

What's New and Other Important Information for 2009

Differences between California and Federal Law

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.

2009 Tax Law Changes/What's New

Tax Increase – Beginning on January 1, 2009, the tax rate increased by 0.25%.

Dependent Exemptions Credits – Beginning on January 1, 2009, the dependent exemption credit decreased from \$309 to \$98 per dependent exemption.

Home Credit – For taxable years beginning on or after March 1, 2009, and before March 1, 2010, a home credit against net tax will be allowed for the purchase of a never been occupied home in an amount equal to the lesser of five percent of the purchase price of a qualified principal residence or ten thousand dollars (\$10,000). For more information, go to ftb.ca.gov and search for **home credit** or get FTB Pub. 3528, New Home Credit.

California Film and Television Tax Credit – For taxable years beginning on or after January 1, 2011, a film and television credit against net tax will be allowed. The credit, which is allocated and certified by the California Film Commission, is 20% of expenditures attributable to a qualified motion picture and 25% of production expenditures attributable to an independent film or a TV series that relocates to California. The California Film Commission will accept applications on a first come, first served basis beginning on July 1, 2009. For more information, go to film.ca.gov and search for **incentives**.

New Jobs Credit – For taxable years beginning on or after January 1, 2009, a new jobs credit against net tax will be allowed for a qualified employer in the amount of \$3,000 for each qualified full-time employee hired during the taxable year that increases the employer's number of full-time employees over the previous year. This is determined on an annual full-time equivalent basis. Any credits not used in the taxable year may be carried forward up to eight years. For more information go to ftb.ca.gov and search for **new jobs** or get form FTB 3527, New Jobs Credit.

Natural Heritage Preservation Credit – The funding for the Natural Heritage Preservation Credit is available beginning January 1, 2010, until June 30, 2015. Currently there is no funding available to award or claim credits for the period from July 1, 2008, to December 31, 2009. However, carryover is not affected for previously awarded credits.

Mandatory Electronic Payments – You are required to remit all your payments electronically once you make an estimate or extension payment exceeding \$20,000 or you file an original tax return with a total tax liability over \$80,000 for any taxable year that begins on or after January 1, 2009. Once you meet this threshold, all subsequent payments regardless of amount, tax type, or taxable year must be remitted electronically. The first payment that would trigger the mandatory e-pay requirement does not have to be made electronically. Individuals who do not send the payment electronically may be subject to a one percent noncompliance penalty.

You can request a waiver from mandatory e-pay if one or more of the following is true:

- You have not made an estimated tax or extension payment in excess of \$20,000 during the current or previous taxable year.
- Your total tax liability reported for the previous taxable year did not exceed \$80,000.
- The amount you paid is not representative of your total tax liability.

Electronic payments can be made using Web Pay on FTB's website, electronic funds withdrawal (EFW) as part of the e-file return, or your credit card. For more information or to obtain the waiver form, go to ftb.ca.gov and search for **mandatory e-pay**.

Conformity – For updates regarding the following federal act, go to ftb.ca.gov and search for **conformity**.

- American Recovery and Reinvestment Act of 2009

Estimated Tax Payments – Installments due for each taxable year beginning on or after January 1, 2010, shall be 30% of the required annual payment for the 1st required installment, 40% of the required annual payment for the 2nd required installment, no installment is due for the 3rd required installment, and 30% of the required annual payment for the 4th required installment.

Taxpayers with a tax liability less than \$500 (\$250 for married/RDP filing separately) do not need to make estimated tax payments.

Same-Sex Married Couples – Married couples must file their California income tax returns using either the married/RDP filing jointly or married/RDP filing separately filing status. On May 26, 2009, the California Supreme Court ruled that the Proposition 8 constitutional amendment is valid and only marriage between a man and a woman is recognized in California. However, the court also held that same-sex couple marriages performed in California after 5:00 p.m. on June 16, 2008, and before November 5, 2008, are valid marriages for California purposes. For more information, get FTB Pub. 776, Tax Information for Same-Sex Married Couples or go to ftb.ca.gov and search for **same sex married couples**.

