TAXABLE YEAR **2009**

Corporate Passive Activity Loss and Credit Limitations

CALIFORNIA FORM **3802**

Attach to Form 100 or Form 100W (personal service corporations and closely held C corporations only).

Corporation name | California corporation number

Part I 2009 Passive Activity Loss

Before completing Part I, complete federal Worksheet 1 and Worksheet 2 in the instructions for federal Form 8810 **using California amounts**.

1 a	Current year income from federal Worksheet 2, column (a)	1a	00		
b	Current year deductions and losses from federal Worksheet 2, column (b)	1b ( )	00		
c	Prior year unallowed losses from federal Worksheet 2, column (c)	1c ( )	00		
d	Combine line 1a, line 1b, and line 1c. If the result is net income or zero, see instructions			1d	00
2	Closely held C corporations, enter net active income. See instructions. Personal service corporations, enter -0- on this line			2	00
3	**Unallowed passive activity deductions and losses.** Combine line 1d and line 2. If the result is net income or zero, see the instructions for line 1d and line 3. Otherwise, go to line 4			3	00
4	**Total deductions and losses allowed.** Add the income, if any, on line 1a and line 2. See instructions			4	00

Part II 2009 Passive Activity Credits

Before completing Part II, complete federal Worksheet 5 in the instructions for federal Form 8810 **using California amounts**.

5 a	Current year passive activity credits from federal Worksheet 5, column (a)	5a	00		
b	Prior year unallowed credits from federal Worksheet 5, column (b)	5b	00		
6	Combine line 5a and line 5b			6	00
7	Enter the tax attributable to net active income and net passive income. See instructions			7	00
8	**Unallowed passive activity credit.** Subtract line 7 from line 6. If zero or less, enter -0-. See instructions			8	00
9	**Allowed passive activity credit.** Subtract line 8 from line 6. See instructions			9	00

Part III Election to Increase Basis of Credit Property

10 If the corporation disposed of its entire interest in a passive activity or former passive activity in a fully taxable transaction, and it elects to increase the basis of credit property used in that activity by the unallowed credit that reduced the property's basis, check here ▶ ☐

11 Name of passive activity disposed of ▶

12 Description of the credit property for which the election is being made ▶

13 Amount of unallowed credit that reduced the property's basis for California purposes ▶ $ 00

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 Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

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 the corporation does not round, the Franchise Tax Board (FTB) will disregard the cents. This helps process the return quickly and accurately.

The following may affect the computation of the corporation's passive loss and credit limitation:

- **Passive loss rules (IRC Section 469(c)(7)):** Beginning in 1994, and for federal purposes only, rental real estate activities of taxpayers engaged in a real property business are not automatically treated as a passive activity. California **did not** conform to this provision. For California purposes, all rental activities are passive activities regardless of the level of participation.
- **Amortization of certain intangibles (IRC Section 197):** Property classified as IRC Section 197 property under federal law is also IRC Section 197 property for California purposes. California does not require or allow a separate election. However, for California purposes, in the case of IRC Section 197 property acquired before January 1, 1994, the California adjusted basis as of January 1, 1994, must be amortized over the remaining federal amortization period.

A Purpose

Personal service corporations and closely held C corporations use form FTB 3802, Corporate Passive Activity Loss and Credit Limitations, to figure the amount of any passive activity loss (PAL) or credit for the current taxable year and the amount of losses and credits from passive activities allowed on the corporation's tax return. See the instructions for federal Form 8810, Corporate Passive Activity Loss and Credit Limitations, for the definitions of personal service corporations and closely held C corporations.

A personal service corporation has a PAL for the taxable year if the total losses (including prior year unallowed losses) from all of the corporation's passive activities exceed the total income from all of the corporation's passive activities. A closely held C corporation has a PAL for the taxable year if the total losses (including prior year unallowed losses) from all its passive activities exceed the sum of the total income from all its passive activities and its net active income.

A personal service corporation has passive activity credits if the passive activity credits (including prior year unallowed credits) exceed the tax attributable to net passive income. A closely held C corporation has a passive activity credit for the year if its credits from passive activities (including prior year unallowed credits) exceed the sum of the tax attributable to net passive income and the tax attributable to net active income.

