

Member's Instructions for Schedule K-1 (568)

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2005. 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 regarding California and federal law, visit our Website at www.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 or 540NR), and the Business Entity tax booklets.

Note, 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 tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

For taxable years beginning on or after January 1, 2003, California will follow the revised federal instructions (with some exceptions) for reporting the sale, exchange or disposition of an asset for which an IRC Section 179 expense was claimed in a prior year by a partnership, limited liability company (LLC), or S corporation.

Members should follow federal reporting requirements as detailed in federal Form 1065, U.S. Return of Partnership Income, and Form 4797, Sale of Business Property instructions.

A Purpose

A limited liability company (LLC) that has elected to be treated as a partnership for tax purposes, uses Schedule K-1 (568) to report your distributive share of the LLC's income, deductions, credits, etc. Please keep the Schedule K-1 (568) for your records. Information from the Schedule K-1 (568) should be used to complete your California return. However, do not file the schedule with your California return. The LLC has filed a copy with the Franchise Tax Board (FTB).

As a member of the LLC, you are subject to tax on your distributive share of the LLC income, whether or not distributed.

The amount of loss and deduction you are allowed to claim on your California return may be less than the amount reported on Schedule K-1 (568). Generally, the amount of loss and deduction you are allowed to claim is limited to your basis in the LLC and the amount for which you are considered at-risk. If you have losses, deductions, or credits from a passive activity, you also must apply the passive activity loss and credit rules. It is the member's responsibility to consider and apply any applicable limitations. See Specific Instructions C, Loss Limitations.

You should also read the federal Schedule K-1 (1065) instructions before completing your California return with this Schedule K-1 (568) information.

For additional information on the treatment of LLC income, deductions, credits, etc., get the following federal publications:

- Publication 541, Partnerships, and
- Publication 535, Business Expenses.

Any information returns required for federal purposes under IRC Sections 6038, 6038A, and 6038B are also required for California purposes. Attach the information returns to your California return when filed. If the information returns are not provided, penalties may be imposed under R&TC Sections 19141.2 and 19141.5.

Internet Access

You can download, view, and print California tax forms and publications from our Website at www.ftb.ca.gov.

Access other state agencies' websites through the State Agency Index on California's Website at www.ca.gov.

B Definitions

Member

An individual or entity owning an interest in the LLC whose potential personal liability for LLC debts is limited to the amount of money or other property that the member contributed or is required to contribute to the LLC.

A husband and wife that own 100% of an LLC as community property that is not treated as a corporation may elect to be a single member or for each spouse to be separate members. If the couple elects to be a single member the LLC will be a disregarded entity. If the spouses elect for each to be separate members, the LLC will be treated as a partnership for tax purposes.

Nonrecourse Loans

Liabilities of the LLC for which none of the members have assumed any personal liability.

Qualified Nonrecourse Financing

Any financing for which no one is personally liable for repayment that is borrowed for use in an activity of holding real property and that is loaned or guaranteed by a federal, state, or local government, or borrowed from a "qualified person."

California Business Situs

The place at which intangible personal property is employed as capital in California; or the place where the property is located if possession and control of the property is localized in connection with the taxpayer's business that is within this state so that substantial use or value attaches to the property.

Apportionment

The process by which business income from a trade or business is conducted in two or more states (an apportioning trade or business) is divided between taxing jurisdictions. The apportionment percentage is determined by reference to the property (including rent), payroll, and sales factors of the apportioning trade or business.

Unitary

A method of taxation by which all of the activities comprising a single trade or business are viewed as a single unit, regardless of whether those activities are conducted by divisions of a single entity or by commonly owned or controlled entities. For further information about unitary business principles, get FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report.

Election

The ability to choose a particular accounting method for tax reporting purposes. Generally, the LLC decides how to compute taxable income from its operations. For example, it chooses the accounting method and depreciation methods it will use.

However, certain elections are made separately on your California return and not by the LLC. These elections are made under the following IRC Sections, to which the R&TC conforms:

- IRC Section 108(b)(5) (income from discharge of indebtedness); and
- IRC Section 617 (deduction and recapture of certain mining exploration expenditures, paid or incurred).

C Reporting Information from Columns (d) and (e)

If the LLC derives income from activities conducted both within and outside California, the LLC will complete Schedule R, Apportionment and Allocation of Income, to determine the LLC income from California sources. Resident members will use only the information in column (c) and column (d) to report their share of the LLC's income or loss.

Nonresident, corporate, and other entity members must report their share of income apportioned or allocated to California as indicated on Schedule K-1 (568). Special rules apply if a member and the LLC are engaged in a unitary business. See Cal. Code Regs., tit. 18 sections 17951 and 25137-1 for more information. Also see General Information E.

Nonresident, corporate, and other entity members (other than members that are unitary with the LLC) will use the information in columns (c), (d), and (e) to report their distributive share of income (losses) or credits. Residents, part-year residents, and some nonresidents may qualify for a credit for taxes paid to other states on income that is apportioned or allocated to a state other than California. For more information get Schedule S, Other State Tax Credit.

Nonapportioning LLCs do not need to fill out column (e) on Schedule K-1 (568) if the member is a resident and the "No" box is checked on Question H. However, the final determination of residency is made at the member level. If the LLC is uncertain as to the residency status of the member, it should fill out column (e) for that member.

