

2009 Instructions for Form 541-QFT

California Income Tax Return for Qualified Funeral Trusts (QFTs)

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

Contribution Limits

For taxable years beginning on or after August 29, 2008, the Hubbard Act of 2008 repealed the contribution limits for Qualified Funeral Trusts for federal income tax purposes. California **does not** conform. The 2009 contribution limit for California purposes is \$9,500.

Estimated Tax Payments

For taxable years beginning on or after January 1, 2010, quarterly estimated tax payments shall be paid in the following percentages of the required annual payment:

- 1st Quarter – 30 percent
- 2nd Quarter – 40 percent
- 3rd Quarter – no payment required
- 4th Quarter – 30 percent

Qualified Funeral Trusts with a tax liability less than \$500 do not need to make estimated tax payments.

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 1, 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**.

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 at ftb.ca.gov.

Access other state agencies' websites through the State Agencies Directory on California's website at ca.gov.

Estimated Tax Payments

For taxable years beginning January 1, 2009, taxpayers with an adjusted gross income equal to or greater than \$1,000,000 must compute the annual estimated tax requirement based on the current year income. Get Form 541-ES for more information.

Third Party Designee

The organization can designate a third party to discuss the tax return with the Franchise Tax Board (FTB). For more information, see General Information H, Who Must Sign.

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

The trustee of a trust that has elected to be taxed as a qualified funeral trust (QFT) can use Form 541-QFT, California Income Tax Return for Qualified Funeral Trusts, to file for a single QFT or for multiple QFTs having the same trustee, following the rules discussed under General Information D, Composite Return.

An election to file as a QFT for federal purposes is considered an election for California purposes. A separate election is not allowed.

Trustees must use Form 541-QFT to:

- Report income received by a QFT.
- Report income that is either accumulated or distributed currently to the beneficiaries.
- Report any applicable tax liability of the fiduciary.
- File an amended return for the QFT.

Pre-need funeral trusts that do not qualify as QFTs should get the instructions for Form 541, California Fiduciary Income Tax Return, for their filing requirements.

For tax purposes, a trust will generally be regarded as a separate entity. However, if there is an unlawful shifting of income from the individual who has earned that income to a trust, the trust will no longer be treated as a separate entity and the income will be taxed to the individual who earned the income. If the individual who established the trust has a substantial ability to control the assets, all of the income will be taxed to that individual. Unless specifically allowed by the California R&TC and the IRC, deduction of personal living expenses by an individual or trust is not allowed.

B Qualified Funeral Trust

A QFT is a domestic trust that meets all of the following requirements:

- Arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property to provide such services.
- The sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use those funds solely to pay for funeral or burial services or property to provide such services for the benefit of the beneficiaries of the trust.
- The only beneficiaries are individuals for whom such services or property are to be provided at their death under the contracts described above.
- The aggregate contributions to the trust on behalf of any single beneficiary do not exceed the contribution limit (see General

Information C, Contribution Limit,) and are made by or for the beneficiaries' benefit.

- The trustee makes the election to treat the trust as a QFT.
- If the QFT election had not been made, the trust would have been treated as owned by the purchasers of the contracts under the grantor trust provisions of the IRC.

If a QFT has multiple beneficiaries, each beneficiary's separate interest under a contract is treated as a separate QFT for the purpose of figuring the tax and filing this return. Each beneficiary's share of the trust's income is determined in accordance with the beneficiary's interest in the trust. A beneficiary's interest in a trust may be determined under any reasonable method.

Whenever these instructions refer to a trust or QFT, it includes such separate interests that are treated as separate QFTs.

C Contribution Limit

*California **does not** conform to the repeal of the federal contribution limits enacted in August 2008 by the Hubbard Act of 2008.

How to determine your contribution limit

To meet the contribution limit, first determine your contribution limit amount. You determine this amount in the year in which an individual enters into a contract with a person engaged in the trade or business of providing funeral or burial services or property to provide these services.

For contracts entered in . . .	your contribution limit amount is . . .
1998 and before	\$7,000
1999	7,100
2000	7,200
2001	7,500
2002	7,700
2003	7,800
2004	8,000
2005	8,200
2006	8,500
2007	8,800
2008	9,000
*2009	9,500

How to determine if a trust meets the contribution limit

A trust meets the contribution limit if one of the following applies:

- The fair market value of contributions do not exceed the contribution limit amount.
- The aggregate contributions to the trust do not exceed the contribution limit.

