

Instructions for Form FTB 3805P

Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts

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 does not conform to federal legislation that enacted Health Savings Accounts (HSAs) beginning January 1, 2004.

Early Distributions Not Subject to Additional Tax

California conforms to the exceptions from the penalty on early withdrawals from retirement plans for qualified distributions made after September 11, 2001 to reservists while serving on active duty for at least 180 days and for qualified distributions made after August 17, 2006, to public safety employees after separation from service after age 50. If you received one or more of these distributions and were assessed a penalty you may amend your returns to claim a refund.

Registered Domestic Partners (RDP)

For purposes of California income tax, references to a spouse, husband, or wife also refer to a California RDP unless otherwise specified. When we use the initials RDP they refer to both a California registered domestic "partner" and a California registered domestic "partnership," as applicable. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

A Purpose

Use form FTB 3805P, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, to report any additional tax you may owe on an early distribution from an individual retirement account (IRA), other qualified retirement plan, annuity, modified endowment contract, or medical savings account (MSA).

B Who Must File

You **must** file form FTB 3805P if you:

- Received an early taxable distribution from a qualified retirement plan and a distribution code other than 2, 3, or 4 is shown in box 7 of federal Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
- Owe tax on early distributions from your IRA, other qualified retirement plan, annuity, or modified endowment contract, and you incorrectly have an exception code in box 7 of federal Form 1099-R.
- Owe a tax because you received distributions from a Coverdell Education Savings Account (ESA) in excess of amounts you spent for educational expenses (complete Part II).
- Received taxable distributions from an Archer MSA.
- Meet an exception to the tax on early distributions and distribution code 2, 3, or 4 is **NOT** shown or is incorrect on federal Form 1099-R. (You must file even if you do not owe any tax.)

You **do not** have to file form FTB 3805P if you:

- Rolled over the taxable part of all distributions you received during the year into another qualified plan within 60 days of receipt.
- Received an early distribution from your plan but meet an exception to the tax (distribution code 2, 3, or 4 must be correctly shown on federal Form 1099-R).

California and federal laws are generally the same for the tax on early distributions except for the rate of tax assessed. California **does not** conform to all of the federal exceptions to the additional tax on early distributions. The amount of an IRA or Keogh distribution included in income may differ for state and federal tax purposes. Also, California does not have taxes similar to the tax on excess contributions to traditional IRAs, tax on excess contributions to Roth IRAs, tax on excess contributions to Coverdell ESAs, tax on excess contributions to Archer MSAs, or tax on excess accumulation in qualified retirement plans.

Such federal taxes are figured on federal Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.

Joint Returns. Each spouse/RDP must complete a separate form FTB 3805P for taxes attributable to his or her distribution from a qualified retirement plan as described above. If both spouses/RDPs owe a tax on early distributions, enter the

combined tax from both forms on Form 540, line 63 or Long Form 540NR, line 73.

Federal law does not recognize RDPs/Same Sex Married Couples (SSMCs); therefore there may be additional tax on early distributions for federal purposes, but not for California purposes. For more information on RDPs/SSMCs, get FTB Pub. 737 or 776, respectively.

IRA Contributions. Do not file form FTB 3805P to report a deduction for contributions to your IRA or Keogh plan. See the instructions for Schedule CA (540), California Adjustments — Residents, or Schedule CA (540NR), California Adjustments — Nonresidents or Part-Year Residents.

If you made a nondeductible IRA or Keogh contribution in prior years, get FTB Pub. 1005, Pension and Annuity Guidelines, for information on how to compute the taxable portion of your IRA distribution that is subject to the additional tax.

C When and Where to File

If you are required to file a 2012 Form 540, California Resident Income Tax Return, or Long Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, you must attach your 2012 form FTB 3805P to your tax return.

If you are not required to file Form 540 or Long Form 540NR, but have to file form FTB 3805P as described in General Information B, Who Must File, you must still complete and file this form with the Franchise Tax Board (FTB) by the due date for filing Form 540 or Long Form 540NR. If you meet the requirements of the Mandatory e-Pay program, you must make **all payments electronically, regardless of the tax year or amount.** Go to ftb.ca.gov and search for **mandatory e-pay**. Send your completed form FTB 3805P and your check or money order payable to the "Franchise Tax Board" for the total of any taxes due. Write your social security number (SSN) or individual taxpayer identification number (ITIN) and "2012 FTB 3805P" on your check or money order. Make all checks or money orders payable in U.S. dollars and drawn against a U.S. financial institution.