Inconsistent treatment of items

Generally, members must report tax items shown on their Schedule K-1s and any attached schedules, the same way the LLC treated the items on its tax return. If the treatment on a member's original or amended tax return is inconsistent with the LLC's treatment, or if the LLC has not filed a tax return, the member must attach a statement with its original or amended tax return to identify and explain any inconsistency or to note that a LLC tax return has not been filed. If a member is required to attach this statement but fails to do so, the member may be subject to an accuracy related-penalty.

D Income Not from a Trade Or Business of the LLC (Nonbusiness Income)

If the LLC has income that is not from a trade or business (nonbusiness income), the source of that nonbusiness intangible income will be determined at the member level. However, nonbusiness income from real or tangible personal property located in California, such as rents, royalties, gains, or losses is California source income (Cal. Code Regs., tit. 18 section 17951-3 and R&TC Sections 23040, 25124, and 25125). This information should be included on the appropriate line of column (e), as well as in Table 2, Part B, if the LLC believes it is unitary with the member or if the LLC is uncertain whether it is unitary with the member. Non-unitary members should ignore the information in Table 2 and use column (e).

The source of income from all nonbusiness intangibles will depend on whether the member is required to apportion its income and whether the member is a corporation. In most cases, income from nonbusiness intangible property is sourced at the residence or commercial domicile of the member. If the member is a non-apportioning corporation the intangible income is from California sources unless it has acquired a business situs outside of this State (R&TC Section 23040).

However, for individuals, estates, and trusts that are not required to apportion income, income from nonbusiness intangibles will have a California source if the intangible has acquired a California business situs. For example, a nonresident pledges stocks, bonds, or other intangible personal property in California. This pledge is security for the payment of debt, taxes, or other liabilities incurred for a business in this state. The pledged property will acquire a business situs in California. Another example is a nonresident who maintains an office and bank account in California for the business activities in this state. The bank account will acquire a business situs in California. See Cal. Code Regs., tit. 18 section 17951-2 and R&TC Section 17952. If the intangible income is determined to have a business situs by the LLC, the intangible income will be included in column (e).

If the member is an apportioning taxpayer or is a corporation, Cal. Code Regs., tit. 18 sections 17951-4 and 25137-1 require that nonbusiness income from intangibles be allocated in accordance with the rules of R&TC Sections 25126 and 25127.

Because the source of intangible nonbusiness income is dependent upon the status of the individual member, that income is not included in column (e) and is entered only in Table 1. The member must determine the source of such income by applying the rules described above.

E Unitary Members

Note: The following rules apply to corporations, individuals, and other entities that conduct a trade or business that is unitary with the LLC's trade or business (see Cal. Code Regs., tit. 18 section 17951, incorporating the provisions of section 25137 and regulations thereunder).

Unitary members cannot use the California source information reflected in column (e). Such members must use the information in Table 1 and Table 2 as described below and in Specific Line Instructions G and H.

The member's distributive share of LLC items is determined by applying the LLC rules in R&TC Sections 17851 through 17858. The determination of the portion of the distributive share of business and nonbusiness income that has its source in California or that is includible in the member's business income subject to apportionment is made in accordance with Cal. Code Regs., tit. 18 section 25137-1 if the member, or the LLC, or both, have income from sources within and outside this state. The member, in computing net income for its tax accounting period, must include its distributive share of LLC items referred to above for any LLC taxable year ending within or with the member's tax accounting period.

Distributive Items of Business Income

Apportionment of Business Income – Unitary Business

If the LLC's activities and the member's activities constitute a unitary business under established standards (other than ownership requirements), the combined business income of this single trade or business apportioned to California is determined by combining the member's distributive share of the LLC's apportionment factors with the factors of the member for any LLC year ending within the member's tax accounting period. Combined business income is then apportioned by using a 3- or 4-factor formula consisting of the combined property, payroll, and a single or double-weighted sales factor. Use of a 3-factor formula depends upon whether combined gross business receipts (member's share of the LLC's gross business receipts plus the member's own gross business receipts) are more than 50% from agricultural, extractive, savings and loans, banking, or financial business activities.

If you are a member that is unitary with the LLC, use Table 2 to compute your factors, applying the rules shown below (see Cal. Code Regs., tit. 18 section 25137-1 for examples). Members that are unitary with the LLC should perform the following steps:

1. Combine your distributive share of the LLC's business income with your own business income to determine total business income.
2. Compute property, payroll, and sales factors by combining your distributive share of the LLC's factors from Table 2, Part C, with your own factors as explained below.
3. Apply the apportionment factor determined in Step 2 to the total business income determined in Step 1 to arrive at business income apportioned to this state.

1. Unitary Member's Computation of Property Factor

Use Schedule R to compute the numerator and the denominator of the property factor. Adjust factors in accordance with Cal. Code Regs., tit. 18 sections 25130 and 25131. Also apply the following special rules:

- A. Include in the denominator of your property factor your distributive share of the LLC's beginning and ending balances of real and tangible personal property owned (if rented, multiply rent by 8) and used during the tax accounting period in the regular course of business. See Table 2, Part C.
- B. Include in the numerator of the member's property factor the value of such property that is described in 1A (above) that is located in California. See Table 2, Part C.
- C. See Cal. Code Regs., tit. 18 section 25137-1(f)(1)(B) for examples of how to avoid duplication of the value of property that is rented by the member to the LLC or vice versa.

2. Unitary Member's Computation of Payroll Factor

Use Schedule R to compute the numerator and the denominator of the payroll factor in accordance with Cal. Code Regs., tit. 18 sections 25132 and 25133. Apply the following special rules:

- A. Include in the denominator of your payroll factor your distributive share of the LLC's payroll used to produce business income. See Table 2, Part C; and
- B. Include in the numerator any such payroll described in 2A that is applicable to California. See Table 2, Part C.