Projections for future contributions are based on the following:

- Existing contributions.
- Applicable California law regarding trust contribution requirements.
- Any expected contributions in excess of California law requirements.

When to determine the contribution limit

Make the determination at the inception of the trust and again if the projected amount for future contributions changes.

Losing QFT status

A trust loses its QFT status at the time it exceeds or is projected to exceed its contribution limit amount.

Multiple beneficiaries

If a QFT has multiple beneficiaries, the contribution limit applies separately to each beneficiary. Each beneficiary's share of the total contributions to a trust is determined by the beneficiary's interest in the trust. A beneficiary's interest in a trust may be determined under any reasonable method.

Related trustees and the contribution limit

A beneficiary's share of contributions made to all trusts that have trustees that are related persons will be aggregated for purposes of testing the contribution limit. Trustees will be considered related if any of the following apply:

- The relationship is described in IRC Section 267 or IRC Section 707(b).
- The persons are treated as a single employer under IRC Section 52(a) or (b).
- The FTB determines that treating the persons as related is necessary to prevent avoidance of this section.

D Composite Return

A trustee may file a composite Form 541-QFT for all QFTs of which he or she is the trustee including QFTs that have short taxable years. Get federal Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts, for more information.

E When to File

For calendar year estates and trusts, file Form 541-QFT by April 15, 2010. The due date for a composite return is also April 15, 2010, even if the return includes QFTs that terminated during the year. If the QFT needs an extension of time to file and owes an unpaid tax liability, get form FTB 3563, Payment for Automatic Extension for Fiduciaries. If you are filing for a short taxable year, file Form 541-QFT by the 15th day of the 4th month following the close of the short taxable year. The QFT has an additional six months to file without filing a written request for extension. However, to avoid late payment penalties, 100% of the tax liability must be paid by the original due date of the return.

If the QFT does not file the return by the extended due date, we will impose late filing penalties and interest on any tax due from the original due date of the return.

F Where to File

If an **amount is due** with the return, mail the return and payment to:

FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001

Using blue or black ink, make the check or money order payable to the "Franchise Tax Board." Write the QFT's federal employer identification number (FEIN) and "2009 541-QFT" on the check or money order. **Do not** mail cash.

All checks or money orders must be payable in U.S. dollars and drawn against a U.S. financial institution.

If there is a **refund or no amount is due**, mail the return to:

FRANCHISE TAX BOARD
PO BOX 942840
SACRAMENTO CA 94240-0002

G Private Delivery Services

California conforms to federal law regarding the use of certain designated private delivery services to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. See federal Form 1041-QFT, for a list of designated delivery services. If a private delivery service is used, send the return to:

FRANCHISE TAX BOARD
SACRAMENTO CA 95827

Private delivery services cannot deliver items to PO boxes. If using one of these services to mail any item to the FTB, **DO NOT** use an FTB PO box.

H Who Must Sign

Trustee

The trustee or an authorized representative must sign Form 541-QFT.

Paid Preparer

Generally, anyone who is paid to prepare a tax return must sign the tax return and fill in the required information in the "Paid Preparer's Use Only" area of the tax return. The person required to sign the tax return must apply all of the following:

- Complete the required paid preparer information.
- Sign it in the space provided for the preparer's signature.
- Give the trustee or authorized representative a copy of the return in addition to the copy to be filed with the FTB.

Third Party Designee

If the trustee wants to allow the FTB to discuss its 2009 return with the paid preparer who signed it, check the "Yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Paid Preparer's Use Only" section of the return. It does not apply to the firm, if any, shown in that section.

If the "Yes" box is checked, the trustee is authorizing the FTB to call the paid preparer to answer any questions that may arise during the processing of its return. The trustee is also authorizing the paid preparer to:

- Give the FTB any information that is missing from the return.

- Call the FTB for information about the processing of the return or the status of any related refund or payments.
- Respond to certain FTB notices about math errors, offsets, and return preparation.

The trustee is not authorizing the paid preparer to receive any refund check, bind the trustee to anything (including any additional tax liability), or otherwise represent the trust before the FTB.

