

Instructions for Form 541-B

Charitable Remainder and Pooled Income Trusts

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2009**, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, for taxable years beginning on or after January 1, 2010, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2009. 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.

California Form 541-B, Charitable Remainder and Pooled Income Trusts, was revised to conform more closely with the federal Form 5227, Split-Interest Trust Information. The revised Form 541-B meets the filing requirements of R&TC Section 18635.

Split-interest trusts no longer have to file FTB Form 541-A, Trust Accumulation of Charitable Amounts. A trust allowed a deduction under IRC Section 642(c), must file Form 541-A. For more information, go to ftb.ca.gov and search for **541-A**.

A Purpose

Use Form 541-B, Charitable Remainder and Pooled Income Trusts, to report the financial activities of a charitable lead trust, charitable remainder trust, or a pooled income fund. Use this form to provide information regarding charitable deductions and distributions of or from a split interest trust, distributions to non-charitable beneficiaries, information about donor and asset contributions and report accumulations of income for charitable remainder trusts.

B Who Must File

Do not file Form 541-B if there are no California fiduciaries, California noncontingent beneficiaries, or California sourced income.

The fiduciary or fiduciaries for all charitable remainder trusts as defined in IRC Section 664, pooled income funds as defined in IRC Section 642(c)(5), or charitable lead trusts must file Form 541-B for each calendar year to report the information required in R&TC Section 18635, unless all net income is required to be currently distributed.

C When to File

File Form 541-B on or before April 17, 2012. Due to the Emancipation Day holiday on April 16, 2012, tax returns filed and payments mailed or submitted on April 17, 2012, will be considered timely. If you need additional time to file, California grants an automatic six-month extension. The automatic extension will apply if the fiduciary files the tax return by the 15th day of the 10th month following the close of the taxable year (fiscal year), or by October 15, 2012 (calendar year.) Get form FTB 3563, Payment for Automatic Extension for Fiduciaries, for more information.

If the trust owes tax, see Specific Instructions, Part II, Unrelated Business Taxable Income.

D Which Parts to Complete

The revised Form 541-B has several parts. Parts that do not reference a specific trust apply to all split-interest trusts. Charitable lead trusts, pooled income funds, and charitable remainder trusts must supply additional information as noted on the form and in the instructions.

E Where to File

Mail Form 541-B to:

FRANCHISE TAX BOARD
PO BOX 942840
SACRAMENTO CA 94240-0002

F Trust Instrument

If this is the first return for a charitable remainder annuity trust or a charitable remainder unitrust, include a copy of the trust instrument and a written declaration under penalties of perjury that the instrument is a true and complete copy.

G California Tax Exemption

A charitable remainder annuity trust or a charitable remainder unitrust is exempt from California income tax, except for years when it has unrelated business taxable income. Even though exempt from California income tax, such a trust must file Form 541-B for the calendar year.

H Amended Return

If the fiduciary is filing an amended Form 541-B, check the box labeled "Amended return." Complete the entire return and correct the lines needing new information. On an attached sheet, explain the reason for the amendments and identify the lines and amounts being changed on the amended return. Include the fiduciary name and federal employer identification number (FEIN) on each attachment.

I Final Return

For the last taxable year of a charitable remainder annuity trust or a charitable remainder unitrust, check the box labeled "Final Return."

J Signature

The fiduciary or officer representing the fiduciary must sign Form 541-B. Any person preparing the fiduciary's return for compensation, who is not a regular full-time employee of the fiduciary, must also sign Form 541-B.

Third Party Designee

If the trust wants to allow the Franchise Tax Board (FTB) to discuss its 2011 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 tax return. It does not apply to the firm, if any, shown in that section.

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

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

The trust is not authorizing the paid preparer to receive any refund check, bind the trust 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 2012 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.