Form FTB 3802 closely follows federal Form 8810. In general, if the corporation completed federal Form 8810 to determine the amount of the federal PAL and credit limitations, the corporation **must also** complete form FTB 3802.

Using California amounts, complete federal Worksheet 1 through Worksheet 6 in the instructions for federal Form 8810 to determine the amounts to enter on form FTB 3802. Keep both the California and federal worksheets for the corporation's records.

B Special Rules

S Corporations

S corporations must use form FTB 3801, Passive Activity Loss Limitations, and form FTB 3801-CR,

Passive Activity Credit Limitations, instead of form FTB 3802 to figure the California PAL and credit limitations.

Publicly Traded Partnerships (PTPs)
A PTP is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market (or its substantial equivalent).

Because California and federal laws differ, PTPs may have different income amounts for state and federal purposes (see form FTB 3801). However, when figuring PALs, California PTPs are treated the same as federal PTPs. Follow the "Special Instructions for PTPs" in the instructions for federal Form 8582, Passive Activity Loss Limitations.

C Who Must File

Personal service corporations and closely held C corporations that have losses or credits from passive activities must file form FTB 3802. See the instructions for federal Form 8810 for the definitions of personal service corporations and closely held C corporations. S corporations must use forms FTB 3801 and FTB 3801-CR instead of form FTB 3802.

D Coordination With Other Limitations

Losses from passive activities are subject to basis and at-risk limitations before they are subject to the passive loss limitations. For details on at-risk rules, get federal Form 6198, At-Risk Limitations. Complete federal Form 6198 **using California amounts** before completing form FTB 3802.

E Special Rules for Corporations Filing a Combined Report

The PAL and passive activity credit of a corporation filing a combined report are determined by taking into account the following items of all members of the group:

- Passive activity gross income and deductions.
- Gain or loss on dispositions.
- Net active income (in the case of a corporation filing a combined report treated as a closely held C corporation).
- Credits from passive activities.

Specific Instructions

The PAL rules of IRC Section 469 apply to closely held corporations and personal service corporations. Corporations subject to the PAL rules must complete form FTB 3802 to compute the allowable PAL and credit limitations. Before completing form FTB 3802, complete federal Worksheet 1 through Worksheet 6 in the instructions for federal Form 8810, **using California amounts**.

Also, see Temporary Treas. Reg. Section 1.163-8T, which provides rules for allocating interest expense among activities. The interest offset computation should be made before allocating this interest expense among activities. Get Schedule R, Apportionment and Allocation of Income, for more information.

A state adjustment may be required on Form 100, California Corporation Franchise or Income Tax Return, or Form 100W, California Corporation Franchise or Income Tax Return - Water's-Edge Filers, line 8 or line 16, if the corporation uses the "federal reconciliation" method to file Form 100 or Form 100W. See General Information I, Net Income Computation, in the Form 100 Booklet or Form 100W Booklet for more information.

Specific Line Instructions

To complete form FTB 3802, see the instructions below and the specific instructions for federal Form 8810, Part I and Part II.

Part I – 2009 Passive Activity Loss

Line 1d and Line 3
If line 1d or line 3 shows net income or zero, all of the deductions and losses are allowed, including any prior year unallowed losses entered on line 1c. If the "federal reconciliation" method was used to complete Form 100 or Form 100W, compare the California amount on form FTB 3802, line 1d or line 3 to the amount on federal Form 8810, line 1d or line 3. Enter the difference as a state adjustment on Form 100 or Form 100W, line 8 or line 16, whichever is applicable.

