

2016 Instructions for Form FTB 3544

Election to Assign Credit Within Combined Reporting Group

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2015**, and to the California Revenue and Taxation Code (R&TC).

Important Information

For taxable years beginning on or after July 1, 2008, California Revenue and Taxation Code (R&TC) Section 23663 allows a taxpayer to assign an “eligible credit” to any “eligible assignee.” A credit assigned may only be claimed against the tax of the eligible assignee in a taxable year beginning on or after January 1, 2010. For more information, see R&TC Section 23663 or go to ftb.ca.gov and search for **credit assignment**.

After assignment of an eligible credit, the assignee shall be treated as if it originally generated the assigned credit. All restrictions and limitations, including any carryover limitations that applied to the assignor (entity that originally generated the credit) will also apply to the assignee.

The election to assign any credit is **irrevocable**. The assignor shall make the election and report the credit assignment by completing form FTB 3544, Election to Assign Credit Within Combined Reporting Group, and attach it to the assignor’s **original** tax return for the taxable year the assignment is made. A credit assignment will **not** be allowed if form FTB 3544 is attached to an amended tax return.

Once a credit is assigned under R&TC Section 23663 to an assignee, the assigned credit cannot be reassigned to another assignee. The assignor will reduce the credit amount available for assignment by the amount used by the assignor and the amount of the credit assigned.

There is no requirement of payment for assignment of credit by an eligible assignee to an assignor. If the eligible assignee makes a payment for receiving the assignment of credit, the payment is not a deductible expense for the assignee nor income to the assignor.

The assignor who assigns a credit shall complete all of the information requested on form FTB 3544. Attach additional form(s) FTB 3544, if necessary. Schedules or substitute forms, other than Franchise Tax Board (FTB) approved computer-generated substitute versions of form FTB 3544, will **not** be accepted.

Also, the assignor shall maintain the information necessary to substantiate any credit assigned and to verify the assignment and subsequent use of the credit assigned. Lack of substantiation may result in the disallowance of the assignment. The assignor and the eligible assignee shall each be liable for the full amount of any tax, addition to tax, or penalty that results from any disallowance of any eligible credit assigned under R&TC Section 23663, and the FTB may collect such amount in full from either the assignor or the eligible assignee.

The assignee is required to use form FTB 3544A, List of Assigned Credit Received and/or Claimed by Assignee, to report the assigned credit received and when the credit is applied against their tax. For more information on the requirements for assignees, get form FTB 3544A.

Note: If assigning credit under R&TC Section 23663, **both** the assignor and assignee must file their applicable forms. The assignor must file form FTB 3544 when assigning the credit and the assignee must file form FTB 3544A when receiving/claiming the assigned credit.

California Motion Picture and Television Production Credits – The assignor may assign any portion of the **original** or **new** California Motion Picture and Television Production Credit, under R&TC Section 23663, by completing form FTB 3544. Once assigned under R&TC Section 23663, the assignor may not subsequently reassign that portion of the credit under R&TC Section 23685 or Section 23695. To receive and claim the credit assigned under R&TC Section 23663, the assignee completes form FTB 3544A.

If the assignor assigns any portion of the **original** or **new** California Motion Picture and Television Production Credit under R&TC Section 23685 or Section 23695, the assignor and the assignee complete form FTB 3541, California Motion Picture and Television Production Credit. Once any portion of the credit is assigned under R&TC Section 23685 or Section 23695, the assignor may not subsequently reassign that portion of the credit under R&TC Section 23663. Get form FTB 3541 for more information.

General Information

In general, for taxable years beginning on or after January 1, 2015, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2015. However, there are continuing differences between California and federal law. When California conforms to federal 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 R&TC in the instructions. Taxpayers should not consider the instructions as authoritative law.

A Purpose

Use form FTB 3544 to report the following:

- The election to assign credits to a member of the combined reporting group.
- The assignment (assignor’s information, assignee’s information, and the amount of the credit assigned).

B Definitions

Eligible credit. Eligible credit means any credit generated by the taxpayer in a taxable year beginning on or after July 1, 2008, or any credit generated in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer’s first taxable year beginning on or after July 1, 2008.

Assignor. The assignor is the taxpayer that originally generated the eligible credit (or is allowed the credit as a distributive share item) and assigned the eligible credit to an eligible assignee. Any taxpayer-member of the combined reporting group that includes the eligible assignee is a possible assignor.