Mail to: FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001

If you are paying tax for a previous year, you must complete that taxable year's version of form FTB 3805P. If you have filed your Form 540 or Long Form 540NR for the previous year and you have no adjustments to income that require you to file Form 540X, Amended Individual Income Tax Return, file only form FTB 3805P.

If you are filing form FTB 3805P separately from Form 540, Long Form 540NR, or Form 540X, you must sign form FTB 3805P. Include a check or money order payable to the "Franchise Tax Board" for the total amount of any tax due. Write your SSN or ITIN and "2012 FTB 3805P" on your check or money order. Make all checks or money orders payable in U.S. dollars and drawn against a U.S. financial institution. Mail to the address shown above.

D Definitions

Qualified Retirement Plan — A qualified retirement plan includes:

- A qualified pension, profit-sharing, or stock bonus plan.
- A Keogh plan.
- A qualified cash or deferred arrangement (CODA) described in IRC Section 401(k).
- A qualified annuity plan.
- A tax-sheltered annuity contract.
- An individual retirement account or an individual retirement annuity.

Coverdell ESAs and Archer MSAs are not qualified retirement plans.

Traditional IRA — An individual retirement account or an individual retirement annuity described in IRC Sections 408(a) and (b), including a simplified employee pension (SEP) IRA, but not including a SIMPLE IRA or a Roth IRA.

SEP IRA — An employer-sponsored plan under which an employer can make contributions to IRAs established for its employees. The term SEP IRA means an IRA that receives contributions made under a SEP. The term SEP includes a salary reduction described in IRC Section 408(k)(6).

SIMPLE IRA — A written arrangement established under IRC Section 408(p) that provides a simplified tax-favored retirement plan for small employers. A SIMPLE IRA can be an individual retirement account or an individual retirement annuity.

Roth IRA — An IRA that meets the requirements of IRC Section 408A. Generally, for purposes of this form, the same rules that apply to traditional IRAs apply to Roth IRAs. For additional information about Roth IRAs, get federal Publication 590, Individual Retirement Arrangements (IRAs), federal Form 8606, Nondeductible IRAs, and FTB Pub. 1005.

Early Distributions — Generally, any distribution from your qualified retirement plan, annuity, or modified endowment contract that you receive before you reach age 59½ is an early distribution. The portion of the early distribution that is

included in income is subject to an additional 2½% tax. (If the early distribution is from a SIMPLE retirement plan received during the first two-year period beginning on the date you first began participating in the plan, the portion included in income is subject to an additional 6% tax.)

Rollover – A tax-free distribution (withdrawal) of assets from one qualified retirement plan that is contributed to another plan. You must complete the rollover within 60 days following the distribution for it to qualify for tax-free treatment. Any taxable amount not rolled over within 60 days should be included in income and may be subject to an additional 2½% tax. Get federal Publication 590 for more information.

Effective for taxable years beginning on or after January 1, 2007, the IRS allows a one-time rollover from an IRA to a HSA. California does not conform to this provision. Under California law any distribution from an IRA to a HSA must be added to adjusted gross income (AGI) on the taxpayer's California return and would be subject to a 2½% additional tax under the rules for premature distributions under IRC Section 72.

Federal law allows an exception of additional tax on qualified recovery assistance distributions. California **does not** conform to federal law regarding qualified recovery assistance distributions.

Tax on Early Distributions. The tax on early distributions from qualified retirement plans does not apply to any of the following:

- 2012 IRA contributions withdrawn during the year or 2011 excess contributions withdrawn in 2012 before the filing date (including extensions) of your 2011 income tax return.
- Excess IRA contributions for years before 2011 that were withdrawn in 2012, and 2011 excess contributions withdrawn after the due date (including extensions) of your 2011 income tax return, if no deduction was allowed for the excess contributions, and the total IRA contributions for the taxable year for which the excess contributions were made were not more than \$5,000 or \$6,000 if age 50 or older at the end of 2011 (or if the total contributions for the year included employer contributions to a SEP IRA, increase the \$5,000 by the smaller of the amount of the employer contributions to the SEP or \$49,000), for taxable years before 2002, refer to federal Form 5329 instructions.
- The part of your IRA distributions that represents a return of nondeductible IRA contributions figured on federal Form 8606.
- The part of your IRA distribution that represents a return of nondeductible contributions made before 1987.
- Distributions from a traditional IRA that are converted to a Roth IRA.
- Distributions rolled over to another retirement arrangement or plan.
- Distributions of excess contributions from a qualified cash or deferred arrangement.
- Distributions of excess aggregate contributions to meet nondiscrimination requirements for employer matching and employee contributions.
- Distributions of excess deferrals.
- Amounts distributed from unfunded deferred compensation plans of tax-exempt or state and local government employers. (IRC Section 457 plans.)