3. Unitary Member's Computation of the Sales Factor

Compute the numerator and denominator of the sales factor in accordance with Cal. Code Regs., tit. 18 sections 25134 to 25136. Apply the following special rules:

- A. Include in the denominator of the sales factor your distributive share of the LLC's sales that give rise to business income. See Table 2, Part C;
- B. Include in the numerator of your sales factor the amount of such sales described in 3A attributable to California; and
- C. Eliminate intercompany sales as follows:
 - Sales by the member to the LLC to the extent of the member's interest in the LLC; or
 - Sales by the LLC to the member not to exceed the member's interest in all LLC sales. See Cal. Code Regs., tit. 18 section 25137-1(f)(3).

Distributive Items of Nonbusiness Income for a Unitary Member

Income in Table 2, Part B, is from a California source under R&TC Sections 25124 and 25125. Schedule K-1 (568), column (e) data is not used

by a unitary member, unitary members must make certain to separately include such items as California source income.

Specific Instructions

A Questions and Items

The LLC completes the questions and items on each Schedule K-1 (568) for all its members. For more information, see the instructions for federal Schedule K-1 (1065).

B Schedule K-1 (568)

Important Note to Members: If your Schedule K-1 (568) reports losses and/or deductions, you must first apply the basis, at-risk, and passive activity limitations before such losses/deductions can be deducted on your California return. See Specific Instructions C, Loss Limitations. Also, see IRC Section 705(a) for information on how to compute basis.

Note: If your return is ever examined, you may be required to provide your computations and the supporting documents for your membership interest.

If you are an individual member, the amounts in column (c), Adjustments, and column (d), Total amounts using California law, that are from nonpassive activities must be reported on the appropriate California form or schedule; such as, Schedule D, California Capital Gain or Loss Adjustment, Schedule D-1, Sales of Business Property, Schedule CA (540), California Adjustments – Residents, or Schedule CA (540NR), California Adjustments – Nonresidents or Part-Year Residents.

Amounts in column (e), California source amounts and credits, that are from passive activities must be reported on form FTB 3801, Passive Activity Loss Limitations, form FTB 3801-CR, Passive Activity Credit Limitations, or form FTB 3802, Corporate Passive Activity Loss and Credit Limitations. Use the related worksheets to figure any passive loss limitations. If the LLC knows that you are a California resident, it may leave column (e) blank. California residents are subject to tax on their entire taxable income shown in column (d) (R&TC Section 17041).

If you are not an individual member, report the amounts as instructed on your California return.

If you have losses, deductions, credits, etc., from a prior year that were not deductible or usable because of certain limitations they may be taken into account in determining your net income, loss, etc., for this year. However, do not combine the prior-year amounts with any amounts shown on this Schedule K-1 (568) to get a net figure. Instead, report the amounts on an attached schedule, statement, or form on a year-by-year basis. See the instructions for federal Schedule K-1 (1065) for more information.

C Loss Limitations

The amounts shown on line 1 through line 3 of your Schedule K-1 (568) reflect your distributive share of income or loss from the LLC's business or rental operations. If you have losses from the LLC, there are three potential limitations imposed on losses before you may deduct them on your return. These limitations and the order in which they must be applied are:

- Basis limitations (IRC Section 704);
- At-risk limitations (IRC Section 465); and
- Passive activity loss and credit limitations (IRC Section 469).

Each of these limitations is discussed separately below.

Note: Other limitations may apply to specific deductions such as the investment interest expense deduction. These limitations on specific deductions generally apply before the basis, at-risk, and passive loss limitations.

Basis Rules

Generally, California tax law conforms to federal tax law concerning basis limitation. You may not claim your share of an LLC loss (including a capital loss) that is greater than the adjusted basis of your LLC interest at the end of the LLC's taxable year.

The LLC is not responsible for keeping the information needed to compute the basis of your LLC interest. Although the LLC does provide you with an analysis of the changes to your capital account on your Schedule K-1 (568), Item I, that information is based on the LLC's books and records and should not be used to compute your basis.

You can compute the basis of your LLC interest by adding items that increase your basis and then subtracting items that decrease your basis.

Items that increase your basis may include:

- Money and the adjusted basis of property you contributed to the LLC;
- Your distributive share of the LLC's income; and
- Your distributive share of the increase in the liabilities of the LLC (and/or your individual liabilities caused by your assumption of LLC liabilities).

Items that decrease your basis, but not below zero, may include:

- Money and the adjusted basis of property distributed to you;
- Your share of the LLC's losses; and
- Your share of the decrease in the liabilities of the LLC (and/or your individual liabilities assumed by the LLC).

Note: This is not a complete list of items and factors that determine basis. Get federal Publication 541, Partnerships, for a complete discussion of how to determine the basis of your LLC interest.

At-Risk Rules

The at-risk rules limit the amount of loss (including loss on disposition of assets) and other deductions (such as IRC Section 179, R&TC Sections 17267.2, 17267.6, and 17268) that you can claim to the amount you could actually lose in the activity.

If you have: (1) a loss or other deduction from an activity carried on as a trade or business or for the production of income by the LLC; and (2) amounts in the activity for which you are not at-risk, you will have to complete federal Form 6198, At-Risk Limitations, to figure the allowable loss to report on your return. Complete federal Form 6198 using California amounts.

See the instructions for federal Schedule K-1 (1065), At-Risk Limitations, and federal Publication 925, Passive Activity and At-Risk Rules, for more information.