Line 2 – Closely held C corporations
Closely held C corporations can offset the loss, if any, on line 1d with net active income. Net active income is the corporation's taxable income for the taxable year, determined without regard to the following items:

- Net passive income or loss.
- Portfolio income.
- Deductions attributable to portfolio income described in Temporary Treas. Reg. Section 1.469-2T(d)(2)(i), (ii), and (iv).
- Interest expense allocated under Temporary Treas. Reg. Section 1.163-8T to a portfolio expenditure within the meaning of Section 1.163-8T(b)(6).
- Gain on the disposition of substantially appreciated property formerly held for investment. See Treas. Reg. Section 1.469-2(c)(2)(iii).
- Gross income from certain oil or gas properties treated under Treas. Reg. Section 1.469-2(c)(6) as if from a non-passive activity.
- Gross income and deductions from any trade or business activity from trading certain personal property described in Temporary Treas. Reg. Section 1.469-1T(e)(6), but only if the corporation does not materially participate in the activity for the taxable year.

Net active income includes an overall loss from a passive activity if there is a fully taxable disposition of an entire interest in a passive activity. Include the overall loss to the extent that it exceeds net passive income. If there is a net passive loss, include all of the loss.

Figure any contribution deduction by taking 10% of net active income (figured without the contribution deduction) and subtract the smaller of that amount or the contribution deduction from the net active income (figured without the contribution deduction).

Line 4 – Total deductions and losses allowed
Use Worksheet 3 and Worksheet 4 in the instructions for federal Form 8810 to figure the unallowed deductions and losses to be carried forward and the allowed deductions and losses to report on the 2009 California forms. Federal Worksheet 2, columns (d) and (e), will show whether an activity had an overall gain or loss. If an activity has an overall gain on Worksheet 2, column (d), report all of the deductions and losses listed in Worksheet 1 and any prior year unallowed losses in Worksheet 2 for those activities on the appropriate lines of Form 100 or Form 100W.

Use Worksheet 3 and Worksheet 4 for activities in Worksheet 2 that show an overall loss in column (e).

Part II – 2009 Passive Activity Credits

Use form FTB 3802, Part II to determine the amount of certain credits allowed from passive activities for the current taxable year and the passive activities credit carryover amount.

The following credits from passive activities are included on form FTB 3802:

Credit	Code
Orphan drug credit carryover	185
Low-income housing credit	172
Research credit	183

Credits Subject to Other Limitations
The research credit is limited to the amount of tax on the income from those activities. Since this limitation is applied before the passive credit limitations, figure it before completing form FTB 3802.

Line 7
Use Part I or Part II of the computation for Line 7 in the instructions for federal Form 8810 to figure the tax attributable to net passive/active income.

Enter -0- on line 7, if any of the following apply:

- The corporation is a personal service corporation with a loss on form FTB 3802, line 1d.
- The corporation is a personal service corporation with net passive income on form FTB 3802, line 1d, and the corporation had an overall loss from the entire disposition of a passive activity that was equal to or greater than the net income on line 1d.
- The corporation is a closely held C corporation with a loss on form FTB 3802, line 1d, and the corporation had no net active income.
- The corporation is a closely held C corporation with net passive income on form FTB 3802, line 1d, and had an overall loss from an entire disposition that was equal to or greater than the amount on form FTB 3802, line 1d, and the corporation had no net active income.

See the instructions for federal Form 8810, line 7, for more information.

Line 8 – Unallowed passive activity credit
If line 8 is zero, all of the passive activity credits on line 6 are allowed. See the instructions for line 9 for how to report the credits.

Line 9 – Allowed passive activity credit
If the credits allowed on line 9 do not have to be allocated between activities or different types of credits, report the amount on line 9 on the appropriate credit form.

If the credits allowed on line 9 must be allocated between activities or different types of credits, complete federal Worksheet 6 **using California amounts** to determine the credit amount allowed for each activity.

Part III – Election to Increase Basis of Credit Property

When a taxpayer disposes of an entire interest in a passive activity through a taxable transaction, the taxpayer may elect to increase the property's basis, immediately before the disposition, by the credit amount if both of the following circumstances are met:

- The taxpayer was required to reduce the property's basis by the amount of the credit.
- The taxpayer was not able to apply all or part of the credit against tax liability because of the limitations imposed by the passive activity rules.

See IRC Section 469(j)(9) for more information. The amount of the unallowed credit which a taxpayer may elect to add back to the basis of property for California tax purposes may differ from the amount of unallowed credit entered on federal Form 8810, Part III, because of differences in California and federal law. Complete Part III to make the election for California tax purposes.