

Instructions for Schedule D (565)

Capital Gain or Loss

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, go to 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.

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.

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 Agencies Directory on California's Website at www.ca.gov.

Purpose

Use Schedule D (565), Capital Gain or Loss, to report the sale or exchange of capital assets, except capital gains (losses) that are specially allocated to any partners. Do not use this form to report the sale of business property. For sales of business properties, use California Schedule D-1, Sale of Business Property.

Enter specially allocated capital gains (losses) received from limited liability companies (LLCs) classified as partnerships, partnerships, S corporations, and fiduciaries on Schedule D (565), line 3. Enter capital gains (losses) that are specially allocated to partners on Schedule K-1 (565), Partner's Share of Income, Deductions, Credits, etc. Do not include these amounts on Schedule D (565). See the instructions for

Schedule K (565) and Schedule K-1 (565) for more information. Also, refer to the instructions for federal Schedule D (1065).

Nonresident and Part-Year Resident Partners, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency. With the enactment of AB 1115 (Stats. 2001, Ch 920) capital loss carry-over and capital loss limitations for nonresident partners and part-year resident partners, for the portion of the year they were nonresidents, are determined based upon California source income and loss items only for the computation of their California taxable income. Moreover, the character of their gains and losses on the sale or exchange of property used in trade or business or certain involuntary conversions (IRC Section 1231) are determined for purposes of calculating their California taxable income by netting California sources Section 1231 gains and losses only.

California law conforms to federal law for the recognition of gain on a constructive sale of property in which the partnership held an appreciated interest.

Qualified Small Business Stock

R&TC Section 18152.2 is similar to IRC Section 1202 regarding the exclusion of 50% of the gain on the sale of qualifying small business stock originally issued after August 10, 1993, that was held for more than five years. However, for California purposes, at least 80% of the issuing corporation's payroll must be attributable to employment located within California, and at least 80% of the value of the corporation's assets must be used by the corporation to actively conduct one or more qualified trades or businesses in California.

R&TC Section 18038.5 also provides for the deferral of gain from the sale of small business stock that has been held for six months or more, if qualified replacement stock is purchased within 60 days after the sale giving rise to the gain. Report gain deferred from the sale of qualified small business stock in accordance with the instructions contained in Revenue Procedure 98-48.

The partnership also must separately state the amount of the gain that qualifies for the 50% exclusion under R&TC Section 18152.5 on Schedule K, line 11. Each partner must determine if he or she qualifies for the gain at the partner level.

Instructions for Form FTB 3885P

Depreciation and Amortization

A Purpose

Use form FTB 3885P, Depreciation and Amortization, to compute depreciation and amortization allowed as a deduction on Form 565, Partnership Return of Income. Attach form FTB 3885P to Form 565.

Depreciation is the annual deduction allowed to recover the cost or other basis of business or income producing property with a determinable useful life of more than one year. Land is not depreciable.

Amortization is an amount deducted to recover the cost of certain capital expenses over a fixed period.

In general, California conforms to federal law for assets placed in service on or after January 1, 1987. See California Revenue and Taxation Code (R&TC) Section 17250.

B Federal/State Calculation Differences

California law has not always conformed to federal law with regard to depreciation methods, special credits, or accelerated write-offs. Consequently, the recovery periods and the basis on which the depreciation is calculated may be different from the amounts used for federal purposes. Reportable differences may occur if all or part of your assets were placed in service:

- **Before January 1, 1987:** California disallowed depreciation under the federal Accelerated Cost Recovery System (ACRS). Continue to calculate California depreciation in the same manner as in prior years for those assets.
- **On or after January 1, 1987:** California provides special credits and accelerated write-offs that affect the California basis for qualifying assets. California does not conform to all the changes to federal law enacted in 1993. Therefore, the California basis or recovery periods may be different for some assets.

Additional differences may occur for the following:

- **Luxury Automobile Depreciation:** California generally conforms to the federal 2003 increase (IRC Section 280F) for the limitation on luxury automobile depreciation. However, California does not conform to IRC Section 168(k) provisions (30% and 50% additional first year depreciation). In addition, SUVs and minivans built on a truck chassis are included in the definition of trucks and vans when applying the 6,000 pound gross weight limit.

