

# 2021 Instructions for Form FTB 3804

## Pass-Through Entity Elective Tax Calculation

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).

### What's New

**Elective Tax for Pass-Through Entities (PTE) and Credit for Owners** – For taxable years beginning on or after January 1, 2021, and before January 1, 2026, California law allows an entity taxed as a partnership or an “S” corporation to annually elect to pay an elective tax at a rate of 9.3 percent based on its qualified net income. The election shall be made on an original, timely filed return and is irrevocable for the taxable year.

The law allows a credit against the personal income tax to a taxpayer, other than a partnership, that is a partner, shareholder, or member of a qualified entity that elects to pay the elective tax, in an amount equal to 9.3 percent of the partner's, shareholder's, or member's pro rata share or distributive share and guaranteed payments of qualified net income subject to the election made by the qualified entity. A disregarded business entity and its partners or members cannot claim the credit, except for a disregarded single member limited liability company (SMLLC) that is owned by an individual, fiduciary, estate, or trust subject to personal income tax. For more information, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **pte elective tax** and get the following new PTE elective tax forms and instructions:

- Form FTB 3893, Pass-Through Entity Elective Tax Payment Voucher
- Form FTB 3804, Pass-Through Entity Elective Tax Calculation
- Form FTB 3804-CR, Pass-Through Entity Elective Tax Credit

### General Information

In general, for taxable years beginning on or after January 1, 2015, California law conforms to the 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**.

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.

For each taxable year beginning on or after January 1, 2021, and before January 1, 2026, the electing qualified PTE shall make an elective tax payment on its qualified net income. The electing qualified PTE must use Form 3804, Pass-Through Entity Elective Tax Calculation, to report each qualified taxpayer's pro-rata share or distributive share and guaranteed payments of qualified net income and elective tax amount to the Franchise Tax Board (FTB).

An electing qualified PTE must elect to annually pay an elective tax according to or measured by its qualified net income, computed as the sum of 9.3 percent of its qualified net income for the taxable year for which the election is made. If this election is made by the electing qualified PTE, the qualified taxpayer is allowed a credit against their personal income tax. A partner, shareholder, or member that does not consent to participate does not prevent the electing qualified PTE from making an election to pay the elective tax for consenting partners, shareholders, or members.

The election made by the electing qualified PTE to pay the tax is irrevocable and can only be made on the electing qualified PTE's timely filed original tax return.

Attach the completed form FTB 3804 to the electing qualified PTE's Form 100S, California S Corporation Franchise or Income Tax Return; Form 565, Partnership Return of Income; or Form 568, Limited Liability Company Return of Income.

**Round Cents to Dollars** – Round cents to the nearest whole dollar.

### A Purpose

Use form FTB 3804 to report the elective tax on the electing qualified PTE's qualified net income. Form FTB 3804 also includes a Schedule of Qualified Taxpayers that requires the electing qualified PTE to identify the qualified taxpayers, report the pro-rata share or distributive share and guaranteed payments of qualified net income amounts, and calculate the elective tax credit amounts. This schedule will allow the FTB to trace the elective tax credit payments from the electing qualified PTE return to the qualified taxpayers' returns upon receipt of the completed form FTB 3804.

**Do not** use form FTB 3804 to remit the elective tax payment. Use form FTB 3893. For more information, get form FTB 3893.

**Do not** include those partners, shareholders, or members who have not consented to the inclusion of the pro-rata share or distributive share of income and guaranteed payments in the entity's qualified net income.

### B Definitions

**Electing qualified PTE** – is defined as an entity that is taxed as a partnership or S corporation that elects to pay the PTE elective tax. The qualifying partnership or S corporation is **not** a publicly traded partnership or permitted or required to be in a combined reporting group. For the tax year the PTE elective tax is paid, the partners, shareholders, or members of the electing qualified PTE are exclusively corporations as defined in R&TC Section 23038, or taxpayers as defined in R&TC Section 17004. For more information, see R&TC Section 19902.

**PTE Elective Tax** – is defined as the annual tax that a qualified PTE elects to pay in the amount equal to 9.3 percent of its consenting partner's, shareholder's, or member's pro-rata share or distributive share and guaranteed payments of qualified net income subject to personal income tax.

**Qualified taxpayer** – is defined as an individual, fiduciary, estate, or trust that is a partner, shareholder, or member of an electing qualified PTE that consents to have their pro-rata share or distributive share of income and guaranteed payments included in the qualified net income subject to the elective tax of the electing qualified PTE. The qualified taxpayer may be a resident, nonresident, or part-year resident. The qualified taxpayer **does not** include disregarded business entities and their partners or members, except for a disregarded SMLLC that is owned by an individual, fiduciary, estate, or trust subject to personal income tax.

