

# 2018 Instructions for Form FTB 3805E

## Installment Sale Income

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).

### 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 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](http://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 instructions. Taxpayers should not consider the instructions as authoritative law.

Beginning January 1, 2002, California taxes installment gains that a nonresident received from the sale of property based on where the property is sourced (e.g., located). California now taxes a California resident on installment proceeds received from the sale of property sourced outside California that the taxpayer sold before becoming a California resident. For more information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

**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.

**Installment Sale Withholding** – Buyers/transferees are required to withhold on the principal portion of all payments made, unless the sellers/transferees choose to elect out of subsequent installment payment withholding by reporting the entire gain in the year of sale and receive an approval letter from Franchise Tax Board (FTB) to release the withholding. **Do not** use form FTB 3805E if you elect not to report the sale on the installment method. For more information, get FTB 4010, Withholding on California Real Estate Installment Sales, or go to [ftb.ca.gov](http://ftb.ca.gov) and search for **installment sales**.

### Purpose

Use form FTB 3805E, Installment Sale Income, to report income from casual sales of real or personal property other than inventory if you will receive any payments (including installment payments from sales before 1980) in a taxable year after the year of sale.

**Do not** use form FTB 3805E to report sales after 1986 of stock or securities traded on an established securities market. Treat all payments from these sales as received in the year you sold the stock.

**Do not** use form FTB 3805E if you elect not to report the sale on the installment method. To elect out, report the sale on Schedule D (540 or 540NR), California Capital Gain or Loss Adjustment, Schedule D (541, 565, 568), Capital Gain or Loss, Schedule D (100S), S Corporation Capital Gains and Losses and Built-In Gains, or Schedule D-1, Sales of Business Property, whichever applies.

Report the ordinary income from sales of property described in IRC Sections 1245, 1250, 179, and 291 in full in the year of sale even if no payments were received. Figure the ordinary income to be recaptured on Schedule D-1, Part III.

Generally, California law is the same as federal law concerning installment sales. Get the instructions for federal Form 6252, Installment Sale Income, for more information on how to calculate your installment sale income. You may also refer to IRC Section 453 and R&TC Sections 17551, 17560, and 24667.

### Specific Instructions

Complete line 1 through line 4.

#### Other Parts To Be Completed

- **For the Year of Sale** – Complete Part I and Part II. Also, complete Part III if applicable.
- **For Years After the Year of Sale** – Complete Part II for any year you receive a payment from an installment sale.
- **Related Party Sales** – If you sold marketable securities to a related party, complete form FTB 3805E for each year of the installment agreement even if you did not receive a payment. See “Installment Sales to Related Party,” below for the definition of a related party. For any year after the year of sale, complete Part III. If you received a payment, also complete Part II.

If you sold property other than marketable securities to a related party, complete form FTB 3805E for the year of sale and for two years after the year of sale even if you did not receive a payment. If during this two-year period you did not receive an actual or deemed payment, complete Part III. After this two-year period, see “For Years After the Year of Sale” above.

### Special Rules

**Interest on Installment Payments** – If any part of an installment payment you received is for interest, be sure to report that interest on the appropriate form or schedule. **Do not** report interest received, carrying charges received, or unstated interest on this form. Get federal Publication 537, Installment Sales, for details on unstated interest.

**Installment Sales to Related Party** – A special rule applies to a first disposition (sale or exchange) of property under the installment method to a related party who then makes a second disposition (sale, exchange, gift, or cancellation of installment note) before making all payments on the first disposition. For this purpose, a related party includes your spouse/RDP, child, grandchild, parent, brother, sister, or a related corporation, S corporation, partnership, limited liability company (LLC), estate or trust. See IRC Section 453(f)(1) for more information.

Under this rule, you treat part or all of the amount the related party realized, or the fair market value (FMV) if the disposed property is not sold or exchanged, from the second disposition as if you received it from the first disposition at the time of the second disposition. Figure the gain, if any, on line 30 through line 37. This rule does not apply if any of the exceptions listed in Part III, line 29 are met.

**Sale of Depreciable Property to Related Person** – Generally, if you sell depreciable property to a related person, as defined in IRC Section 453(g)(3), you may not report the sale using the installment method. For this purpose, depreciable property is any property that can be depreciated by the person or entity to whom you transfer it.

However, you may use the installment method if you can show to the satisfaction of the Franchise Tax Board that avoidance of state income taxes was not one of the principal purposes of the sale. For example, no significant tax deferral benefit will result from the sale.

If the installment method does not apply, report the sale on Schedule D (540, 540NR, 541, 565, 568, or 100S) or Schedule D-1, whichever applies. Treat all payments you will receive as if they were received in the year of sale. Use the FMV for any payment that is contingent as to amount. If the FMV cannot be readily determined, basis is recovered ratably.

**Pledge Rule** – If an installment obligation from a nondealer disposition of real property used in a trade or business or held for the production of rental income with a sales price over \$150,000 is pledged as security on debt after December 31, 1989, treat the net proceeds of the secured debt as a payment on the installment obligation. This rule applies to the disposition of any property under the installment method after 1989 with a sales price over \$150,000, except for farm property and personal use property disposed of by an individual. The amount treated as a payment cannot exceed the excess of the total contract price over any payments received under the contract before the secured debt was obtained.

