participated in the rental real estate activity for both that prior year and this year. If you did not actively participate for both years, include the credits in Worksheet 4 but not in Worksheet 1.

Line 2a through Line 2c – Individuals, including limited partners, and qualifying estates who had low-income housing credits for property placed in service before 1990, should include the credits from those activities on line 2a and line 2b.

However, if you have low-income housing credits for property placed in service after 1989, include those credits in Worksheet 3 instead of Worksheet 2. If you held an indirect interest in the property through a partnership, S corporation, or other pass-through entity, use Worksheet 3 only if you acquired your interest in the pass-through entity after 1989.

Caution: If you were married filing a separate return and lived with your spouse at any time during the year, include the credits in Worksheet 4 but not in Worksheet 2 or Worksheet 3.

Line 3a through Line 3c – Individuals, including limited partners, and qualifying estates who had low-income housing credits for property placed in service after 1989, should include those credits on line 3a and line 3b instead of Worksheet 2. If you held an indirect interest in the property through a partnership, S corporation, or other pass-through entity, use line 3a and line 3b only if you also acquired your interest in the pass-through entity after 1989.

Line 4a through Line 4c – Individuals should include on line 4a and line 4b credits from passive activities which were not entered on line 1a and line 1b, line 2a and line 2b, or line 3a and line 3b. Estates (other than qualifying estates), trusts, and S corporations, should include credits from all passive activities on line 4a through line 4c.

Line 1, Line 2, Line 3, and Line 4 – If you are using a different form to report credits from the same activity, keep them separate by listing the activity each time for each credit.

Line 6 – If form FTB 3801, line 3, shows net income or if you did not complete form FTB 3801 because you had net passive income, you will have to figure the tax on the net passive income. If you have an overall loss on an entire disposition of your interest in a passive activity, reduce net passive income, if any, on form FTB 3801, line 3, to the extent of the loss (but not below zero) and use only the remaining net passive income in the computation below. If you had a net passive activity loss, enter -0- on line 6, and go on to line 7.

Figure the tax on net passive income as follows:

A. Taxable income including net passive income . . . . A ______
B. Tax on line A . . . . B ______
C. Taxable income without net passive income . . . . C ______
D. Tax on line C . . . . D ______
E. Subtract line D from line B and enter the result on form FTB 3801-CR, line 6 . . . . E ______

Note: When using taxable income in the above computation, it is not necessary to refigure items that are based on a percentage of adjusted gross income.

Line 7 – If line 7 is zero because the tax on net passive income on line 6 is more than your credits from passive activities on line 5, all of your passive activity credits are allowed. In this case, enter the amount from line 5 on line 37. Report the credits on the related credit forms. Do not complete Worksheet 5 through Worksheet 9.

Part II

Special Allowance for Credits from Rental Real Estate Activities with Active Participation

Line 9 – Married persons filing separate returns who lived together at any time during the year are not eligible to complete Part II.

Line 10 – Enter your federal modified adjusted gross income from federal Form 8582-CR, line 10.

Note: If you are a nonresident military service member domiciled outside of California, subtract your military compensation from your federal AGI and enter on line 10.

Line 15 – Figure the tax attributable to the amount on line 14 using the following worksheet.

A. Taxable income . . . . A______
B. Tax on line A . . . . B______
C. Enter amount from line A above . . . . C ______
D. Enter amount from form FTB 3801-CR, line 14 . . . . D ______
E. Subtract line D from line C . . . . E ______
F. Tax on line E . . . . F ______
G. Subtract line F from line B and enter the result on form FTB 3801-CR, line 15 . . . . G ______

Note: When using taxable income in the above computation, it is not necessary to refigure items that are based on a percentage of adjusted gross income.

Part III

Special Allowance for Low-Income Housing Credits for Property Placed in Service Before 1990 (or from Pass-Through Interests Acquired Before 1990)

Note: Married persons filing separate returns who lived together at any time during the year are not eligible to complete Part III.

Caution: In computing the special allowance for rental real estate activities with active participation, the dollar limitation for the low-income housing credit is more than the amount allowed under federal law. The California limitation is $75,000 ($37,500 if married filing a separate return, and you lived apart for the entire year).

Line 21 – The special allowance for low-income housing credits for property placed in service before 1990 (or from pass-through interests acquired before 1990) is completely phased out once federal modified adjusted gross income reaches $350,000 ($175,000 if married filing a separate return and you lived apart for the entire year). If you completed Part II of this form and your federal modified adjusted gross income on line 10 was $200,000 or less ($100,000 or less if married filing a separate return and you lived apart for the entire year), enter $75,000 on line 24 ($37,500 if married filing a separate return and you lived apart for the entire year).

Line 22 – Enter your federal modified adjusted gross income from federal Form 8582-CR, line 22.

Line 27 – Figure the tax attributable to the amount on line 26 as follows:

A. Taxable income . . . . A ______
B. Tax on line A . . . . B ______
C. Enter the amount from line A above . . . . . C ______
D. Enter amount from form FTB 3801-CR, line 26 . . . . D ______
E. Subtract line D from line C . . . . E ______
F. Tax on line E . . . . F ______
G. Subtract line F from line B and enter the result on form FTB 3801-CR, line 27 . . . . G ______

Note: When using taxable income in the above computation, it is not necessary to refigure items that are based on a percentage of adjusted gross income.