Passive Activity Loss and Credit Rules

IRC Section 469 limits the deduction of certain losses and credits. California law generally conforms to this federal provision. These rules apply to members who have a passive activity loss or credit for the taxable year.

For California purposes, passive loss limitations apply to individuals, estates, trusts (other than grantor trusts), closely held corporations, and S corporations.

Even though the passive loss rules do not apply to grantor trusts, partnerships, and LLCs, they do apply to the owners of these entities.

A passive activity is generally a trade or business activity in which the member does not materially participate or a rental real estate activity in which the member does not actively participate. An LLC may have more than one activity. Each member must apply the passive activity loss and credit limitations on an activity-by-activity basis.

Individuals, estates, trusts, and S corporations must complete form FTB 3801 to calculate the allowable passive losses and form FTB 3801-CR to calculate the allowable passive credits. Corporations must complete form FTB 3802.

The amounts reported on Schedule K-1 (568), line 1 and line 14, are normally passive activity income (loss) or credits from the trade or business of the LLC if you are a member who did not materially participate in the trade or business activities of the LLC. The amounts reported on Schedule K-1 (568), line 2, line 3, and line 13b are from rental activities of the LLC and are passive activity income (loss) or credits to all members. There is an exception to this rule for losses incurred by qualified investors in qualified low-income housing projects. The LLC will identify any of these qualified amounts on an attachment for line 2.

The passive loss rules apply to the items attributable to each publicly traded partnership (PTP) that is not treated as a corporation under IRC Section 7704. Thus, members who do not materially participate in the operations of a PTP are allowed to deduct their share of the PTP's losses only to the extent of passive income from the same PTP or when the entire interest is sold, IRC Section 469(k). See the instructions for form FTB 3801 and form FTB 3802 for rules to calculate and report income, gains, and losses from passive activities that you held through each PTP you owned during the tax year.

See the instructions for federal Schedule K-1 (1065), Passive Activity Limitations, and federal Publication 925, Passive Activity and At-Risk Rules, for more information.

D Investment Partnership Income

If you are a nonresident individual, the amounts in column (e) will generally not be taxable by California (R&TC Section 17955). However, nonresident individuals will be taxed on their distributive share of California source income from an LLC that is an investment partnership if the income from the qualifying investment securities is interrelated with:

- Any other business activity of the nonresident member; or
- Any other entity in which the nonresident member owns an interest that is separate and distinct from the investment activity of the LLC and that is conducted in California.

If you are a corporate member, the amounts in column (e) will generally not be taxable in California provided the income from the LLC is the corporation's only California source income. However, if the corporation:

- Participates in the management of the investment activities of the LLC or is engaged in a unitary business with another corporation or partnership that participates in the management of the investment activities of the LLC; or
- Has income attributable to sources within California other than income from the investment partnership;

Then the corporation will be taxable on its distributive share of California source income of the LLC. See R&TC Section 23040.1 for more information.

Specific Line Instructions

The IRS revised federal Schedule K-1 (1065). As a result of the revision, lines 4 through 11 (income and deductions) of federal Schedule K-1 (1065) and California Schedule K-1 (568) are no longer in agreement. Be sure to transfer the appropriate amounts to your California Schedule K-1 (568).

Enter the difference between federal and California amounts from column (c) on Schedule CA (540) if you are a resident or on Schedule CA (540NR) if you are a nonresident or part-year resident. Also, if you are a nonresident or part-year resident, enter California source amounts from the Schedule K-1 (568), column (e), on your Schedule CA (540NR), column E.

F(1) – If this box is checked, the LLC is a PTP as defined in IRC Section 469(k)(2). Follow the instructions for form FTB 3801 or form FTB 3802 for reporting income, gains, and losses from PTPs.

F(2) – If this box is checked, the LLC qualifies as an investment partnership as defined in R&TC Sections 17955 and 23040.1. If you are a nonresident individual, the amounts in column (e) will generally not be taxable in California. See Specific Line Instructions D for additional information.

Nonresident and Part-Year Resident Members, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency. Part-year resident members must consider their period of residency and nonresidency in the computation of total California income.

Note: The specific line instructions below that instruct you to enter information from Schedule K-1 (568), column (d), on other forms, apply to resident members. When the instructions make reference to column (d), nonresident members should take information from columns (c), (d), and (e) and apply the information to the appropriate line relating to computation of total income and income from California sources.

A Income (Loss)

Line 1 – Ordinary Income (Loss) from Trade or Business Activities

The amount reported on line 1, column (d), is your share of the ordinary income (loss) from the trade or business activities of the LLC. For individual members, where this amount is reported depends on whether or not this amount is a passive activity.

If, in addition to this passive activity income, you have a passive activity loss from this LLC or from any other source, report the income on form FTB 3801 or form FTB 3802. If a loss is reported on line 1, column (d), report the loss on the applicable line of form FTB 3801 or form FTB 3802 to determine how much of the loss is allowable.

Note: If the LLC income is from activities both within and outside California, the amount nonresidents or corporate members must report on their

California return is a function of the LLC's apportionment percentage and allocation of income. Reporting instructions are included in the information provided by the LLC. See Cal. Code Regs., tit. 18 sections 17951-4 and 25137-1 for more information. In addition, see General Information E.

Line 2 – Net Income (Loss) from Rental Real Estate Activities

Generally, the income (loss) reported on line 2, column (d), is a passive activity amount to all members. However, the loss limitations of IRC Section 469 do not apply to qualified investors in qualified low-income housing projects. If applicable, the LLC will attach a schedule for line 2 to identify such amounts. You will have to report the California adjustment amount from column (c) on Schedule CA (540 or 540NR).