See the instructions for line 2 for other distributions that are not subject to the tax.

Coverdell ESAs – A trust or custodial account described in IRC Section 530 that is created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the account.

Taxpayers may deposit up to \$2,000 per year for taxable years beginning on or after 2002 into a Coverdell ESA for a child under age 18. The total contributions (by all taxpayers) for the child during the taxable year may not exceed \$2,000 for taxable years beginning on or after 2002 and each contributor is subject to the contributions limit of IRC Section 530(c) based on adjusted gross income.

Distributions from a Coverdell ESA that exceed the child's qualified higher education expenses in a tax year are generally subject to income tax and to an additional tax of 2½% (figured in Part II of form FTB 3805P).

For additional information, see federal Publication 970, Tax Benefits for Education.

Archer Medical Savings Accounts (MSAs) – A tax-exempt trust or custodial account set up in the United States exclusively for paying the qualified medical expenses of the account holder in conjunction with a high deductible health plan. Federal law does not treat an RDP or an SSMC individual as a spouse in connection with the tax treatment of an Archer MSA.

Federal Form 8853, Archer MSAs and Long-Term Insurance Contracts, is used to report general information about new MSAs, to figure your MSA deduction, and to figure your taxable distribution for MSAs. California law is the same as federal law regarding MSA contributions and deductions but is different regarding the amount of additional tax on MSA distributions not used for qualified medical expenses. The additional tax is 10% for California.

Therefore, for California purposes, there is no separate form to file to report general information about new MSAs or to figure your MSA deduction. However, if you have a taxable MSA distribution, you must file form FTB 3805P to figure the additional tax.

Specific Line Instructions

Part I — Additional Tax on Early Distributions

Line 1 – Early Distributions Included in Income

Qualified Retirement Plans (including IRAs). Enter the amount of early distributions included in income that you received from a qualified retirement plan, including traditional IRAs and Roth IRAs (and income earned on excess contributions to your IRAs), before you reached age 59½. The amount of the early distributions you must include in income for California purposes may differ from the amount reported on your federal return if the amount of contributions you deducted for California was different than the federal amount. A nonresident or former nonresident will no longer receive a stepped-up basis for annual contributions and earnings attributable to periods of nonresidency. You must report the difference on Schedule CA (540) or Schedule CA (540NR).

For Long Form 540NR filers, the amount entered on line 1 is the taxable amount of early distributions reported on Schedule CA (540NR), line 15 or line 16.

Annuity Contracts. If you receive any distributions from an annuity contract before reaching age 59½, such amounts also may be subject to an additional 2½% tax on the portion which is includible in income. Refer to IRC Section 72(q) and federal Publication 575, Pension and Annuity Income, for more information. Enter on line 1 the distribution included in income.

Modified Endowment Contracts. In general, if before reaching age 59½ you received any distributions from a modified endowment contract, as defined in IRC Section 7702A and entered into after June 20, 1988, such amounts also are subject to an additional 2½% tax on the part of the distribution that is includible in income. Enter the distribution included in income on line 1.

Prohibited Transactions. If you borrow from your individual retirement account or annuity, or pledge your individual retirement annuity as security for a loan, your account or annuity no longer qualified as an IRA on the first day of the tax year in which you did the borrowing or pledging. You are considered to have received a distribution of the entire value of your account or annuity at that time. Using your IRA as a basis for obtaining a benefit also is a prohibited transaction. If you were under age 59½ on the first day of the taxable year, enter on line 1 the entire value of the account that represents taxable income.

Pledging of Account. If, during your taxable year, you use any part of your IRA as security for a loan, that part is considered distributed to you at the time pledged. If you were under age 59½ at the time of the pledge, enter the amount pledged on line 1.

Collectibles. If your IRA invested funds in collectibles, you are considered to have received a distribution equal to the cost of any "collectible." Collectibles include works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages, and certain other tangible personal property. The cost of any collectible in which you invested funds of your IRA in 2012 is deemed to be a distribution to you in 2012. If you were under age 59½ when the funds were invested, enter on line 1 the cost of the collectible included in income.