Eligible assignee. Eligible assignee is any affiliated corporation that is a member of the same combined reporting group (under R&TC Section 25101 or 25110) as the assignor on:

- (1) June 30, 2008, **and** the last day of the taxable year in which the credit was assigned to the assignee, for **credits generated** in taxable years beginning **before** July 1, 2008, or
- (2) The last day of the taxable year in which the credit was first allowed to the assignor **and** the last day of the taxable year in which the credit was assigned to the assignee, for **credits generated** in taxable years beginning **on or after** July 1, 2008.

C Disclosure of Limitations and Restrictions

The eligible assignee shall be treated as if it originally generated the assigned credit. Any credit limitations or restrictions that applied to the assignor will also apply to the eligible assignee. The assignor shall disclose the existence and nature of any assigned credit limitations to the eligible assignee and to the FTB. Such limitations may include, but are not limited to:

- Limitations imposed on the credit to certain types of income, such as income from one of the former California Enterprise Zones.
- Limitations imposed by California’s incorporation of IRC Section 383.
- Limitations on the number of years the assigned credits may be carried forward.

In addition to the requirement to separately list credits generated in different taxable years, the assignor must separately list credits which are subject to separate and distinct limitations and

disclose each of those separate and distinct limitations in a statement to be attached to form FTB 3544.

For example, the amount of Enterprise Zone (EZ) credit allowable for use is limited to the tax on income attributable to that enterprise zone. For zone credits assigned, the assignee must have a tax liability on the income attributable to the same zone that the original credit was generated. If the original credit was generated in the Fresno enterprise zone of the assignor, the assignee must have a tax liability on the income attributable to the former Fresno enterprise zone.

Also, when a corporation has an ownership change, as defined in IRC Section 382, tax credits may be subject to limitations imposed under IRC Section 383. In such situations, the annual use of credits is limited to an amount determined under IRC Section 383.

Another example is that the assignor has an Environmental Tax credit generated during the 2011 taxable year. The credit has not been used and was carried forward and assigned in the 2016 taxable year. The credit carryover will expire in the 2022 taxable year, based on the date that the assignor originally generated the credit. The credit carryover will expire for the assignee in the 2022 taxable year, unless the carryover period is extended by law.

Specific Instructions

The assignor must complete the following information on form FTB 3544:

- Key corporation name, California key corporation number, and key corporation principal business activity (PBA) code.
- Assignor name, assignor California corporation number or federal employer identification number (FEIN), and assignor PBA code.

For a complete list of the Principal Business Activity Codes, get Form 100, Corporation Tax Booklet, or Form 100W, Corporation Tax Booklet, Water's-Edge Filers.

For **each** type of eligible business credit assigned, the assignor should complete a **separate** form FTB 3544. For example, if the assignor is assigning the Research and Development (R&D) credit and the EZ credit, two separate forms FTB 3544 are required.

When attaching form FTB 3544 to the original tax return, make sure to check the "Yes" box on Side 1, Schedule Q, **Question B4** of the Form 100, California Corporation Franchise or Income Tax Return, or Form 100W, California Corporation Franchise or Income Tax Return - Water's-Edge Filers.

Credit Assigned Information

Enter the applicable credit name and credit code in the space provided. For a complete list of eligible credits (active or repealed with a carryover provision) to be assigned, see the

Credit Chart inside the Form 100 Tax Booklet or Form 100W Tax Booklet. **Note:** The Prior Year Alternative Minimum Tax credit is **excluded** from the list of credits eligible to be assigned.

When completing the form, the assignor must **separately** list credits generated in different taxable years. Assignor shall **separately** list credits which are subject to separate and distinct limitations and disclose each of those separate and distinct limitations in a statement to be attached to this form.

Column (a) – Assignee name. Enter the corporation name that is receiving a credit assignment from the assignor.

Column (b) – Assignee California corporation number or FEIN. Enter the California corporation number or FEIN of the corporation that is receiving the credit assignment. If the corporation has applied for but not yet received the California corporation number or FEIN, enter "Applied for" in column (b). If the corporation is a non-U.S. foreign corporation, enter "Foreign" in column (b).

Column (c) – Certificate number or agreement number. If the credit assigned is the original or new California Motion Picture and Television Production credit, enter the California Film Commission (CFC) certificate number.

If the credit assigned is the California Competes Tax Credit (CCTC), enter the CCTC Committee agreement number.