Use the following instructions to determine where to enter the line 2 amount.

- If you have a loss on line 2, column (d) (other than a qualified low-income housing project loss), enter the loss on the applicable line of form FTB 3801 or form FTB 3802 to determine how much of the loss is allowable. Your share of the loss may be eligible for the special \$25,000 allowance for rental real estate losses. Get the instructions for form FTB 3801 or form FTB 3802 for more information.

See the federal Schedule K-1 (1065) Specific Instructions for box 2, item 1, and item 2 for more information.

Note: Report any California adjustment amount from column (c) on Schedule CA (540 or 540NR) if you are a qualified investor reporting a qualified low-income housing project loss.

- If you have only income on line 2, column (d), and no other passive losses, enter any California adjustment amount from column (c) on Schedule CA (540 or 540NR). However, if in addition to this passive activity income, you have a passive activity loss from this LLC or from any other source, report the line 2, column (d), income on the applicable line of form FTB 3801 or form FTB 3802.

Line 3 – Net Income (Loss) from Other Rental Activities

The amount on line 3, column (d) is a passive activity amount for all members.

- If line 3, column (d) is a loss, report the loss on the applicable line of form FTB 3801 or form FTB 3802.
- If only income is reported on line 3, column (d), and you have no other passive losses, report the California adjustment from column (c) on Schedule CA (540 or 540NR). However, if in addition to this passive activity income, you have a passive activity loss from this LLC or from any other source, report the line 3 income on the applicable line of form FTB 3801 or form FTB 3802.

Line 4a through Line 4e – Portfolio Income (Loss)

- Line 4a, enter the amount of interest income from federal Schedule K-1 (1065), box 5;
- Line 4b, enter the amount of dividend income from federal Schedule K-1 (1065), box 6a and box 6b;
- Line 4c, enter the amount of royalties from federal Schedule K-1 (1065), box 7;
- Line 4d, enter the amount of net capital gain (loss) from federal Schedule K-1 (1065), box 8 and box 9a; and
- Line 4e, enter the amount of other portfolio income from federal Schedule K-1 (1065), box 11.

Portfolio income (loss), referred to as "portfolio" in these instructions, is generally not subject to the passive activity limitations of IRC Section 469. Portfolio income includes interest, dividend, royalty income, and gain or loss on the sale of property held for investment. If you have amounts on Schedule K-1 (568), line 4a through line 4e, report these amounts as follows:

- Line 4a, column (c) — Report on Schedule CA (540 or 540NR), line 8, column B or column C, whichever is applicable;
- Line 4b, column (c) — Report on Schedule CA (540 or 540NR), line 9, column B or column C, whichever is applicable;
- Line 4c, column (c) — Report on Schedule CA (540 or 540NR), line 17, column B or column C, whichever is applicable;
- Line 4d, column (d) — Report on Schedule D (540 or 540NR); and
- Line 4e, column (d) — Report on applicable schedule.

Caution: Generally, amounts reported on line 4d and line 4e are gains or losses attributable to the disposition of property held for investment and are, therefore, classified as portfolio income (loss). However, if an amount

reported on line 4d or line 4e, column (d), is a passive activity amount, the LLC should identify the amount.

The LLC uses line 4e, column (d), to report portfolio income other than interest, dividend, royalty, and capital gain (loss) income. The LLC should attach a schedule to Schedule K-1 (568) to tell you what kind of portfolio income is reported on line 4e, column (d). An example of portfolio income that could be reported on line 4e, column (d), is from a real estate mortgage investment conduit (REMIC) in which the LLC is a residual interest holder.

If the LLC has a residual interest in a REMIC, it will report your share of REMIC taxable income (net loss) on the schedule. Report the adjustment amount from column (c) on Schedule CA (540 or 540NR). The LLC will also report your share of "excess inclusion" and your share of IRC Section 212 expenses. If you itemize your deductions on federal Schedule A (1040), you may deduct these IRC Section 212 expenses as a miscellaneous deduction.

Line 5 – Guaranteed Payments to Members

Enter the amount of guaranteed payments to members from federal Schedule K-1 (1065), box 4.

Amounts on this line are not normally part of a passive activity. If there is an amount on Schedule K-1 (568), line 5, column (c), enter this amount on Schedule CA (540 or 540NR), line 21f, column B or column C, whichever is applicable.

Line 6 – Net Gain (Loss) Under IRC Section 1231 (Other Than Due to Casualty or Theft)

Enter the amount of net gain (loss) under IRC Section 1231 from federal Schedule K-1 (1065), box 10.

If the amount on line 6 relates to rental activity, the IRC Section 1231 gain (loss) is a passive activity amount. If the amount relates to a trade or business activity and you, as a member, did not materially participate, the IRC Section 1231 gain (loss) is a passive activity amount.

- If the amount is not a passive activity amount report it on Schedule D-1, line 2, column (g). You do not have to complete column (b) through column (f). Write "From Schedule K-1 (568)" across these columns.
- If a gain is reported on line 6, column (d), and it is a passive activity amount report the gain on Schedule D-1, line 2, column (g), and be sure to see "Passive Loss Limitations" in the instructions for Schedule D-1.
- If a loss is reported on line 6, column (d), and it is a passive activity amount see "Passive Loss Limitations" in the instructions for Schedule D-1. You must use form FTB 3801 to determine how much of the loss is allowed on Schedule D-1.