Exception. Your IRA may invest in U.S. one, one-half, one-quarter, and one-tenth ounce gold coins and one-ounce silver coins minted by the U.S. Treasury Department. Your IRA can invest in certain platinum coins and certain gold, silver, palladium, and platinum bullion.

Roth IRA Distributions

If you received an early Roth IRA distribution, you must generally include on line 1 of form FTB 3805P the amount from your 2012 federal Form 8606, line 19, even if you were age 59½. However, the amount to include on line 1 of form FTB 3805P may be smaller if you have an amount on line 18c of the Roth IRA Worksheet on page 8 of your 2001 through 2006 or page 9 of your 2007 through 2012 FTB Pub. 1005.

In this case, you must recompute the amount to include on line 1 of form FTB 3805P by allocating the amount on your 2012 federal Form 8606, line 19. The amount on your 2012 federal Form 8606, line 19, is allocable to the amounts shown on the following lines, in the order shown (to the extent the amount was not allocable to a distribution from your 1998 federal Form 8606, line 20; your 1999, 2000, 2001 through 2008 federal Form 8606, line 19).

- Your 2009 federal Form 8606, line 20; 2010 federal Form 8606, line 27; 2011-2012 federal Form 8606, line 20.
- Your 2009 federal Form 8606, line 22; 2010 federal Form 8606, line 29; 2011-2012 federal Form 8606, line 22.
- Your 2007-2011 FTB Pub. 1005, page 9, lines 19 and 18c.
- Your 1999-2006 FTB Pub. 1005, page 8, lines 19 and 18c.
- Your 2012 federal Form 8606, line 25 (completed using California amounts).

For an example of this calculation, get federal Form 5329 instructions for Exception for Roth IRA Distributions.

Any portion of your 2012 federal Form 8606, line 19, allocable to an amount on any of the lines below is subject to the penalty and must be included on line 1 of form FTB 3805P:

- Your 2007-2012 FTB Pub. 1005, page 9, line 19.
- Your 2000-2006 FTB Pub. 1005, page 8, line 19.
- Your 2012 federal Form 8606, line 25 (completed using California amounts).

Line 2 – Early Distributions Not Subject to Additional Tax

The additional tax does not apply to certain distributions specifically excepted by the IRC. Enter on line 2 the amount not subject to additional tax. In the boxes on line 2, enter the applicable exception number (01 – 12) from the following list.

No. Exceptions

- 01** Qualified retirement plan distributions (does not apply to IRAs) due to separation from service in or after the year of reaching 55 (age 50 for qualified public safety employees.)
- 02** Distributions made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from an employer plan, payments must begin after separation from service).
- 03** Distributions due to annuity or modified endowment contracts.
- 04** Distributions due to death (does not apply to modified endowment contracts).
- 05** Distributions to the extent you have deductible medical expenses that can be claimed on line 4 of federal Schedule A, Itemized Deductions, (Form 1040) (does not apply to annuity or modified endowment contracts).
- 06** Distributions made to an alternate payee under a qualified domestic relations order (does not apply to IRAs).
- 07** Distributions made to unemployed individuals for health insurance premiums (applies only to IRAs).
- 08** Distributions made for higher education expenses (applies only to IRAs).
- 09** Distributions made for purchase of a first home, up to \$10,000 (applies only to IRAs).
- 10** Distributions due to an IRS levy on the qualified retirement plan.
- 11** Qualified distributions to reservists while serving on active duty for at least 180 days.
- 12** Other exceptions (see instructions below).

Other Exceptions. In addition to the exceptions listed above, the tax does not apply to any distributions from a plan maintained by an employer if:

- You separated from service by March 1, 1986.
- As of March 1, 1986, your entire interest was in pay status under a written election that provides a specific schedule for distribution of the entire interest.
- The distribution is actually being made under the written election.

Also, distributions from annuity contracts are not subject to the additional tax on early distributions to the extent that the distributions are allocable to an investment in the contract before August 14, 1982.

Distributions that are dividends paid with respect to stock described in IRC Section 404(k) are not subject to the additional tax.

Distributions due to an FTB notice to withhold on a qualified retirement plan are not subject to the additional tax.

Also enter on line 2 the amount of a distribution you received when you were age 59½ or older, if you received federal Form 1099-R for a distribution that incorrectly indicated an early distribution (code 1, J, or S in box 7).