Same-Sex Marriages Outside the State of California – On October 11, 2009, the Governor signed Senate Bill 54, which provides that a marriage between two persons who have entered into a same-sex marriage outside the State of California prior to November 5, 2008, that was valid by the laws of the jurisdiction in which the marriage was contracted, is valid in California. The bill also provides that a marriage between two persons who have entered into a same-sex marriage outside the State of California on or after November 5, 2008, that was valid by the laws of the jurisdiction in which the marriage was contracted have the same rights and responsibilities as spouses with the sole exception of the designation of "marriage."

Consequently, beginning in taxable year 2010, persons who have entered into a same-sex marriage outside the State of California that is valid according to the laws of the jurisdiction in which the marriage was contracted must file their California income tax return using either the joint or separate filing status.

Southern California Wildfires 2008 – For tax treatment information for victims of wildfires in Los Angeles and Ventura counties that commenced in October 2008 or November 2008 and wildfires in Orange, Riverside, San Bernardino, and Santa Barbara counties that commenced in November 2008, get FTB Pub. 1034, Disaster Loss How to Claim a State Tax Deduction.

Santa Barbara Wildfires – For tax treatment information for victims of the Santa Barbara county wildfires that commenced in May 2009, get FTB Pub. 1034.

Group Nonresident Returns (also known as Composite Returns) – For taxable years beginning on or after January 1, 2009:

- Group nonresident returns may include less than two nonresident individuals.
- Nonresident individuals with more than \$1,000,000 of California taxable income are eligible to be included in group nonresident returns. An additional 1% tax will be assessed on their entire California taxable income if they elect to be part of the group return.

See FTB Pub. 1067, Guidelines for Filing a Group Form 540NR, for more information.

Other Important Information

Net Operating Loss – For taxable years beginning in 2008 and 2009, California has suspended the net operating loss (NOL) carryover deduction. Taxpayers may continue to compute and carryover an NOL during the suspension period.

However, taxpayers with net business income of less than \$500,000 or with disaster loss carryovers are not affected by the NOL suspension rules.

The carryover period for suspended losses is extended by:

- Two years for losses incurred in taxable years beginning before January 1, 2008.
- One year for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

Also, NOL carryovers and the number of taxable years to which the loss may be carried, are modified. For more information, see form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations – Individuals.

NOL carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011. For more information on NOL carrybacks, see form FTB 3805V.

Business Tax Credit Limitation – For taxable years beginning on or after January 1, 2008, and before January 1, 2010, there is a limitation on the application of business tax credits for taxpayers whose net business income is \$500,000 or more. The limitation is equal to 50 percent of the net tax before the application of any credits.

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.

Direct Deposit Refund – You can request a direct deposit refund on your tax return whether you e-file or file a paper return. Please be sure to fill in the routing and account numbers carefully and double-check the numbers for accuracy to avoid it being rejected by your bank.

What's New and Other Important Information for 2009 *(continued)*

Withholding on California Real Estate – For transactions occurring on or after January 1, 2007, that require withholding, a seller of California real estate may elect an alternative to withholding 3 1/3 percent of the total sales price. The seller may elect an alternative withholding amount based on the maximum tax rate for individuals, corporations, or banks and financial corporations, as applied to the gain on the sale. The seller is required to certify under penalty of perjury the alternative withholding amount to the FTB. For taxable years beginning on or after January 1, 2009, the buyer is required to withhold on each installment sale payment if the sale of California real property is structured as an installment sale.

Tax Shelter – If the individual was involved in a reportable transaction, including a listed transaction, the individual may have a disclosure requirement. Attach the federal Form 8886, Reportable Transaction Disclosure Statement, to the back of the California return along with any other supporting schedules. If this is the first time the reportable transaction is disclosed on the return, send a duplicate copy of the federal Form 8886 to the address below. The FTB may impose penalties if the individual fails to file federal Form 8886 or fail to provide any other required information. A material advisor is required to provide a reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor.

ATSU 398 MS F385
FRANCHISE TAX BOARD
PO BOX 1673
SACRAMENTO CA 95812-1673

For more information, go to ftb.ca.gov and search for **tax shelters**.