

2009 Enhanced Oil Recovery Credit

3546

Attach to your California tax return.

Name(s) as shown on your California tax return

SSN or ITIN Corporation no. FEIN

Secretary of State (SOS) file number

Credit Computation

1	Qualified enhanced oil recovery costs. See instructions	1	
2	Current year credit. Multiply line 1 by 5% (.05)	2	
3	Pass-through enhanced oil recovery credit from Schedule K-1 (100S, 541, 565, or 568). See instructions	3	
4	Total current year enhanced oil recovery credit. Add line 2 and line 3	4	
5	Credit carryover from 2008. See instructions	5	00
6	Total available enhanced oil recovery credit. Add line 4 and line 5	6	00
7	Enter the amount of credit claimed on the current year tax return This amount may be less than the amount on line 6 if your credit is limited by tentative minimum tax or your tax liability. See instructions for line 7.	7	00
8	Credit carryover available for future years. Subtract line 7 from line 6	8	00

General Information

California allows an enhanced oil recovery credit similar to the federal enhanced oil recovery credit under Internal Revenue Code (IRC) Section 43, with exceptions. Unless specifically identified otherwise, references in these instructions are to the IRC as of January 1, 2005, and to the California Revenue and Taxation Code (R&TC).

Business Tax Credit Limitation – For taxable years beginning on or after January 1, 2008, and before January 1, 2010, business tax credits can only offset 50% of the net tax, if a corporation's taxable income is \$500,000 or more, or if an individual's net business income is \$500,000 or more.

Business tax credits disallowed due to the 50% limitation may be carried over. The carryover period for disallowed credits is extended by the number of taxable years the credits were not allowed. For more information, get the applicable Schedule P (100, 100W, 540, 540NR, or 541), Alternative Minimum Tax and Credit Limitations. Taxpayers are required to keep track of the disallowed business tax credits on a worksheet and provide it to the Franchise Tax Board (FTB) upon request.

Round Cents to Dollars – Round cents to the nearest whole dollar. For example, round \$50.50 up to \$51 or round \$25.49 down to \$25. If you do not round, the FTB will disregard the cents.

A Purpose

Use form FTB 3546, Enhanced Oil Recovery Credit, to figure the current year credit and any carryover credit for qualified enhanced oil recovery costs for qualified oil recovery projects located within California. Also use this form to claim pass-through enhanced oil recovery credits you received from

S corporations, estates or trusts, partnerships, or limited liability companies (LLCs) classified as partnerships.

S corporations, estates or trusts, partnerships, and LLCs classified as partnerships should complete form FTB 3546 to figure the amount of credit to pass through to shareholders, beneficiaries, partners, or members. Attach this form to Form 100S, California S Corporation Franchise or Income Tax Return; Form 541, California Fiduciary Income Tax Return; Form 565, Partnership Return of Income; or Form 568, Limited Liability Company Return of Income. Show the pass-through credit for each shareholder, beneficiary, partner, or member on Schedule K-1 (100S, 541, 565, or 568), Share of Income, Deductions, Credits, etc.

B Description

The California enhanced oil recovery credit is available for taxable years beginning on or after January 1, 1996. The tentative enhanced oil recovery credit is equal to 5% (representing 1/3 of the federal enhanced oil recovery credit) of the qualified enhanced oil recovery costs for qualified oil recovery projects located within California. See General Information F, Limitations, for limitations on the enhanced oil recovery credit.

C California and Federal Differences

The federal enhanced oil recovery credit under IRC Section 43 and the California enhanced oil recovery credit under R&TC Sections 17052.8 and 23604 are generally the same, except that:

1. The California credit is equal to **5%** of the qualified enhanced oil recovery costs for qualified oil recovery projects **located within California**. The federal credit is equal to 15% of the qualified enhanced oil recovery costs for qualified oil recovery

projects located within the United States. It includes the seabed and subsoil adjacent to the territorial waters of the United States as defined under IRC Section 638(1).

2. California **does not allow** the enhanced oil recovery credit for the following taxpayers:
 - Taxpayers who are **retailers of oil or natural gas** (excluding bulk sales of aviation fuels) and sell directly or through a related person to the Department of Defense. See IRC Sections 613A(d)(2) and 613A(d)(3) for more information.
 - Taxpayers (or related persons) who are **refiners of crude oil** and, on any day during the taxable year, whose daily refinery output exceeded 50,000 barrels. See IRC Section 613A(d)(4) for more information.
3. Taxpayers may carry over the California credit for 15 years. The credit is subject to limitations described in General Information F, Limitations. The federal credit is part of the general business credit subject to the limitations imposed by IRC Section 38.

D Definitions

Qualified enhanced oil recovery costs –

1. Any amount the taxpayer pays or incurs during the taxable year for tangible property located within California:
 - That is an integral part of a qualified enhanced oil recovery project in California.
 - For which depreciation (or amortization) is allowable.

2. Any intangible drilling and development costs:
 - The taxpayer pays or incurs in connection with a qualified enhanced oil recovery project located within California.
 - For which the taxpayer elects to capitalize and amortize such costs under IRC Section 263(c) and R&TC Sections 17201 and 24423.
3. Any qualified tertiary injectant expenses the taxpayer pays or incurs in connection with a qualified enhanced oil recovery project located within California.