If any of these exceptions apply, enter the distribution amount on line 2 and exception number 12 in the boxes provided. For additional exceptions applicable to annuity contracts, see IRC Section 72(q)(2) and federal Publication 575.

Long Form 540NR Filers: Enter the portion of the taxable distribution [Schedule CA (540NR), line 15 or line 16] that qualifies for an exception.

Line 3 – Subtract the amount of distributions not subject to additional tax on line 2 from the amount of early distributions included on line 1. Enter the result on line 3. This is the amount of your distribution subject to tax.

Line 4 – Multiply line 3 by 2½% (.025). However, if any amount on line 3 was a distribution from a SIMPLE IRA received within 2 years from the date you first participated in the plan, you must multiply that amount by 6% (.06) instead of 2½% (.025). SIMPLE distributions are included in box 1 and box 2a of federal Form 1099-R and are designated with a code “S” in box 7.

Enter the result here and include it in the total on Form 540, line 63 or Long Form 540NR, line 73. If you are not required to file Form 540 or Long Form 540NR, see General Information C, When and Where to File.

Part II — Additional Tax on Distributions from Coverdell ESAs or Qualified Tuition Programs (QTPs) Not Used for Educational Expenses

Line 5 – Enter the amount from federal Publication 970, Worksheet 7-3, line 16.

Long Form 540NR Filers: Enter the taxable amount of Coverdell ESA and QTP distributions included on Schedule CA (540NR), line 15, column E.

Line 6 – Enter on line 6 the total amount that is not subject to additional tax.

The 2½% (.025) additional tax does not apply to distributions that are:

- Due to the death or disability of the beneficiary.
- Made on account of a scholarship, allowance, or payment described in IRC Section 25A(g)(2).
- Made because of attendance by the beneficiary at a U.S. military academy. This exception applies only to the extent that the distribution does not exceed the costs of advanced education at the academy.
- Included in income because you used the qualified education expenses to figure the American Opportunity Tax and Lifetime Learning credit.

Line 8 – If you are not required to file Form 540 or Long Form 540NR, see General Information C, When and Where to File.

Part III — Additional Tax on Distributions from Archer and Medicare Advantage Medical Savings Accounts (MSAs)

MSA Distributions

If a California taxpayer maintains an MSA, the taxpayer treats the MSA distribution as tax-free if used to pay for qualified medical expenses. If the distribution is not used for qualified medical expenses, the taxpayer is subject to the additional 10% tax on this distribution. Complete federal Form 8853, before completing this part. You need to complete line 9 and line 10 on form FTB 3805P only if you have an amount on federal Form 8853, line 8.

California does not conform to the federal law that allows a rollover from an MSA to an Health Savings Account (HSA) to be treated as a tax-free distribution. If a California taxpayer rolls over his MSA into an HSA, this distribution is treated as an MSA distribution not used for qualified medical expenses and is subject to California income tax and the additional 10% tax under R&TC Section 17215. Complete federal Form 8853, before completing this part. If you have an amount on federal Form 8853, line 6b due to an MSA rollover to an HSA, then you must include this amount in line 9 and complete line 10.

Line 9 – Enter the amount from federal Form 8853, line 8.

Long Form 540NR Filers: Enter the taxable amount of MSA distributions that was included on Schedule CA (540NR), line 21, column E.

Line 10a – Check this box if you checked the box on federal Form 8853, line 9a.

Any distribution amount that is excepted from the additional tax for federal purposes is also excepted from the additional tax for California. Refer to the instructions for federal Form 8853, line 9a.

Long Form 540NR Filers: To figure the amount of the distribution that is subject to the additional 10% tax, do not include any portion of the taxable MSA [Schedule CA (540NR), line 21, column E] distributions that qualifies for an exception.

Line 10b – If you are not required to file Form 540 or Long Form 540NR, see General Information C, When and Where to File.

Medicare Advantage MSA Distributions

California law is the same as federal law regarding distributions from a Medicare Advantage MSAs. Any distribution that is subject to the 50% tax under IRC Section 138(c)(2) is also subject to a 50% tax for California purposes. Refer to the instructions for 2012 federal Form 8853, Section B, for more information.

Line 11 – Enter the same amount you entered on your 2012 federal Form 8853, line 13b.

Long Form 540NR Filers: Enter 50% of the portion of the amount that you included on line 12 of your 2012 federal Form 8853 (that does not qualify for any of the exceptions to the 50% tax) that was reported on Schedule CA (540NR), line 21, column E.