Line 7 – Other Income (Loss)

Enter the amount of other income (loss) from federal Schedule K-1 (1065), box 11.

Amounts reported on this line are other items of income (loss) not included on line 1 through line 6. The LLC should give you a description for each of these items.

Use the following instructions to:

- Report income or gain (not losses) from passive activities; or
- Report income, gain, or losses from all other passive activities.

If you have losses from passive activities, or a combination of income, gains, and losses from passive activities, you must first complete form FTB 3801 or form FTB 3802 to determine if any of your losses are limited by the passive loss rules. Use the instructions below to report passive income and losses after the passive loss limitations have been computed.

Line 7 items may include:

- LLC gains from disposition of farm recapture property (get Schedule D-1) and other items to which IRC Section 1252 applies;
- Recoveries of bad debts, prior taxes, and delinquency amounts (IRC Section 111). Report the amount from line 7, column (c), on Schedule CA (540 or 540NR), line 21f, column B or column C, whichever is applicable;
- Gains and losses from wagering (IRC Section 165(d)). Report the amount from line 7, column (c), on Schedule CA (540 or 540NR), line 21f, column B or column C, whichever is applicable;
- Any income, gain, or loss to the LLC under IRC Section 751. Report this amount on Schedule D-1, line 10;
- Specially allocated ordinary gain or loss. Report this amount on Schedule D-1, line 10;

- Net gain or loss from involuntary conversions due to casualty or theft. The LLC will provide a schedule that shows the California amounts to be entered on federal Form 4684, Casualties and Thefts, Section B, Part II, line 37, column (b)(i), column (b)(ii), and column (c); and
- Eligible gain from the sale or exchange of qualified small business stock (as defined in R&TC Section 18152.5, and issued after August 10, 1993). Also, the name of the corporation that issued the stock and the adjusted basis of that stock should be reported on the attachment to Schedule K (568) and Schedule K-1 (568). Any differences between IRC Section 1202 and R&TC Section 18152.5 should be included on line 7, column (c).

B Deductions

Line 8 – Charitable Contributions

The LLC will provide a schedule that shows which contributions were subject to the 50%, 30%, and 20% limitations. See the instructions for federal Form 1040 for more information.

Note: California has not conformed to any of the provisions of the Katrina Emergency Relief Act of 2005.

If there is an amount on Schedule K-1 (568), line 8, column (c), enter this amount on Schedule CA (540 or 540NR), line 39.

Line 9 – Expense Deduction for Recovery Property

Enter the amount of expense deduction for recovery property from federal Schedule K-1 (1065), box 12.

For California the maximum amount of expense deduction for recovery property (IRC Section 179 deduction) that you can claim for all sources is \$25,000. The \$25,000 limit is reduced if the total cost of IRC Section 179 property placed in service during the year exceeds \$200,000.

Note: Federal limitation amounts are different than California limitation amounts.

The LLC will provide information on your share of the IRC Section 179 deduction and of the cost of the LLC's IRC Section 179 property so that you can compute this limitation. Your IRC Section 179 deduction is also limited to your taxable income from all of your trades or businesses. See form FTB 3885A, Depreciation and Amortization Adjustments, and get federal Publication 534, Depreciating Property Placed In Service Before 1987, for more information.

If the IRC Section 179 deduction is a passive activity amount, report it on the applicable line of form FTB 3801. If it is not a passive activity amount and there is an amount on Schedule K-1 (568), line 9, column (c), enter this amount on Schedule CA (540 or 540NR), line 21f, column B or column C, whichever is applicable.

Refer to R&TC Sections 17267.2, 17267.6, and 17268 on how to figure the expense deduction for recovery property in an economic development area.

Line 10 – Deductions Related to Portfolio Income

Amounts entered on this line are the deductions that are clearly and directly allocable to portfolio income (other than investment interest expense and expenses from a REMIC). If you have an amount on Schedule K-1 (568), line 10, column (c), enter this amount on Schedule CA (540 or 540NR), line 21f, column B or column C, as applicable. If any of the line 10 amounts should not be reported on Schedule CA (540 or 540NR), the LLC should identify these amounts.

Line 11 – Other Deductions

Amounts on this line are deductions not included on line 8 through line 10. If there is an amount on Schedule K-1 (568), line 11, column (c), enter this amount on the applicable line of Schedule CA (540 or 540NR).

Enter the amount of other deductions from federal Schedule K-1 (1065), box 13.

See the instructions for federal Schedule K-1 (1065), box 13, for examples of other deductions. Also get FTB Pub. 1001, Supplemental Guidelines to California Adjustments, for differences between federal and state tax law for certain deductions.

C Investment Interest

If the LLC paid or accrued interest on debts it incurred to buy or hold investment property, the amount of interest you can deduct may be limited.

For more information and the special provisions that apply to investment interest expense, get form FTB 3526, Investment Interest Expense Deduction, and federal Publication 550, Investment Income and Expenses.

Line 12a – Interest Expense on Investment Debts

Enter the amount from column (d) on form FTB 3526 along with your investment interest expense from any other sources. Form FTB 3526 will help you determine how much of your total investment interest is deductible.

Line 12b(1) & Line 12b(2) – Investment Income and Investment Expenses

Use the column (d) amounts to determine the amount to enter on form FTB 3526, line 1.

Caution: The amounts shown include only investment income and expenses included on lines 4a, 4b, 4c, 4e, and 10 of this Schedule K-1 (568). The LLC should attach a schedule that shows the amount of any investment income and expenses included in any other lines of this Schedule K-1 (568). Use these amounts, if any, to adjust line 12b(1) and line 12b(2) to determine your total investment income and total investment expenses from this LLC.