The pledge rule does not apply to pledges made after December 31, 1989, if the debt is incurred to refinance the principal amount of a debt that was outstanding on December 31, 1989, AND was secured by nondealer real property installment obligations on that date and at all times after that until the refinancing occurred. However, this exception does not apply to the extent that the principal amount of the debt resulting from the refinancing exceeds the principal amount of the refinanced debt immediately before the refinancing. Also, the pledge rule does not affect refinancing due to the calling of a debt by the creditor as long as the debt is then refinanced by a person other than this creditor or someone related to the creditor.

#### **Interest on Deferred Tax**

You must pay interest on the deferred tax from certain installment obligations (The rules generally apply to dispositions of real property and personal property on or after January 1, 1990). The interest applies to any installment obligation arising from the disposition of any property under the installment method if both of the following apply:

- The property had a sales price over \$150,000.
- The aggregate balance of all nondealer installment obligations (arising during and outstanding at the close of the taxable year) is more than \$5 million.

**Exception:** These rules do not apply to dispositions of farm property or to dispositions of personal use property by an individual.

You must pay interest on the deferred tax from all installment obligations arising from the disposition of timeshares and residential lots. See IRC Section 453(l).

You must pay interest in subsequent years if installment obligations, which originally required interest to be paid, are still outstanding at the close of a taxable year.

**How to Report the Interest** – The interest is not figured on form FTB 3805E. See IRC Section 453A or 453(l)(3) to figure the interest. Substitute the maximum rate of tax imposed under R&TC Section 17041, 23151, 23186, or 23802, whichever applies, for the maximum rate of tax under IRC Section 1 or 11. Enter the interest as an additional tax on your tax return.

Individuals should include the amount on Form 540, line 63 or Long Form 540NR, line 73. Write “IRC Section 453A interest” or “IRC Section 453 interest” and the amount on the dotted line to the left of the amount or include it according to your software’s instructions.

Corporations may deduct the interest in the year it is paid or accrued. Individuals and other taxpayers may not deduct this interest.

#### **Apportioning Corporations**

If an apportioning corporation reports a sale under the installment method, the apportionment factors from the year of sale should be used in subsequent periods when the gains from the installment sale are recognized. (See FTB Legal Ruling 413.)

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## **Specific Line Instructions**

If partnerships, S corporations, or LLCs elect to expense costs under IRC Section 179, then the partners, shareholders, or members may not include the expensed costs on line 9.

Refer to federal Form 6252 for information on how to complete the following lines:

- Line 5 – Selling price
- Line 6 – Mortgages and other debts
- Line 8 – Cost or other basis of property sold
- Line 9 – Depreciation allowed or allowable
- Line 11 – Commissions and other expenses of sale
- Line 21 – Payments received during the year
- Line 23 – Payments received in prior years
- Line 30 – Selling price of property sold by related party
- Line 33 – Total payments received

#### **Line 12**

Figure the amount of recapture on Schedule D-1, Part III and Part IV. See the instructions for Schedule D-1. Enter the part of the gain from the sale of depreciable property recaptured under IRC Sections 1245 and 1250 (as well as IRC Sections 179 and 291).

#### **Line 15**

If the property described on line 1 was your main home, you may be able to exclude part or all of your gain. Get federal Publication 523, *Selling Your Home*, for more information.

#### **Line 19**

Enter the gross profit percentage (expressed as a decimal amount) determined for the year of sale even if you did not file form FTB 3805E for that year.

#### **Line 25 and Line 36**

Report on line 25 or line 36 any ordinary income recapture on IRC Sections 1252, 1254, and 1255 property. This includes recapture for the year of sale or any remaining recapture from a prior year sale. Also report on these lines any ordinary income recapture remaining from prior years on IRC Sections 1245 and 1250 property sold before January 1, 1985. **Do not** enter ordinary income from an IRC Section 179 deduction. If this is the year of sale, see the instructions for Schedule D-1, Part IV.

The amount on line 25 and line 36 may not exceed the total of the amounts on line 24 and line 35.

#### **Line 26 and Line 37**

**Capital Assets.** Enter this amount on Schedule D (540 or 540NR), line 1 or on Schedule D (541, 565, 568) as short- or long-term gain on lines identified as from FTB 3805E.

**Trade or Business Property.** Enter this amount on Schedule D-1, line 4, if the property was held for more than one year (more than six months if acquired before January 1, 1988). If the property was held one year or less (six months or less if acquired before January 1, 1988), or if you have an ordinary gain from a noncapital asset, even if the holding period is more than one year, enter the amount on Schedule D-1, line 10, column (g), and write “FTB 3805E” to the left of the amount.

#### **Line 29**

If one of the conditions is met, check the appropriate box and skip line 30 through line 37. If you checked box “e,” attach an explanation. Generally, the nontax-avoidance condition will apply to the second disposition if the disposition was either of the following:

- Involuntary (e.g. a creditor of the related person foreclosed on the property, or the related person declared bankruptcy).
- An installment sale under which the terms of payment were substantially equal to or longer than those for the first sale. However, the resale terms must not permit significant deferral of recognition of gain from the first sale (e.g. amounts from the resale are being collected sooner).