

2023 Instructions for Form FTB 3461

California Limitation on Business Losses

General Information

Excess Business Loss Limitation – The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act made amendments to Internal Revenue Code (IRC) Section 461(l) by eliminating the excess business loss limitation of noncorporate taxpayers for taxable year 2020 and retroactively removing the limitation for taxable years 2018 and 2019. California does **not** conform to those amendments. Also, California law does not conform to the federal changes in the federal American Rescue Plan Act of 2021 and the Inflation Reduction Act of 2022 that extend the limitation on excess business losses of noncorporate taxpayers for taxable years beginning after December 31, 2020, and ending before January 1, 2029. Complete form FTB 3461, California Limitation on Business Losses, if you are a noncorporate taxpayer and your net losses from all of your trades or businesses are more than \$289,000 (\$578,000 for married/registered domestic partners (RDPs) taxpayers filing a joint return).

Registered Domestic Partners (RDPs) – 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

There is a limitation for the amount of losses from the trades or businesses of noncorporate taxpayers that the taxpayers can claim each year. Use form FTB 3461 to compute the excess business loss. Taxpayers cannot deduct an excess business loss in the current year. However, for California purposes, the excess business loss will be treated as an excess business loss carryover instead of an NOL carryover for the subsequent taxable year.

B Who Must File

File form FTB 3461 if you are a noncorporate taxpayer and your net losses from all of your trades or businesses are more than \$289,000 (\$578,000 for married/RDP taxpayers filing a joint return). A trust subject to tax under IRC Section 511 should complete form FTB 3461 if it has a loss attributable to its trade or business of more than \$289,000.

Attach form FTB 3461 to the applicable tax return you file.

- Form 540, California Resident Income Tax Return
- Form 540NR, California Nonresident or Part-Year Resident Income Tax Return
- Form 541, California Fiduciary Income Tax Return
- Form 541-QFT, California Income Tax Return for Qualified Funeral Trusts
- Form 109, California Exempt Organization Business Income Tax Return (applicable to trusts only)

C Definitions

Excess business loss – An excess business loss is the amount by which the total deductions from your trades or businesses are more than your total gross income or gains from your trades or businesses, plus the threshold amount.

Threshold amount – For taxable year 2023, the threshold amount is \$289,000 (\$578,000 for married/RDP taxpayers filing a joint return). These amounts are indexed for inflation.

Trade or business – An activity qualifies as a trade or business if your primary purpose for engaging in the activity is for income or profit and you are involved in the activity with continuity and regularity. The facts and circumstances of each case determine if an activity is a trade or business. The regularity of activities and transactions and the production of income are important elements. You do not need to actually make a

profit to be in a trade or business as long as you have a profit motive. However, you do need to make ongoing efforts to further the interests of your business.

Note: If you own an interest in a partnership or S corporation, the trade or business determination is made at that entity's level.

D Ordering Rules

First apply the at-risk rules; next, apply the passive activity loss rules; and then apply the excess business loss rules. For more information, get the instructions for California form FTB 3801, Passive Activity Loss Limitations, federal Form 6198, At-Risk Limitations, and federal Pub. 925, Passive Activity and At-Risk Rules.

E Transition Rules

If you had losses or deductions that were limited under other provisions of the law in prior tax years, those losses or deductions are included in figuring the amount, if any, of your excess business loss in taxable year 2023.

Specific Line Instructions

Joint returns – Complete one form FTB 3461 containing all the information for both spouses/RDPs.

Part I – Total Income/Loss Items

Use Part I to report all the income and losses reflected on your applicable tax return. If you are filing a tax return other than Form 540, see the instructions below for the specific line that is an equivalent to the line on Form 540. If the line instructions do not reference a form listed under Who Must File, then it is not applicable.

Line 1

Enter any wages, salaries, and tips reported on Schedule CA (540NR), California Adjustments – Nonresidents or Part-Year Residents, Part II, Section A, line 1z, column E.

Line 2

Enter any business income or loss reported on Schedule CA (540NR), Part II, Section B, line 3, column E; or Form 541, line 3.

Line 3

Enter any capital gains or losses reported on Schedule CA (540NR), Part II, Section A, line 7, column E; Form 541, line 4; or Form 541-QFT, line 3.

Line 4

Enter any other gains or losses reported on Schedule CA (540NR), Part II, Section B, line 4, column E; Form 541, line 7; or Form 541-QFT, line 4.

Line 5

Enter any supplemental income or loss reported on federal Schedule E (Form 1040), Supplemental Income and Loss, such as income from rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc. This is reported on Schedule CA (540NR), Part II, Section B, line 5, column E; Form 541, line 5; or Form 541-QFT, line 4.

Line 6

Enter any farm income or loss reported on Schedule CA (540NR), Part II, Section B, line 6, column E; Form 541, line 6; or Form 541-QFT, line 4.

Line 8

Enter any other trade or business income, gain, or loss not reported on line 1 through line 6 that you reported on your tax return.

Line 9

Combine all the entries from line 1 through line 8 on line 9. The result can be a positive or negative number.

Part II – Adjustment for Amounts not Attributable to Trade or Business

Use Part II to report the income, gain, or loss from your tax return that is not from a trade or business. The information will then be used to figure the excess business loss.

Line 10

Enter the combined amount of income or gain you reported on line 1 through line 8 that is not from a trade or business. If you are filing a tax return other than Form 540, see the specific line references for the tax return in the specific line instructions in Part I.