Combine these totals with investment income and expenses from all other sources to determine the amount to enter on form FTB 3526, line 1.

D Credits

If you have credits that are passive activity credits, complete form FTB 3801-CR Passive Activity Credit Limitations (corporations use form FTB 3802), in addition to the credit forms referenced. Get the instructions for form FTB 3801-CR (or form FTB 3802) for more information.

Line 13a – Total Withholding

Total Withholding is the sum of your distributive share of withholding on payments to the LLC by another entity, (allocated to all members according to their respective LLC interests), plus withholding on you as a domestic or foreign nonresident member. If there is a pass-through withholding credit from another entity or taxes were withheld on you by the LLC, the LLC must provide a completed Form 592-B, Nonresident Withholding Tax Statement. Attach Form 592-B to the front of your California return to claim the amount withheld. See FTB Pub. 1017, Nonresident Withholding Partnership Guidelines for more information. The amount shown on Form 592-B should be claimed on:

- Form 540, California Resident Income Tax Return, line 38; or
- Form 540NR, California Nonresident or Part-Year Resident Income Tax Return (Long Form), line 44; or
- Form 541, California Fiduciary Income Tax Return, line 31; or
- Form 109, California Exempt Organization Business Income Tax Return, line 22; or
- Form 100, California Corporation Franchise or Income Tax Return, line 34; or
- Form 100S, California S Corporation Franchise or Income Tax Return, line 33.

Schedule K-1 (568) may not be used to claim the withholding credit. If the LLC is not on a calendar year, the amount on line 13a may not match the amount on Form 592-B because of the difference in accounting periods.

Line 13b – Low-Income Housing Credit

Any allowable credit is entered on form FTB 3521, Low-Income Housing Credit. However, the passive activity credit limitations of IRC Section 469 may limit the amount of credit. Credits from passive activities are generally limited to tax attributable to passive activities.

Caution: You cannot claim the low-income housing credit on any qualified low-income housing project for which any person was allowed any benefit under IRC Section 502 of the Tax Reform Act of 1986.

Line 13c – Other Credits Related to Rental Real Estate Activities

The information you need to compute credits related to rental real estate activities other than the low-income housing credit is provided with an attached schedule.

Line 13d – Credits Related to Other Rental Activities

Any information you need to compute credits related to rental activities other than rental real estate activities is provided on this line with an attached schedule.

Line 13e – Nonconsenting Nonresident Member's Tax Paid by LLC

This line shows any income tax paid on your behalf by the LLC if, as a nonresident member, you did not sign form FTB 3832, Limited Liability Company's Nonresident Members' Consent, consenting to California's jurisdiction to tax your distributive share of the LLC income attributable to California sources.

This line also shows any income tax paid on behalf of your LLC by another LLC of which your LLC is a member. This applies if form FTB 3832, Limited Liability Company Nonresident Members' Consent, is not signed on behalf of your LLC. This means that your LLC is not consenting to California's jurisdiction to tax your LLC's distributive share of another LLC's income attributable to California sources.

Note: You must attach a copy of Schedule K-1 (568) to your California tax return to claim the tax paid by the LLC on your behalf.

For taxable years beginning on or after January 1, 2005, the tax may be reduced by the amount of tax previously withheld and paid by the LLC with respect to each nonconsenting, nonresident member.

If there was income tax paid on behalf of your LLC, you must attach a copy of the following to your California return to claim your share of the tax paid by another LLC on behalf of your LLC:

- The Schedule K-1 (568) issued to your LLC by another LLC.
- The Schedule K-1 (568) issued by your LLC.

Line 14 – Other Credits

This line is used to report information you need to compute pass-through credits and other items that are not includable on 13a through 13d but are related to the trade or business activity. The LLC should provide a schedule and/or statement explaining any items.

Credits that may be reported on line 14 (depending on the type of activity they relate to) include:

- Community Development Financial Institution Deposits Credit. Use credit code 209.
- Disabled Access Credit for Eligible Small Businesses. Get form FTB 3548.
- Donated Agricultural Products Transportation Credit. Get form FTB 3547.
- Employer Child Care Program/Contribution Credit. Get form FTB 3501.
- Enhanced Oil Recovery Credit. Get form FTB 3546.
- Enterprise Zone (EZ) Hiring and Sales or Use Tax Credit. Get form FTB 3805Z.
- Environmental Tax Credit. Get form FTB 3511.
- Farmworker Housing Credit-Construction. Use credit code 207.
- Joint Strike Fighter Credit. Get form FTB 3534.
- Local Agency Military Base Recovery Area (LAMBRA) Hiring and Sales or Use Tax Credit. Get form FTB 3807.
- Manufacturing Enhancement Area (MEA) Hiring Credit. Get form FTB 3808.
- Natural Heritage Preservation Tax Credit. Get form FTB 3503.
- Prison Inmate Labor Credit. Get form FTB 3507.
- Research Credit. Get form FTB 3523.
- Rice Straw Credit. Use credit code 206.
- Solar or Wind Energy System Credit. Get form FTB 3508.
- Targeted Tax Area (TTA) Hiring and Sales or Use Tax Credit. Get form FTB 3809.