Column (d) – Taxable year credit was generated. Enter the taxable year that the assignor generated the credit. For example, the assignor (Corporation A) generated an R&D credit of \$1,000 during the 2012 taxable year. The credit was not claimed by Corporation A and was carried forward to the succeeding years. Corporation A assigned the available credit to Corporation F (another unitary member of the combined reporting group) in the 2016 taxable year. Corporation A will enter "2012" as the taxable year the R&D credit was generated.

Column (e) – Limitations. Check column (e) if the credit assigned is subject to any limitations as discussed under General Information C, Disclosure of Limitations and Restrictions. If the assigned credit is subject to any limitation, attach a statement to form FTB 3544 fully disclosing the specific limitation(s) imposed upon each of the assigned credits listed on the form. Assignor shall separately list credits which are subject to separate and distinct limitations and disclose each of those separate and distinct limitations in a statement.

Column (f) – Credit amount available for assignment less amount used by assignor. The available credit amount may be assigned to more than one assignee. However, once a credit amount is assigned to an assignee, the assignment is irrevocable and the assigned credit amount cannot be reassigned to another assignee.

List the unused carryover credit amount available for assignment **separately** for **each** taxable year a credit was generated. Also, **separately** list the credit amount available for assignment that is generated in the current taxable year. For example, if the assignor (Corporation A) generated \$11,000 of R&D credit in 2012 (using \$1,000 against its own tax liability), \$6,000 of R&D credit in 2013, and \$5,000 of R&D credit for the current taxable year, then each taxable year's credit amount would be separately listed in column (f) with the corresponding taxable year the credit was generated in column (d). **Note:** Corporation A enters \$10,000 as the amount available for assignment after taking into account \$1,000 of 2012 year credit used against its own tax liability. See the example on the next page for how to report the credit assignment.

Column (g) – Credit amount assigned. Enter the credit amount that is being assigned to an assignee in the combined reporting group. Using the same example listed under column (f) for the 2012 generated credit also assume 1) that in the current taxable year (2016) Corporation A assigns \$1,000 to Corporation B, and 2) that in the next taxable year (2017) Corporation A uses \$2,000 of the credit balance available for use by assignor against its own tax liability, and assigns the remaining amount of credit to Corporation C. On the current year's form (2016), Corporation A would enter \$10,000 in column (f) as the credit amount available for assignment, \$1,000 in column (g) as the credit amount assigned to Corporation B, and \$9,000 in column (h) as balance available for use by assignor.

Note: For the following year's form (2017), Corporation A would enter \$7,000 as the credit amount available for assignment in column (f). This is the amount from column (h) of the previous year's form less the amount of credit used by the assignor against its own tax liability for the 2017 taxable year (\$9,000 - \$2,000 = \$7,000). Corporation A would enter \$7,000 in column (g) as credit amount assigned to Corporation C, and \$0 in column (h) as the balance available for use by assignor. See the example on the next page for how to report the credit assignment.

Column (h) – Balance available for use by assignor. This is the amount available for assignment less amount used by assignor [column (f)] less the amount of the current taxable year assigned credit [column (g)]. The balance is the credit amount available that the assignor may use to assign to another assignee, or to carry forward to future taxable years.

Line 22 – Total credit assigned. Add amounts in column (g) and enter the total on this line. This is the total credit amounts being assigned to affiliated corporations that are members of the same combined reporting group.

Also, enter the total credit assigned on the applicable line of the related credit form.

EXAMPLE – How to report the credit assignment.

2016

(a) Assignee name	(b) Assignee California corporation number or FEIN	(c) Certificate number or agreement number	(d) Taxable year credit was generated	(e)* Limitations	(f) Credit amount available for assignment less amount used by assignor	(g) Credit amount assigned	(h) Balance available for use by assignor, column (f) less column (g)
Corp B	XXXXXXXXXX	XXXXXXXXXXXX	2012		10,000	1,000	9,000
Corp B	XXXXXXXXXX	XXXXXXXXXXXX	2013	✓	6,000	1,500	4,500
Corp D	Foreign	XXXXXX	2013	✓	4,500	4,500	0
Corp E	XXXXXXX	XXXXXX	2016		5,000	5,000	0
Total credit assigned. Add amounts in column (g). See instructions						12,000	

* Check column (e) if the credit assigned is subject to limitations. See instructions.

2017

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
Corp C	Applied for	XXXXXX	2012		7,000	7,000	0