Line 11

Enter the combined amount of losses or deductions you reported on line 1 through line 8 that is not from a trade or business. If you are filing a tax return other than Form 540, see the specific line references for the tax return in the specific line instructions in Part I.

Important: Although losses and deductions usually are entered as negative numbers on other forms or worksheets, enter them as a positive number on this line.

Note: For amounts reported on Schedule D (540 or 540NR), California Capital Gain or Loss Adjustment, or Schedule D (541), Capital Gain or Loss, if form FTB 3461, line 3 is a loss limited to (\$3,000), determine the amount of the loss not from a trade or business as follows.

- If the loss from your trade or business is less than (\$3,000), enter the difference between (\$3,000) and your trade or business loss.
- Do not enter any loss amount on this line from Schedule D (540, 540NR, or 541) if the loss from your trade or business is equal to or greater than (\$3,000).

Line 12

Subtract line 11 from line 10. The result is your gain or loss that is not from a trade or business. Use this amount in Part III to figure your excess business loss.

Part III – Limitation on Losses

Use Part III to apply the threshold limitation and figure the excess business loss.

Line 14a

Add line 9 and line 13. The result can be a positive or negative number.

Line 14b

Prior years excess business losses carryover should be reported on this line. Prior years amounts include excess business losses carryover from 2019 through 2022. Enter the amount from line 16 of your 2022 form FTB 3461. Enter as a negative number.

If in the current year, you have enough business income to fully offset all of the excess business loss carryover from prior year, then the carryover balance is applied to offset the business income and there is no limitation to calculate. If you have excess business loss carryover from prior years on line 14b and do not have any current year business loss that is reportable on line 14a, enter the line 14b amount (up to the business income amount) on Schedule CA (540), California Adjustments – Residents, Part I, or Schedule CA (540NR), Part II, Section B, line 8z, column B. Write “excess business losses carryover from prior years” on the space provided for line 8z. If you are filing Form 541 or Form 109, report the excess business losses carryover from prior years on the “other income” line of the return as a negative number. Write “excess business losses carryover from prior years” on the space provided or in the schedule attached.

Line 14c

Add line 14a and line 14b. The result can be a positive or negative number.

Line 15

If you have enough business income that is reported on any line from line 1 through line 8 to offset all business losses, continue to the instructions in the next column.

When you have excess business loss carryover from prior years on line 14b and when line 14a, current year business loss (positive number), does not exceed line 15, current year threshold amount, subtract line 14a (positive number) from line 15 and enter the result on Schedule CA (540), Part I, or Schedule CA (540NR), Part II, Section B, line 8z, column B. Write “excess business losses carryover from prior years” on the space provided for line 8z. The result to be entered on Schedule CA (540 or 540NR) should be less than or equal to the amount on line 14b (positive number), excess business loss carryover from prior years. If you are filing Form 541 or Form 109, report the excess business losses carryover from prior years on the “other income” line of the return as a negative number. Write “excess business losses carryover from prior years” on the space provided or in the schedule attached.

Line 16

Add line 14c and line 15. If the result on this line is a negative number, this is your **excess business loss to be carried forward** to 2024. If you do not have an amount on line 14b, and although line 16 is a loss, you will report the **excess business loss adjustment** as a positive number on the applicable line of the following 2023 schedule/form:

- Schedule CA (540), Part I, Section B, line 8p, column C.
- Schedule CA (540NR), Part II, Section B, line 8p, column C.
- Form 541, line 8.
- Form 541-QFT, line 4.
- Form 109, Part I, line 12 (applicable to trusts only).

For California purposes, any disallowed loss is treated as a **carryover excess business loss** instead of an NOL carryover for the subsequent taxable year. If in the subsequent year, you have enough business income for that year to fully offset all of the excess business loss carryover, then the carryover balance is applied to offset the business income and there is no limitation to calculate. If there is business income in the subsequent year, but not enough to fully offset all of the excess business loss carryover, then any remaining balance will continue to carryover to future year(s).

If you have an amount on line 14b, **do not** enter the amount from line 16 (positive number) on the 2023 schedule/form listed in line 16 instructions. Instead, go to line 17 and follow the instructions to determine the excess business loss adjustment amount to enter on the 2023 schedule/form listed in line 16 instructions.

Line 17

If you have an amount on line 14b, excess business losses carryover from prior years, and if the amount on line 16 (positive number) is more than the excess business loss adjustment amount included as income in prior years from Schedule CA (540 or 540NR) or other applicable forms, then reduce line 16 amount (positive number) by the excess business loss adjustment amount included as income in prior years. Enter the result on line 17 and enter this amount (positive number) on the applicable line of the 2023 schedule/form listed in line 16 instructions. This is your 2023 **excess business loss adjustment** amount included as income.

If you have an amount on line 14b, excess business losses carryover from prior years, and if the amount on line 16 (positive number) is less than the excess business loss adjustment amount included as income in prior years from Schedule CA (540 or 540NR) or other applicable forms, **do not** enter the amount from line 16 (positive number) on Schedule CA (540 or 540NR) or any other 2023 schedule/form listed in line 16 instructions. You do not have an excess business loss adjustment for 2023.

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 to learn about our privacy policy statement, or go to ftb.ca.gov/forms and search for **1131** to locate FTB 1131 EN-SP, Franchise Tax Board Privacy Notice on Collection – Aviso de Privacidad del Franchise Tax Board sobre la Recaudación. To request this notice by mail, call 800.338.0505 and enter form code **948** when instructed.