- **Amortization of Certain Intangibles** (IRC Section 197): Property classified as Section 197 property under federal law is also Section 197 property for California purposes. There is no separate California election required or allowed. However, for 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.
- **Qualified Indian reservation property:** California has not conformed to the accelerated recovery periods available under the Alternative Depreciation System (ADS) for such property.
- **Grapevines subject to Phylloxera or Pierce's Disease:** For California purposes, replacement grapevines may be depreciated using a recovery period of five years instead of ten years.

This list is not intended to be all-inclusive of the federal and state differences. For additional information, please refer to California's R&TC.

Specific Line Instructions

Line 1 – California depreciation for assets placed in service after December 31, 2006, and amortization for intangibles placed in service after December 31, 2006

Complete column (a) through column (i) for each asset or group of assets or property placed in service after December 31, 2006. Enter the column (f) totals on line 1(f). Enter the column (i) totals on line 1(i).

Line 2 – California depreciation for assets placed in service before January 1, 2007

Enter total California depreciation for assets placed in service prior to January 1, 2007, taking into account any differences in asset basis or differences in California and federal tax law.

Line 4 – California amortization for intangibles placed in service before January 1, 2007

Enter total California amortization for intangibles placed in service prior to January 1, 2007, taking into account any differences in asset basis or differences in California and federal tax law.

Assets with a Federal Basis Different from California Basis

Some assets placed in service on or after January 1, 1987, will have a different adjusted basis for California purposes due to the credits claimed or accelerated write-offs of the assets. Review the list of depreciation and amortization items in the instructions for Schedule CA (540), California Adjustments — Residents, and Schedule CA (540NR), California Adjustments — Nonresidents or Part-Year Residents. If the partnership has any other adjustments to make, get FTB Pub. 1001, Supplemental Guidelines to California Adjustments, for more information.

Line 6 – Total Depreciation and Amortization

Add line 3 and line 5. Enter the total on line 6 and on Form 565, Side 1, line 17a.

If depreciation or amortization is from more than one trade or business activity, or from more than one rental real estate activity, the partnership should separately compute depreciation for each activity. Use the depreciation computed on this form to identify the net income for each activity. Report the net income from each activity on an attachment to Schedule K-1 (565), Partner's Share of Income, Deductions, Credits, etc., for purposes of passive activity reporting requirements. Use California amounts to determine the depreciation amount to enter on line 14 of federal Form 8825, Rental Real Estate Income and Expenses of Partnership or an S Corporation.

Line 7

Enter the Internal Revenue Code (IRC) Section 179 expense election amount from line 12 of the following worksheet.

These limitations apply to the partnership and each partner.

Election to Expense Certain Tangible Property (IRC Section 179) Worksheet

Follow the instructions on federal Form 4562 or 4562-FY for listed property.

1	Maximum dollar limitation	1	\$ 25,000
2	Total cost of IRC Section 179 property placed in service during the taxable year	2	
3	Threshold cost of IRC Section 179 property placed in service during the taxable year	3	\$200,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for taxable year. Subtract line 4 from line 1. If zero or less, enter -0-	5	

(a) Description of property	(b) Cost	(c) Elected cost
6		

7	Listed property. Use federal Form 4562 or 4562-FY, Part V, line 29. Make any adjustments for California law and basis differences.	7	
8	Total elected cost of IRC Section 179 property. Add amounts in column (c), line 6 and line 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8.	9	
10	Carryover of disallowed deduction from 2006. See instructions for line 10 through line 13 on federal Form 4562 or 4562-FY	10	
11	Income limitation. Enter the smaller of line 5 or the aggregate of the partnership's items of income and expense described in IRC Section 702(a) from any business actively conducted by the partnership, other than credits, tax-exempt IRC Section 179 expense deduction, and guaranteed payments under IRC Section 707(c)	11	
12	IRC Section 179 expense deduction. Add line 9 and line 10, but do not enter more than line 11. Enter on Schedule K (565), line 12 and on form FTB 3885P, line 7	12	
13	Carryover of disallowed deduction to 2008. Add line 9 and line 10 and subtract line 12. Enter here and on line 8 of form FTB 3885P	13	