Note: The passive activity limitations of IRC Section 469 may limit the amount of credits on line 13b, line 13c, line 13d, and line 14. Line 13b, line 13c, and line 13d credits are related to the rental activities of the LLC. Line 14 credits are related to the trade or business activities of the LLC. In general, passive activity credits from passive activities are limited to tax attributable to passive activities for California purposes (R&TC Section 17561). Credits that may be limited under the passive activity credit rules are the:

- Research credit; and
- Low-income housing credit.

You may be able to use the low-income housing credit, and other credits generated from rental activities, against tax on other income. See form FTB 3801-CR for more information.

The LLC can include on line 14 your distributive share of net income taxes paid to other states by the LLC. Subject to the limitations of R&TC Section 18006, members may claim a credit against their individual tax for net income taxes paid by the LLC to another state. The amount of tax paid is required to be supported by a copy of the return filed with the other state and evidence of the payment of the tax. Get Schedule S for more information.

Reminder: All of these forms and many others are available from our Website at www.ftb.ca.gov.

E Adjustments and Tax Preference Items

Line 15a through Line 15e column (d)

Use the information reported on line 15a through line 15e, column (d) as well as your adjustments and tax preference items from other sources to complete Schedule P (540), Alternative Minimum Tax and Credit Limitations — Residents; Schedule P (540NR), Alternative Minimum Tax and Credit Limitations — Nonresidents or Part-Year Residents; Schedule P (541), Alternative Minimum Tax and Credit Limitations — Fiduciaries; Schedule P (100), Alternative Minimum Tax and Credit Limitations — Corporations; or Schedule P (100W), Alternative Minimum Tax and Credits Limitations — Water's-Edge Filers. For additional information, see the instructions for federal Schedule K-1 (1065), Alternative minimum tax (AMT) items box 17.

F Other

Line 16 through Line 19

See the federal instructions for Schedule K-1 (1065), box 18 through box 20. The LLC should give you a description and the amount of your share for each item applicable to California in this category.

Line 22 – Supplemental Information

The LLC will provide supplemental information required to be reported to you on this line. If the LLC is claiming tax benefits from an EZ, LARZ, LAMBRA, MEA, or TTA, it will give you the business income, and business capital gains and losses, apportioned to the EZ, LARZ, LAMBRA, MEA, or TTA, on this line. Get form FTB 3805Z, FTB 3806, FTB 3807, FTB 3808, or FTB 3809 to claim any applicable credit.

The LLC may have provided an amount showing your proportionate interest in the LLC's aggregate gross receipts, less returns and allowances on this line. A qualified taxpayer may exclude income, positive and negative adjustments, and preference items attributable to any trade or business from alternative minimum taxable income. A "qualified taxpayer" is defined as an individual, estate, or trust that:

- Is the owner of, or has an ownership interest in a trade or business; **and**
- Has aggregate gross receipts, less returns and allowances, of less than \$1,000,000 during the taxable year from all trades or businesses in which the taxpayer is an owner or has an ownership interest. In the case of an ownership interest, you should include only your proportional share of aggregate gross receipts of any trade or business from a partnership, LLC, S corporation, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

You need to add your share of the aggregate gross receipts from this LLC to your aggregate gross receipts from all other trades or businesses in which you hold an interest to determine if you are a qualified taxpayer.

For purposes of R&TC Section 17062(b)(4), "aggregate gross receipts, less returns and allowances" means the sum of:

- The gross receipts of the trades or businesses which the taxpayer owns;
- The proportionate interest of the gross receipts of the trades or businesses which the taxpayer owns; and
- The proportionate interest of pass-through entities gross receipts in which the taxpayer holds an interest.

"Gross receipts" means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of R&TC Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of R&TC Section 25120.

For purposes of this section "pass-through entity" means a partnership (as defined by R&TC Section 17008), an S corporation, a RIC, a REIT, and a REMIC. See R&TC Section 17062 for more information.

Get FTB Pub. 1001, Supplemental Guidelines to California Adjustments, for a listing of items of nonconformity for individuals.

The pro-rata share of gain or loss on property subject to the IRC Section 179 expense deduction recapture should be reported on Schedule K-1 as supplemental information. Follow the instructions on the federal Form 4797 and federal Schedule K-1 (1065) for the reporting requirements.

G Table 1

Generally, nonbusiness interest and dividends are sourced to the state of residence for nonapportioning individuals. Nonapportioning means doing business entirely within California. For more information regarding the sourcing of intangibles, see R&TC Section 17952.

For apportioning members, nonbusiness interest and dividends generally are allocable to California if the taxpayer's commercial domicile is California. For information regarding sourcing of intangibles for apportioning taxpayers, see R&TC Sections 25126 and 25127.

The income data contained in Table 1 is not reflected in column (e) of Schedule K-1 (568). For additional information, see General Information E.

H Table 2

The final determination of unity is made at the member level.

If the member and the LLC are engaged in a single unitary business, or if the LLC is uncertain as to whether it is unitary with the member, the LLC will furnish the information on Table 2.

The member's share of the LLC's business income is entered on Table 2, Part A. The member then adds that income to its own business income and apports the combined business income using the revised factor described below.

Table 2, Part B, reflects the member's share of nonbusiness income from real and tangible property wholly sourced or allocable to California. This is added to apportioned business income and nonbusiness intangible income allocated to California and becomes a part of California taxable income. For more information on sourcing intangibles, see R&TC Sections 25124 and 25125, and Cal. Code Regs., tit. 18 sections 17951-1, 17951-2, and 17951-3.

The member's share of the LLC's property, payroll, and sales factors is in Table 2, Part C. The member combines its apportionment factors with the apportionment factors of the LLC and uses the revised factor to compute its business income apportioned to California. For further information, see General Information D.