

Instructions for Form FTB 3544

Election to Assign Credit Within Combined Reporting Group

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2005**, and to the California Revenue and Taxation Code (R&TC).

What's New

For taxable years beginning on or after **July 1, 2008**, California Revenue and Tax Code (R&TC) Section 23663 was added to allow taxpayers to assign an "eligible credit" to any "eligible assignee." A credit assigned may only be applied against the tax of the eligible assignee in a taxable year beginning on or after January 1, 2010.

After assignment of an eligible credit, the assignee shall be treated as if it originally generated the assigned credit. All restrictions and limitations, including any carryover limitations that applied to the assignor (entity that originally generated the credit) will apply to the assignee.

Important Information

The election to assign any credit is **irrevocable**. The assignor shall make the election and report the credit assignment by completing form FTB 3544, Election to Assign Credit Within Combined Reporting Group, and attach it to the assignor's **original** tax return for the taxable year the assignment is made. Credit assignment will **not** be allowed if form FTB 3544 is attached to an amended tax return. Once a credit is assigned to an assignee, it cannot be reassigned. The assignor will reduce the credit amount available for assignment by the amount of the credit assigned.

No consideration is required to be paid by eligible assignees. However, if consideration is paid, no deduction will be allowed to assignee for the amount paid. Also, no amounts received, by the assignor receiving consideration for credits being assigned, shall be recognized as income.

The assignor who assigns a credit shall complete all of the information requested on form FTB 3544. Attach additional form(s) FTB 3544, if necessary (schedules or substitute forms, other than FTB-approved computer-generated substitute versions of form FTB 3544, will **not** be accepted).

Also, the assignor shall maintain the information necessary to substantiate any credit assigned and to verify the assignment and subsequent use of the credit assigned. Lack of substantiation may result in the disallowance of the assignment. The assignor and the eligible assignee shall each be liable for the full amount of any tax, addition to tax, or penalty that results from any disallowance of any credit under R&TC Section 23663, and the Franchise Tax Board (FTB) may collect such amount in full from either the assignor or the eligible assignee.

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 **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 R&TC in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

A Purpose

Use form FTB 3544 to report the following:

- The election to assign credits to a member of the combined reporting group.
- The assignment (assignor's information, assignee's information, and the amount of the credit assigned).

Attach additional form(s) FTB 3544, if necessary.

When filing a combined report and more than one credit is being assigned, file a **separate** form FTB 3544 for **each** credit and attach it to Form 100, California Corporation Franchise or Income Tax Return, or Form 100W, California Corporation Franchise or Income Tax Return – Water's-Edge Filers. For example, Companies A, B, and C are members of a unitary group filing a combined report. If Company A is assigning Research and Development (R&D) credit and Enterprise Zone (EZ) credit to Companies B and C, Company A shall complete and attach two forms FTB 3544 to the original tax return. One form for the R&D credit and one form for the EZ credit.

B Definitions

Eligible credit. Eligible credit means any credit generated by the taxpayer in a taxable year beginning on or after July 1, 2008, or any credit generated in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer's first taxable year beginning on or after July 1, 2008.

Assignor. The assignor is the taxpayer that originally generated the eligible credit (or is allowed it as a distributive share item) and assigned the eligible credit to an eligible

assignee. Any taxpayer-member of the combined reporting group that includes the eligible assignee is a possible assignor.

Eligible assignee. Eligible assignee is any affiliated corporation that is a member of the same combined reporting group (under R&TC Section 25101 or 25110) as the assignor on:

- (1) June 30, 2008, and the last day of the taxable year in which the credit was assigned to the assignee, for **credits generated** in taxable years beginning **before** July 1, 2008, or
- (2) The last day of the taxable year in which the credit was first allowed to the assignor and the last day of the taxable year in which the credit was assigned to the assignee, for **credits generated** in taxable years **beginning on or after** July 1, 2008.

C Disclosure of Limitations and Restrictions

The eligible assignee shall be treated as if it originally generated the assigned credit. Any credit limitations or restrictions that applied to the assignor will also apply to the eligible assignee. The assignor shall disclose the existence and nature of any assigned credit limitations to the eligible assignee and to the FTB. Such limitations may include, but are not limited to:

- Limitations imposed on the credit to certain types of income, such as income from one of the California Enterprise Zones.
- Limitations imposed by California's incorporation of IRC Section 383.
- Limitations on the number of years the assigned credits may be carried forward.

In addition to the requirement to separately list credits generated in different taxable years, the assignor must separately list credits which are subject to separate and distinct limitations and disclose each of those separate and distinct limitations in a statement to be attached to form FTB 3544.

For example, the use of EZ credits is limited to the tax that is the result of income from the zone in which the credit was generated. This rule applies to the assignee as well. For zone credits assigned, the assignee must have a tax liability as a result of income generated in the same zone that the original credit was generated. If the original credit was generated in the Fresno enterprise zone of the assignor, the assignee must have a tax liability that was the result of income from the Fresno enterprise zone.

Also, when a corporation has an "ownership change" as defined in IRC Section 382, tax credits may be subject to a limitation imposed under IRC Section 383. In such situations, the annual use of credits is limited to an amount determined under IRC Section 383.

In addition, a taxpayer has Manufacturers' Investment Credits that were generated from assets placed in service prior to January 1, 2004. Those credits have not been used and were carried forward and assigned in the 2009 taxable year. Those credits would expire in the 2011 taxable year, based on the date that the taxpayer originally generated the credit. The credits would expire for the assignee in 2011, unless the carryover period was extended by law.