For California Personal Income Tax Law and Corporation Tax Law purposes, taxpayers must capitalize and deduct tertiary injectant costs through depreciation because California has not conformed to the provisions of IRC Section 193.

Qualified enhanced oil recovery project – Any project located within California involving the application of one or more tertiary recovery methods defined in IRC Section 193(b)(3), and mentioned below, that you can reasonably expect to result in more than an insignificant increase in the amount of crude oil recovery.

Tertiary recovery methods – Methods qualifying for the credit include miscible fluid displacement, steam drive injection, microemulsion flooding, in situ combustion, polymer-augmented water flooding, cyclic-steam injection, alkaline (or caustic) flooding, carbonated water flooding, immiscible nonhydrocarbon gas displacement, or any other method the Secretary of the Treasury approves.

E Basis

You must reduce the basis of property by the amount of the credit attributable to that property. You must make the basis adjustment for the taxable year in which the credit is allowed.

F Limitations

Federal election – If a taxpayer has no federal enhanced oil recovery credit due to making an election for an item of property under IRC Section 43(e), which is an election not to apply IRC Section 43 for federal tax purposes, the election is binding and irrevocable for California purposes. The California enhanced oil recovery credit with respect to that item of property is zero.

Ineligible taxpayers – Certain refiners of crude oil, taxpayers that are not permitted to compute their depletion allowance under IRC Section 613 because they are retailers of oil or natural gas, and certain related parties, cannot claim the California enhanced oil recovery credit. See IRC Sections 613A(d)(2) through 613A(d)(4) for more information on ineligible taxpayers.

Reduced credit – The credit is reduced when the reference price, determined under IRC Section 45K (d)(2)(C), exceeds \$28 per barrel. The \$28 value is adjusted for inflation for years after 1991. If the reference price exceeds the base value of \$28 (as adjusted by inflation) by more than \$6, the credit is zero. For 2007, 2008 and 2009, the credit is zero (\$0).

Other limitations

If an item of property qualifies the taxpayer to take the enhanced oil recovery credit as well as any other California credit, the taxpayer must make an election on the original return for each year stating which credit is being claimed. Such an election cannot be revoked except with the written consent of the FTB.

S corporations may claim only 1/3 of the credit against the 1.5% entity-level tax (3.5% for financial S corporations), the remaining 2/3 must be disregarded and may not be used as carryover. S corporations can pass through 100% of the credit to their shareholders.

If a taxpayer owns an interest in a disregarded business entity [a single member limited liability company (SMLLC) not recognized by California, and for tax purposes treated as a sole proprietorship owned by an individual or a branch owned by a corporation], the credit amount received from the disregarded entity is limited to the difference between the taxpayer's regular tax figured with the income of the disregarded entity, and the taxpayer's regular tax figured without the income of the disregarded entity.

An SMLLC may be disregarded as an entity separate from its owner, and subject to certain statutory provisions that recognize otherwise disregarded entities for certain purposes, for example:

- The tax and fee of an LLC
- The return filing requirements of an LLC
- The credit limitations previously mentioned

Get Form 568, Limited Liability Company Tax Booklet, for more information.

If the disregarded entity reports a loss, the taxpayer may not claim the credit this year but can carry over the credit amount received from the disregarded entity.

This credit cannot reduce the minimum franchise tax (corporations and S corporations), annual tax (limited partnerships, limited liability partnerships, and LLCs classified as partnerships), the alternative minimum tax (corporations, exempt organizations, individuals, and fiduciaries), the built-in gains tax (S corporations), or the excess net passive income tax (S corporations).

This credit cannot reduce regular tax below the tentative minimum tax. Get Schedule P (100, 100W, 540, 540NR, or 541), Alternative Minimum Tax and Credit Limitations, for more information.

If this credit is taken in lieu of any deduction otherwise allowable for the same costs, the deduction must be reduced by the amount of credit claimed for the current taxable year (the amount shown on Side I, line 7).

This credit is not refundable.

G Assignment of Credits

Assigned Credits to Affiliated Corporations – For taxable years beginning on or after July 1, 2008, credits earned by members of a combined reporting group may be assigned to an affiliated corporation that is a member of the same combined reporting group. A credit assigned may only be applied by the affiliated corporation against their tax in a taxable year beginning on or after January 1, 2010.

For more information, get form FTB 3544, Election to Assign Credit Within Combined Reporting Group.

H Carryover

If the available credit exceeds the current year tax liability, the unused credit may be carried over to succeeding years. The maximum carryover period is 15 years. Apply the carryover to the earliest taxable year(s) possible.

In no event can you carry the credit back to apply against a prior year's tax.

If you have a carryover, retain all records that document this credit and carryover used in prior years. The FTB may require access to these records.

Specific Line Instructions

Credit Computation

Only a credit carryover from a prior year is allowed in 2009. Begin your credit computation on line 5.

Line 5

Enter the amount from your 2008 form FTB 3546, line 8.

Line 7

The amount of this credit you can claim on your tax return may be limited. Refer to the credit instructions in your tax booklet for more information. These instructions also explain how to claim this credit on your tax return. Use credit code number **203** when you claim this credit. Also see General Information F, Limitations.