The authorization will automatically end no later than the due date (without regard to extensions) for filing the trust's 2010 tax return. If the trust wants to expand the paid preparer's authorization, see form FTB 3520, Power of Attorney Declaration for the Franchise Tax Board. If the trust wants to revoke the authorization before it ends, notify the FTB in writing or call 800.852.5711.

I Accounting Period

All QFTs must adopt a calendar year, even if the trust was on a fiscal year when it was a grantor trust.

J Estimated Tax Payments

Generally, QFTs must make quarterly estimated tax payments. If they expect to owe more than \$500, get the 2010 Instructions for Form 541-ES, Estimated Tax for Fiduciaries. Use Form 541-ES to figure and pay estimated tax for the trust. Estimated tax is the amount of tax the trustee expects to owe for the year after subtracting the amount of any tax withheld and the amount of any credits.

Estimated tax liability is figured for the individual QFT, and not for a composite tax return taken as a whole.

K Interest and Penalties

Interest

Interest will be charged on tax not paid by the due date, even if the return is filed by the extended due date.

Late filing of tax return

A penalty is assessed if the return is filed after the due date (including extensions), unless there was reasonable cause for filing late. The penalty is 25% if the tax return is filed after the extended due date. If the tax return is filed more than 60 days after the extended due date, the minimum penalty is \$100 or 100% of tax due on the tax return, whichever is less.

Late payment of tax

A penalty is assessed for not paying tax by the due date unless there was reasonable cause for not paying on time. The penalty is 5% of the unpaid tax plus one-half of 1% for each month, or part of a month, that the tax is late, up to a maximum of 25%.

If a QFT is subject to both the penalty for failure to file a timely tax return and the penalty for failure to pay the total tax by the due date, a combination of the two penalties may be assessed, but the total will not exceed 25% of the unpaid tax. The late payment penalty may

be waived where 90% of the tax shown on the return is paid by the original due date of the return.

If the QFT includes interest or any of these penalties with the payment, identify and enter these amounts in the bottom margin of Form 541-QFT. **Do not** increase the tax due on line 34 or reduce the overpaid tax on line 35 by the amount of the interest or penalty.

Other penalties

Other penalties may be imposed for a payment returned by the QFT's bank for insufficient funds, accuracy-related matters, or fraud.

L Attachments

If the QFT needs more space on the form or schedules, attach separate sheets showing the information in the same order as on the printed form.

Enter the QFT's FEIN on each sheet. Also, use sheets that are the same size as the forms and schedules and indicate clearly the line number of the printed form to which the information relates. Show the totals on the printed forms.

M Miscellaneous Items

California law follows federal law in the area of accounting methods.

Liability for tax

The trustee is liable for payment of the tax. Failure to pay the tax may result in the trustee being held personally liable. See R&TC Sections 19071 and 19516.

Tax-exempt income

California does not tax:

- **Interest on governmental obligations.** Interest derived from bonds issued by California or its political subdivisions, the federal government, the District of Columbia (issued before December 24, 1973), or territories of the United States is not taxable by California.
- **Proceeds of insurance policies.** In general, a lump sum payable at the death of the insured under a life insurance policy is excludable from gross income of the recipient.
- **Miscellaneous items wholly exempt from tax.** (1) Gifts (not received as a consideration for services rendered) and money or property acquired by bequest, devise, or inheritance (but the income derived therefrom is taxable); and (2) income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

N General Summary of Treatment for Sourcing Income Items

Nonbusiness

- Interest and dividends generally have a source at the taxpayer's state of residence.

- Gains or losses from sale/exchange of real property and tangible personal property generally have a source where the property is located.
- Income from intangible personal property generally has a source at the taxpayer's state of residence.
- Rents and royalties generally have a source where the property is located.

Business

- If the business, trade, or profession is conducted wholly within California, it is California source income.
- If the operations within California are so separate and distinct from the operations outside of California that taxable income can be separately accounted for, only the income from within California must be included in California source income.
- If the trade or business carried on within California is an integral part of a unitary business carried on outside of California, the entire net income must be reported and apportioned or allocated in accordance with the provisions of the Uniform Division of Income for Tax Purposes Act (R&TC Sections 25120 through 25139).