Specific Line Instructions

The assignor must complete the following information on form FTB 3544:

- Key corporation name, California key corporation number, and principal business activity (PBA) code.
- Assignor corporation name, California corporation number or federal employer identification number (FEIN), and PBA code.

The Principal Business Activity Codes chart can be found inside the Form 100 Booklet or Form 100W Booklet.

Credit Assigned Information

Enter the applicable credit name and credit code in the space provided. For a complete list of eligible credits, see the Credit Table inside the Form 100 Booklet or Form 100W Booklet.

Note: The Prior Year Alternative Minimum Tax credit is **excluded** from the list of credits eligible to be assigned.

For **each** type of eligible business credit, the assignor should complete a **separate** form FTB 3544. For example, if the combined group is assigning R&D credit and EZ credit, two separate forms FTB 3544 are required.

When completing the form, the assignor must separately list credits generated in different taxable years. Assignor shall separately list credits which are subject to separate and distinct limitations and disclose each of those separate and distinct limitations in a statement to be attached to this form.

Column (a) – Assignee name. Enter the corporation name that is receiving a credit assignment from the assignor.

Column (b) – California corporation number or FEIN. Enter the California corporation number or FEIN of the corporation that is receiving the credit assignment. If the corporation has applied for but not yet received the California corporation number or FEIN, enter "Applied for" in column (b). If the corporation is a non-U.S. foreign corporation, enter "Foreign" in this column.

Column (c) – Principal business activity code. Enter the six digit PBA code of the assignee in this column. See the Principal Business Activity Codes chart inside the Form 100 Booklet or Form 100W Booklet for more information.

Column (d) – Taxable year credit was generated. Enter the taxable year that the assignor generated the original credit. For example, the assignor (Company A) generated an R&D credit of \$1,000 in taxable year ending December 31, 2006. The credit was unused by Company A and carried forward. On July 1, 2008, the \$1,000 credit was still available for use and was being assigned to Company F, another unitary member of the combined report, in taxable year ending December 31, 2009. The assignor will enter "2006" as the taxable year the credit was generated.

Column (e) – Limitations. Check column (e) if the credit assigned is subject to any limitations as discussed under General Information C, Disclosure of Limitations and Restrictions. If the assigned credit is subject to any limitation, attach a statement to form FTB 3544 fully disclosing the specific limitation(s) imposed upon each of the assigned credits listed on the form. Assignor shall separately list credits which are subject to separate and distinct limitations and disclose each of those separate and distinct limitations in a statement.

Column (f) – Credit amount available for assignment. The available credit amount may be assigned to more than one assignee.

However, once a credit amount is assigned to an assignee, the same amount of credit cannot be assigned to another assignee.

Enter the unused carryover credit amount separately for each taxable year a credit was generated. Also, separately enter the current taxable year generated credit for the specific corporation making the credit assignment. For example, if the assignor (Company A) generated \$100,000 of R&D credit in 2006, \$200,000 of R&D credit in 2007, and \$100,000 of R&D credit for the current taxable year, then each taxable year's credit amount would be separately listed in column (f) with the corresponding taxable year the credit was generated in column (d).

Column (g) – Credit amount assigned. Enter the credit amount that is being assigned to an assignee in the combined reporting group. For example, Corporation A has \$100,000 available for assignment. Corporation A assigned \$40,000 to Corporation K and \$60,000 to Corporation L in the current taxable year. Corporation A would enter the credit amount available for assignment of \$100,000 in column (f), \$40,000 assigned to Corporation K in column (g), and the remaining credit balance of \$60,000 in column (h). On the next line, Corporation A should carryover the amount of \$60,000 from the previous line of column (h) onto column (f). Then, Corporation A would enter \$60,000 assigned to Corporation L in column (g), with the remaining credit balance of \$0 in column (h).

Column (h) – Balance available for use by assignor. This is the amount available for assignment [column (f)], less the amount of the current taxable year assigned credits [column (g)]. The balance is the amount that the assignor corporation may use to assign to another assignee, to offset their portion of the California tax liability as allowed, or to carry forward to future taxable years.

Total credit assigned. Add amounts in column (g) and enter the total on this line. This is the total of all of the credits being assigned to affiliated corporations.

Below is an example of how to report the credit assignment: (This example does **not** reflect any credit used by the assignor).

(a) Assignee name	(b) California corporation number or FEIN	(c) Principal business activity code	(d) Taxable year credit was generated	(e)* Limitations	(f) Credit amount available for assignment	(g) Credit amount assigned	(h) Balance available for use by assignor, column (f) less column (g)
Corp B	XXXXXXXX	XXXXXX	2004		3,000	1,000	2,000 **
Corp C	XXXXXXXX	XXXXXX	2004		2,000 **	2,000	0
Corp B	XXXXXXXX	XXXXXX	2005	✓	6,000	1,500	4,500
Corp D	Foreign	XXXXXX	2005	✓	4,500	2,500	2,000
Corp E	XXXXXX	XXXXXX	2005	✓	2,000	2,000	0
Corp E	XXXXXX	XXXXXX	2006		5,000	5,000	0
Total credit assigned. Add amounts in column (g).....						14,000	

* Check column (e) if the credit assigned is subject to limitations. See instructions.

**The assignor can assign this available balance to another assignee as shown on the next line (Corp. C).