K Attachments

Use the schedules on Form 541-B unless you need more space. If you use attachments, they must include all of the following:

- Show the form number and the taxable year
- Show the trust's name and FEIN
- Include the information required by the form
- Follow the format and line sequence of the form
- Be on the same size paper as the form

L Internet Access

Download, view, and print California tax forms and publications at ftb.ca.gov.

Specific Instructions

Entity Information

Make sure entries have been made for the following:

- Name of the trust
- FEIN
- Name of trustee(s) (attach additional sheets if necessary)
- Date trust created
- Address
- Type of trust

Multiple Trustees

If the trust has multiple trustees (fiduciaries), attach additional sheets as necessary to list the names and addresses of all trustees of the trust filing this form. If a trustee or fiduciary has a limited role, include a description of the role of that trustee.

Part I Income and Deductions

Divide the trusts income (both current and cumulative) into three categories:

- Ordinary income
- Capital gains and losses
- Nontaxable income

Section A – Ordinary Income

Line 2a – Ordinary Dividends

Enter on Line 2a the total dividends the trust received. Include the qualified dividends reported on line 2b. California taxes dividends as ordinary income.

Line 2b – Qualified Dividends

Report the qualified dividends in box 1b of Form 1099-DIV, Dividends and Distributions.

Section D – Deductions – IRC Section 664 Trusts

Enter all allowable deductions and any expenses that would be allowed except deductions allocable to tax-exempt income.

Allocate any expense that is not deductible in determining taxable income and not allocated to nontaxable income to corpus. Allocate all income and excise taxes to trust corpus.

The following deductions are not permitted in computing ordinary income, capital gains, or nontaxable income: federal, state, and local income and excise taxes, charitable contributions IRC Section 642(c); net operating losses, IRC Sections 172 and 642(d); distributions to beneficiaries, IRC Section 661; and capital loss carryovers, IRC Section 1212.

Line 20 – Other allowable deductions. Attach schedule.

List any other allowable deduction or any expense that would be an allowable deduction (except deductions allocable to tax-exempt income) that is not included on lines 16 through 19. Total the amounts and enter the total on line 20.

Section D – Deductions – Split-Interest Trusts Other than IRC Section 664 Trusts

Enter all expenses attributable to gross income that are deductible for the tax year.

Line 20 – Other allowable deductions. Attach schedule.

List any other deductible expense that is attributable to gross income of the trust and that is not included on lines 16 through 19 and line 22. Total the amounts and enter the total on line 20.

Section E – Deductions Allocable to Income Categories – IRC Section 664 trusts only

Allocate deductions as follows:

1. Allowable deductions directly attributable to one or more classes of income items (that is, interest, dividends, or rents) or corpus are allocated to such income classes or corpus.
2. Allowable deductions not allocated under (1) above are allocated on the basis of gross income after directly attributable deductions, to the extent of such income.
3. Deductions not allocated under either (1) or (2) above may be allocated in any manner.

Add the deductions that were allocated to all the classes of income within each category and enter the amount on the appropriate line. (Note: Any deduction allocated to corpus is not shown on any line in Section E.)

The following deductions are not permitted in computing ordinary income, capital gains, or nontaxable income: federal, state, and local income and excise taxes, charitable contributions IRC Section 642(c); net operating losses, IRC Sections 172 and 642(d); distributions to beneficiaries, IRC Section 661; and capital loss carryovers, IRC Section 1212.

Part II Unrelated Business Taxable Income

If the trust has any unrelated business taxable income within the meaning of IRC Section 512 and related regulations for the taxable year, the trust is taxable on all its income for the taxable year as a complex trust.

Complete and file a separate Form 541, California Fiduciary Income Tax Return, to report income and deductions and to compute the tax. Income and deductions, including the deduction for distributions to beneficiaries, are computed in accordance with the regular trust rules contained in the instructions for Form 541. However, the recipients will be taxed on amounts they receive in accordance with Specific Instructions, Part III. The grantor and substantial owner provisions do not apply.