Partnership, limited liability company (LLC), and S corporation income/loss is apportioned or allocated the same as any other business. If the trust is a partner, member, or shareholder of a partnership, LLC, or S corporation, income sourced to California is generally included in column (e) of Schedules K-1 (565, 568, or 100S). For more information, refer to Cal. Code Regs., tit. 18 section 17951-4 and related tax code.

Income retained by a trust is taxable to the trust. Income from California sources is taxable regardless of the residence of the fiduciaries and beneficiaries. The taxability of non-California source income retained by a trust and allocated to principal depends on the residence of the fiduciaries and noncontingent beneficiaries, not the person who established the trust (R&TC Sections 17742 through 17745). Contingent beneficiaries are not relevant in determining the taxability of a trust. For QFT purposes, all beneficiaries are considered noncontingent beneficiaries.

Four different situations can occur when determining the taxability of a QFT.

1. If the trustee (or all the trustees, if more than one) is a California resident, the trust is taxable on all income from all sources (R&TC Section 17742).
2. If the noncontingent beneficiary (or all the noncontingent beneficiaries, if more than one) is a California resident, the trust is taxable on all income from all sources (R&TC Section 17742).
3. If the trustee is a nonresident and at least one noncontingent beneficiary is a California resident and at least one noncontingent beneficiary is a nonresident, the trust is taxable on all California source income plus the proportion of all other

income that the number of California resident noncontingent beneficiaries bear to the total number of noncontingent beneficiaries (R&TC Section 17744).

4. If at least one trustee is a California resident, at least one trustee is not a California resident, and all of the trust's noncontingent beneficiaries are not California residents, the trust is taxable on all California source income plus the proportion of all other income that the number of California trustees bears to the total number of trustees.

The residence of a corporate fiduciary (trustee) of a trust means the place where the corporation transacts the major portion of its administration of the trust, R&TC Section 17742(b).

Specific Line Instructions

Identification Area

Complete the identification area with the same information used on federal Form 1041-QFT. California law is generally the same as federal law in the following areas:

- Simplified filing requirements
- Method of reporting
- Amended tax returns
- Final tax returns

If the trust is filing an amended Form 541-QFT, check the box labeled "Amended return." Complete the entire tax return, correct the appropriate lines with the new information and refigure the tax liability. On an attached sheet, explain the reason for the amendments and identify the lines and amounts being changed on the amended tax return. Include the fiduciary's name and FEIN on each attachment.

Private Mail Box

Include the Private Mail Box (PMB) in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Tax Computation

Line 13 – Tax

Determine the tax on the taxable income (line 12) using the Tax Rate Schedule on page 4 of these instructions and enter the tax on line 13.

Line 14 – Credits

The following California tax credits are available to reduce the tax. For most credits, a separate form or certification statement must be attached to Form 541-QFT.

Credit Name and Form Number (if any)

- Community Development Financial Institution Deposits — obtain certification from: California Organized Investment Network (COIN), Department of Insurance, 300 Capitol Mall, Suite 1600, Sacramento CA 95814
- Disabled Access for Eligible Small Businesses – FTB 3548
- Donated Agricultural Products Transportation – FTB 3547

- Employer Child Care Contribution – FTB 3501
- Employer Child Care Program – FTB 3501
- Enhanced Oil Recovery – FTB 3546
- Enterprise Zone Hiring & Sales or Use Tax – FTB 3805Z
- Local Agency Military Base Recovery Area Hiring & Sales or Use Tax – FTB 3807
- Low-Income Housing – FTB 3521
- Manufacturing Enhancement Area Hiring – FTB 3808
- Natural Heritage Preservation – FTB 3503
- New Jobs – FTB 3527
- Other State Tax – Schedule S
- Prior Year Alternative Minimum Tax – Individuals or Fiduciaries – FTB 3510
- Prison Inmate Labor – FTB 3507
- Research – FTB 3523
- Targeted Tax Area Hiring & Sales or Use Tax – FTB 3809

Repealed Credits

- Farmworker Housing Credit – FTB 3540
- Joint Strike Fighter Wages – FTB 3540
- Joint Strike Fighter Property Costs – FTB 3540
- Los Angeles Revitalization Zone (LARZ) Hiring or Sales & Use Tax – FTB 3806
- Rice Straw – FTB 3540
- Salmon & Steelhead Trout Habitat Restoration – FTB 3540
- Solar or Wind Energy System – FTB 3540

Tax and Payments

Line 28 – Tax Liability

If the QFT owes any additional taxes (e.g. alternative minimum tax, recapture taxes, etc.), include these taxes on line 28. To the left of line 28, write the type and amount of tax. Also attach to Form 541-QFT any forms required to figure these taxes (e.g., Schedule P (541), Alternative Minimum Tax and Credit Limitations - Fiduciaries.)