**Qualified amount** – is defined as an amount equal to 9.3 percent of the sum of the qualified taxpayer's pro-rata share or distributive share and guaranteed payments, as applicable, of qualified net income subject to the election made by an electing qualified PTE.

**Qualified net income** – is defined as the sum of the pro-rata share or distributive share of income and guaranteed payments subject to personal income tax of the electing qualified PTE's qualified taxpayers. For an S Corporation, the qualified net income for a qualified taxpayer can generally be computed by taking the sum of Schedule K-1 (100S) lines 1-10 minus lines 11 and 12. For a partnership the qualified net income for a qualified taxpayer can generally be computed by taking the sum of Schedule K-1 (565/568) lines 1, 2, 3, and 4c through 11 minus lines 12 and 13. A taxpayer with negative income could never be included in the qualified net income of the entity. The electing qualified PTE may still elect to pay the elective tax even if some partners, shareholders, or members do not consent to having their pro-rata or distributive share of income and guaranteed payments included in the electing PTE's qualified net income.

### Specific Instructions

**Taxable Year** – The taxable year on the form must match the year of the filed return.

Enter the electing qualified PTE's business name as shown on the tax return, check the appropriate box, and enter a valid taxpayer identification number (TIN).

The following are acceptable TINs: federal employer identification number (FEIN); California corporation number (CA Corp no.); or CA SOS file number. Failure to provide a valid TIN will result in the denial of the elective tax credit.

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## Part I Elective Tax

The elective tax is the sum of 9.3 percent of its qualified net income for the taxable year for which the election is made.

**Line 1** – Enter the total qualified net income from all consenting qualified taxpayers by combining all box a amounts from Part II, Schedule of Qualified Taxpayers, on Side 1, Side 2, and from any additional pages of the Schedule of Qualified Taxpayers.

**Line 2** – The elective tax rate is 9.3%.

**Line 3** – Calculate the total amount of elective tax by multiplying line 1 by line 2. Enter the result here and on Form 100S, line 29; or Form 565, line 25; or Form 568, line 4.

## Part II Schedule of Qualified Taxpayers

**You must use the Schedule of Qualified Taxpayers of form FTB 3804 to report all consenting qualified taxpayers. Do not** include those who have not consented.

If you have multiple qualified taxpayers, complete and include additional copies of the Schedule of Qualified Taxpayers of form FTB 3804, as necessary. Enter the electing qualified PTE's name and electing qualified PTE's ID number at the top of each additional page.

**Do not** leave a blank qualified taxpayer box unless you are at the end of the Schedule of Qualified Taxpayers.

**Do not** attach your own schedules to this form. We only accept and process additional qualified taxpayers reported on the Schedule of Qualified Taxpayers.

**Do not** attach Part II, Side 2 - Schedule of Qualified Taxpayers, if blank.

**Qualified Taxpayer Name and TIN** – Enter information for each qualified taxpayer and check the appropriate box. If the qualified taxpayer is an **estate** or **trust**, enter the entity's name in the first and last name fields. If the qualified taxpayer is a disregarded SMLLC that is owned by an individual, fiduciary, estate, or trust subject to personal income tax, enter the name and ID of the owner of the disregarded SMLLC. Otherwise, do not enter the business name of your entity as a qualified taxpayer.

**Sum of pro-rata or distributive share and guaranteed payments included in qualified net income** – Enter the qualified taxpayer's pro-rata share or distributive share and guaranteed payments included in qualified net income.

**Elective Tax Rate** – The elective tax rate is 9.3 percent.

**Elective tax credit amount** – Multiply the qualified taxpayer's pro-rata share or distributive share and guaranteed payments of qualified net income by the tax rate of 9.3 percent to calculate the qualified taxpayer's elective tax credit amount.

The PTE elective tax credit amount is not a pass-through item. The amount of the elective tax credit, in box b, will be reflected on the qualified taxpayer's Schedule K-1, Other Credits line. The credit should be explained on a statement attached to the Schedule K-1.

## Franchise Tax Board Privacy Notice on Collection

Our privacy notice can be found in annual tax booklets or online. Go to [ftb.ca.gov/privacy](http://ftb.ca.gov/privacy) to learn about our privacy policy statement, or go to [ftb.ca.gov/forms](http://ftb.ca.gov/forms) and search for **1131** to locate FTB 1131 EN-SP, Franchise Tax Board Privacy Notice on Collection. To request this notice by mail, call 800.338.0505 and enter form code **948** when instructed.