File Form 541 before April 17, 2012. Due to the Emancipation Day holiday on April 16, 2012, tax returns filed and payments mailed or submitted on April 17, 2012, will be considered timely. If you are unable to file Form 541 by the tax return's due date and a tax is owed, get form FTB 3563.

Part III Schedule of Distributable Income

Section 664 Trusts only

Enter the income of the trust (both current and cumulative undistributed income) according to the character of distributions in three categories:

- Ordinary income
- Capital gains and losses
- Nontaxable income

If there is a loss in the current year in any one of the three categories, the loss may not be used to reduce a gain in any other category. A loss in any one category may be used to reduce undistributed gain from an earlier year within the same category. Excess loss may be carried forward to reduce gain in the future years within that same category.

Part IV-A Distributions of Principal for Charitable Purposes

Attach a statement describing in detail the purpose for which charitable disbursements were made from income set aside in prior taxable years and amounts which were paid out of principal for charitable purposes.

Examples of appropriate descriptions are:

- Payments for nursing service
- Laboratory construction
- Fellowships
- Assistance to indigent families (not simply charitable, educational, religious, or scientific)

Part IV-B Accumulated Income Set Aside and Income Distributions for Charitable Purposes

Complete Part IV-B if any of the following apply:

- The trust claimed a deduction in a prior year under IRC Section 642(c) for an amount permanently set aside and at the beginning of the year the set aside amount was not fully distributed.
- The trust claimed a deduction during the year under IRC Section 642(c) whether the amount was set aside or paid.
- The trust made payment for charitable purposes during the year but claimed the IRC Section 642(c) deduction in the prior year.

Attach a statement describing in detail the purpose for which charitable disbursements were made from income set aside in prior taxable years and amounts which were paid out of principal for charitable purposes.

Part V Balance Sheet

Complete the balance sheet using the accounting method the trust uses to keep its books and records. All filers must complete columns (a) and (b). All unitrusts must also complete column (c).

In completing column (c) for unitrusts, if an average value is used for more than one valuation date, enter "average" for the valuation date at the top of the column and report each valuation date in the attached explanation for

line 71. Also, for purposes of this column, fair market value (FMV) includes both accrued income and accrued liabilities.

Line 38 – Cash

Enter the total amount of cash, including cash held in checking accounts, deposits in transit, change funds, petty cash funds, or any other non-interest bearing accounts. **Do not** include advances to employees or officers or refundable deposits paid to suppliers or others.

Line 39 – Savings and temporary cash investments

Enter the total amount of cash in savings or other interest-bearing accounts and temporary cash investments, such as money market funds, commercial paper, certificates of deposit, and U.S. Treasury bills, or other governmental obligations that mature in less than one year.

Line 40 – Accounts receivable

Enter the total accounts receivable and trade notes that arose from the sale of goods and/or the performance of services on line 40a. Enter the allowance for doubtful accounts on line 40b. Any receivables due from officers, directors, trustees, foundation managers, or other disqualified persons must be reported on line 41. Claims against vendors or refundable deposits with suppliers or others may be reported here if not significant in amount. If the amount is significant, report it on line 49, Other assets. Receivables due from other employees (including loans and advances) should be reported on line 49.

Line 41 – Receivables due from officers, directors, trustees, and other disqualified persons

Enter the total amount of all receivables and loans (including advances) due from officers, directors, trustees, and other disqualified persons. Attach a schedule providing information as follows:

- Report each loan separately, even if more than one loan was made to the same person or the same terms apply to all loans made. Salary advances and other advances for personal use and benefit and receivables subject to special terms or arising from transactions not functionally related to the trust's charitable purposes must be reported as separate loans for each officer, director, etc.
- Receivables that are subject to the same terms and conditions (including credit limits and rate of interest) as receivables due from the general public and that arose in connection with an activity functionally related to the trust's charitable purposes may be reported as a single total for all the officers, directors, etc. Travel advances made in connection with official business of the trust may also be reported as a single total.