Line 29 – California income tax withheld

Include any California income tax withheld (e.g., nonresident withholding).

Line 30 – California income tax previously paid

Use this line only if you are filing an amended tax return. Enter payments made with the

original tax return plus additional tax paid after the original tax return was filed. Enter the serial numbers that the FTB stamped on the face of the canceled checks, for each previous payment if available, in the space provided at line 30. If you did not receive a canceled check or if you made any payments with a credit card, attach a statement showing the check number, the amount of the check or charge, the date posted to your account, and the name of the payee.

Line 32 – 2009 CA estimated tax, amount applied from 2008 tax return, and payment with form FTB 3563

Enter the amount of any 2009 California estimated tax payment the estate or trust made. Also, enter the amount of any overpayment from the 2008 tax return that was applied to the 2009 estimated tax. Include payments made with form FTB 3563.

Line 34 – Tax due

If the amount on line 28 is larger than the amount on line 33, your tax is larger than your payments and credits. Subtract line 33 from line 28. This is the amount of tax due with the tax return.

Using blue or black ink, make your check or money order payable to the “Franchise Tax Board” for the full amount you owe. **Do not** send cash. Write the FEIN and “2009 Form 541-QFT” on the check or money order. Enclose, but **do not** attach your payment to your return.

Line 35 – Overpaid tax

If the amount on line 28 is less than the amount on line 33, your payments and credits are larger than your tax. Subtract line 28 from line 33. This is the amount of your overpaid tax.

If the trust completed the credit recapture portion of any of the following forms:

- Form FTB 3501, Employer Child Care Program/Contribution Credit.
- Form FTB 3805Z, Enterprise Zone (EZ) Deduction and Credit Summary.
- Form FTB 3807, Local Agency Military Base Recovery Area (LAMBRA) Deduction and Credit Summary.

Include the recapture amount on line 34. Write the form number and the recaptured amount to the left of line 34.

Line 36 – Credit to your 2010 estimated tax

Enter the amount from line 35 that you want applied to your 2010 estimated tax.

Line 37 – Refund or no amount due

If no amount is entered on line 36, enter the amount from line 35 on line 37. This is the amount that will be refunded. If this amount is less than \$1, attach a written request to Form 541-QFT to request the refund.

Line 42 – Underpayment of estimated tax penalty

The QFT may owe an estimated tax penalty if:

- It underpaid its estimated tax liability for any payment period, or
- The amount on Line 34 is more than \$500 and the QFT did not pay either:

	Current Year's Tax	Prior Year's Tax
AGI less than \$150,000	90%	100%
AGI between \$150,000 and \$999,999	90%	110%
AGI \$1,000,000 or greater	90%	

The FTB will figure the penalty and send a bill. However, the QFT may use form FTB 5805, Underpayment of Estimated Tax by Individuals and Fiduciaries, or form FTB 5805F, Underpayment of Estimated Tax by Farmers and Fishermen to:

- See if it owes a penalty.
- Figure the amount of the penalty.
- Claim a waiver of estimated tax penalty.
- Use the annualized income installment method.

If the QFT completes form FTB 5805 or form FTB 5805F, enter the amount of the penalty (if any) and fill in the appropriate circle on line 42. Attach the form to the back of Form 541.

2009 Tax Rate Schedule

Use this schedule to figure the tax on the QFT's taxable income (Form 541-QFT, line 12). Enter the tax on Form 541-QFT, line 13.

If the amount on Form 541-QFT, line 12 is:

Enter on Form 541-QFT, line 13:

over —	but not over —			of the amount over —
\$ 0	\$ 7,060	\$ 0.00	+ 1.25%	\$ 0
7,060	16,739	88.25	+ 2.25%	7,060
16,739	26,419	306.03	+ 4.25%	16,739
26,419	36,675	717.43	+ 6.25%	26,419
36,675	46,349	1,358.43	+ 8.25%	36,675
46,349	and over	2,156.54	+ 9.55%	46,349