Part IV

Special Allowance for Low-Income Housing Credits for Property Placed in Service After 1989

Line 35 – Figure the tax on the remaining special allowance as follows:

A. Taxable income . . . . A ______
B. Tax on line A . . . . B ______
C. Enter $75,000 ($37,500 if married filing a separate return and you lived apart the entire year) . . C ______
D. Enter amount from form FTB 3801, line 9 . . . . D ______
E. Subtract line D from line C . . . . E ______
F. Subtract line E from line A . . . . F ______
G. Tax on line F . . . . G ______
H. Subtract line G from line B . . . . . . H ______
I. Enter the sum from form FTB 3801-CR, line 16 and line 30 . . . . I ______
J. Subtract line I from line H. This is the amount of tax attributable to the remaining special allowance. Enter the result on form FTB 3801-CR, line 35 . . . . J ______

Note: When using taxable income in the above computation, it is not necessary to refigure items that are based on a percentage of adjusted gross income.

Part V

Passive Activity Credits Allowed

Line 37 – If you have only one type of credit, the amount on line 37 is the credit allowed for the year. Enter this amount on the appropriate credit form. Your unallowed credit would be line 5 minus line 37.

If you have more than one type of credit, or credits from more than one activity, use Worksheet 5 through Worksheet 9 in the instructions for federal Form 8582-CR to allocate the allowed and unallowed credits. Keep a record of each unallowed amount and the activity to which it belongs so you can claim the credit if it becomes allowable in a future year.

Credits from Publicly Traded Partnerships (PTPs)

A credit from a passive activity held through a PTP is allowed to the extent of the tax attributable to net passive income from that partnership. In addition, low-income housing credits from rental real estate activities held through PTPs are allowed to the extent of the remaining $75,000 special allowance. Before the credits may be applied to the $75,000 (or less, if applicable) special allowance, the special allowance must be reduced by the amount used under the passive loss rules and the amount used for credits which were not from a PTP.

Do not enter credits from PTPs on the worksheets or on form FTB 3801-CR. Instead, use the following steps to compute the allowed and unallowed credits from passive activities held through PTPs.

Computation of Passive Activity Credits Allowed for PTPs

Complete Step 1 and Step 2 only if you have net passive income from a PTP with passive activity credits.

Note: In the following instructions, the term “credits” includes current year credits and prior year unallowed credits.

Step 1 — Figure the tax attributable to net passive income from each PTP with passive activity credits by following the steps shown in the worksheet in the line 6 instructions. Complete a separate tax computation for each PTP with net passive income.

Step 2 — Passive activity credits from each PTP are allowed to the extent of the tax attributable to net passive income from that same PTP. Credits in excess of the tax attributable to net passive income may be allowed under one or more steps below.

Complete Step 3 through Step 5 only if you have low-income housing credits for property placed in service before 1990 from a PTP, or low-income housing credits from a PTP in which you acquired your interest before 1990 (regardless of the date placed in service).

Step 3 — Reduce low-income housing credits for property placed in service before 1990 from each PTP, and any low-income housing credits from each PTP in which you acquired your interest before 1990 (regardless of the date placed in service) to the extent of the tax attributable to net passive income from that PTP, which was figured in Step 1.

Step 4 — Before beginning this step, you must complete form FTB 3801-CR if you have any passive credits that are not from PTPs. Subtract the sum of form FTB 3801-CR, line 16, line 30, and line 36 (if any) from form FTB 3801-CR, line 27 to figure the tax attributable to the $75,000 special allowance available for the credits in Step 3.

If your only passive credits are from PTPs, complete form FTB 3801-CR, line 21 through line 27 as a worksheet. The amount on line 27 is the tax attributable to the $75,000 special allowance available for the credits in Step 3.

Step 5 — Low-income housing credits for property placed in service before 1990 by each PTP, and any low-income housing credits from a PTP in which you acquired your interest before 1990 (regardless of the date placed in service) allowed under the $75,000 special allowance are the smaller of the total credits from Step 3 or the amount figured in Step 4. If Step 4 is smaller than Step 3, allocate the amount in Step 4 pro rata to the credits from each PTP in Step 3.

Complete Step 6 through Step 8 only if you have low-income housing credits for property placed in service after 1989 from a PTP in which you also acquired your interest after 1989.

Step 6 — Reduce low-income housing credits for property placed in service after 1989 from a PTP in which you also acquired your interest after 1989 to the extent of the tax attributable to net passive income from that PTP, which was figured in Step 1.

Step 7 — Before beginning this step, you must complete form FTB 3801-CR if you have any passive credits that are not from PTPs. Subtract the sum of the credits allowed in Step 5 above and line 36 of form FTB 3801-CR from the amount on line 35 of form FTB 3801-CR to figure the tax attributable to the $75,000 special allowance available for the credits in Step 6.

If your only passive credits are from PTPs, complete the steps shown in the worksheet in the line 35 instructions. Subtract the credits allowed in Step 5 above from the tax figured on line J of that worksheet. The result is the tax attributable to the $75,000 special allowance available for the credits in Step 6.

Step 8 — Low-income housing credits allowed under the $75,000 special allowance for property placed in service after 1989 from a PTP in which you also acquired your interest after 1989, are the smaller of the total credits from Step 6 or the amount figured in Step 7. If Step 7 is smaller than Step 6, allocate the amount in Step 7 pro rata to the credits from each PTP in Step 6.

Step 9 — Add Steps 2, 5, and 8. These are the credits allowed from passive activities of PTPs.

Step 10 — Figure the allowed and unallowed credits from each PTP. Report the allowed credits on the appropriate credit form. Keep a record of the unallowed credits for use in a future year.

Part VI

Election to Increase Basis of Credit Property
Complete Part VI if you disposed of your entire interest in a passive activity or former passive activity in a fully taxable transaction and you elect to increase the basis of the credit property used in that activity by the unallowed credit that reduced the property's basis.