For each outstanding loan or another receivable that must be reported separately, the schedule should show all of the following information:

- Borrower's name and title
- Original amount
- Balance due
- Date of note
- Maturity date
- Repayment terms
- Interest rate
- Security provided by the borrower
- Purpose of the loan
- Description and the FMV of the consideration furnished by the lender

The above detail is not required for receivables or travel advances that may be reported as a single total. However, report and identify those totals separately in the attached schedule.

Line 42 through Line 48 – See the instructions for federal Form 5227, line 42 through line 48.

Line 49 – Other assets

Attach a schedule listing the value of all other assets not reported on previous lines.

Line 53 – Loans from officers, directors, trustees, and other disqualified persons

Enter the total unpaid balance of loans received from officers, directors, trustees, and other disqualified persons. For each loan outstanding at the end of the year, attach a schedule that provides the name and title of the lender and the information specified in the instructions for line 41.

Line 55 – Other liabilities

Both annuity trusts and unitrusts should include any advances from trustees on line 55. Unitrusts should also include any unitrust amounts applicable to prior years that are unpaid as of the valuation date since such amounts reduce the net FMV of the trust's assets.

Line 58 – Undistributed income, undistributed capital gains, and undistributed nontaxable income

Enter the total amount of undistributed income, undistributed capital gains, and undistributed nontaxable income.

Part VI-A Charitable Remainder Annuity (CRAT) Information

Complete this section only if a IRC Section 664 CRAT.

Part VI-B Charitable Remainder Unitrust (CRUT) Information

Complete this section only if a IRC Section 664 CRUT.

Line 65a – Enter the unitrust fixed percentage (which may not be less than five percent). The unitrust's fixed percentage is the percentage (not less than 5% and not more than 50%) of net FMV of the assets in the trust that must be paid annually.

Line 67a – Enter the total accrued distribution deficiencies from previous years on line 67a. To determine the deficiencies:

1. Aggregate the unitrust's net asset FMV for each previous year.
2. Multiply 1 above by the unitrust's fixed percentage.
3. Subtract the aggregate trust income that was distributed for previous years from 2 above.

Line 68 – Enter the total 2011 unitrust distributions reported in Part IV-B, Accumulated Income Set Aside and Income Distributions for Charitable Purposes.

Part VII Questionnaire for Charitable Lead Trusts, Pooled Income Funds and Charitable Remainder Trusts

Section A – All Trusts

These questions are applicable to all trusts.

Section B – Charitable Lead Trusts

Line 75 – Enter the amount for payments described in IRC Section 170(f)(2)(B).

Section C – Pooled Income Funds

On termination of the income interest the trustee must sever from the fund an amount equal to the value of the remainder interest in the property on which the income interest is based. The trustee must contribute the amount or retain the amount for the use of the public charity designated in the governing instrument. See IRC Regulations Section 1.642(c)5(b)(8) and R&TC Section 17731.

Section D – Charitable Remainder Trusts

Follow the instructions for federal Form 5227, Part VII, Section D, Charitable Remainder Trusts, when completing questions 80 through 86.

Schedule A – Distributions, Assets, and Donor Information

Part I Accumulation Schedule

Refer to the instructions for Form 541-B, Part III, Schedule of Distributable Income, when completing Schedule A, Part I, Accumulation Schedule.

Part II Current Distributions Schedule

Annuity and unitrust amounts required to be distributed have the following characteristics to the recipients:

- First, as ordinary income to the extent of the trust's ordinary income for the current year and undistributed ordinary income for prior years.
- Second, as capital gain to the extent of the trust's undistributed capital gains.
- Third, as nontaxable income to the extent of the trust's nontaxable income using California law for the current year and undistributed nontaxable income using California law for prior years.
- Fourth, as trust corpus. The accumulation distribution provisions do not apply.

Furnish each recipient (beneficiary) with a Schedule K-1 (541), Beneficiary's Share of Income, Deductions, Credits, etc., that reflects their respective current distribution.