2023 Instructions for Form FTB 3804-CR

Pass-Through Entity Elective Tax Credit

General Information

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% based on its qualified net income (QNI). 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% of the partner’s, shareholder’s, or member’s pro rata share or distributive share and guaranteed payments of QNI subject to the election made by the qualified entity. Generally, a disregarded business entity and its partners or members cannot receive 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. Any credits not used in the taxable year may be carried forward up to five years, or until exhausted. For more information, go to **ftb.ca.gov** and search for **pte elective tax** and get the following 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

This credit can reduce regular tax below tentative minimum tax (TMT). For more information, get Schedule P (540, 540NR, or 541), Alternative Minimum Tax and Credit Limitations.

Registered Domestic Partner (RDP) – For purposes of California income tax, references to a spouse, husband, or wife also refer to a California RDP, unless otherwise specified.

A Purpose

Use form FTB 3804-CR to claim the amount of the credit that equals 9.3% of the sum of the taxpayer’s pro rata share or distributive share and guaranteed payments of QNI subject to the election made by an electing qualified entity under the Small Business Relief Act. For more information, get form FTB 3804. The credit is nonrefundable, and the unused credit may be carried forward for five years, or until exhausted.

Attach the completed form FTB 3804-CR to the back of Form 540, California Resident Income Tax Return; Form 540NR, California Nonresident or Part-Year Resident Income Tax Return; or Form 541, California Fiduciary Income Tax Return. Attach additional forms FTB 3804-CR as necessary.

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 qualified partnership or S corporation is **not** a publicly traded partnership or permitted or required to be in a combined reporting group. For the taxable year the PTE elective tax is paid, the partners, shareholders, or members of the electing qualified PTE are exclusively corporations as defined in California Revenue and Taxation Code (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% of its consenting partner’s, shareholder’s, or member’s pro rata share or distributive share and guaranteed payments of QNI 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 and guaranteed payments of income included in the QNI 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.

A trust that is a qualified taxpayer may pass-through all or a part of its credit to one or more of its beneficiaries. If the trust is retaining part of the credit, the trust as well as each beneficiary that receives a pass-through credit, must file its own separate FTB 3804-CR.

Qualified amount – is defined as an amount equal to 9.3% of the sum of the qualified taxpayer’s pro rata share or distributive share and guaranteed payments, as applicable, of QNI subject to the election made by an electing qualified PTE.

The PTE elective tax credit amount is not a pass-through item, however it will be reflected on the qualified taxpayer’s Schedule K-1, Shareholder’s Share of Income, Deductions, Credits, etc., Other credits line. The credit should be explained on a statement attached to the Schedule K-1.

Qualified net income (QNI) – 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. 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 QNI.

C Description

Qualified taxpayers are allowed a credit equal to the qualified amount of the qualified taxpayer’s pro rata share or distributive share and guaranteed payments of the electing PTE’s QNI. That amount is reported on the qualified taxpayer’s Schedule K-1 (100S, 541, 565, or 568). For more information, see R&TC Section 17052.10, or get form FTB 3804.

D Qualifications

To qualify for this credit, an electing qualified PTE must elect to annually pay an elective tax according to or measured by its QNI, computed as the sum of 9.3% of its QNI 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.

E Limitations

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.

The taxpayer is not allowed to claim the credit if the electing qualified PTE did not make the election, and did not pay the elective tax as required.

A taxpayer and spouse/RDP may claim only one credit. If separate returns are filed, the credit may be taken by either spouse/RDP or divided equally between them.

If a taxpayer owns an interest in a SMLLC that is a disregarded entity for tax purposes, the credit amount received from the disregarded entity that can be utilized is limited to the difference between the taxpayer’s regular tax figured with the income of the disregarded entity, and the taxpayer’s regular tax figured without the income of the disregarded entity. For more information on SMLLCs, get Form 568, Limited Liability Company Tax Booklet.

This credit cannot reduce the alternative minimum tax (individuals and fiduciaries).

This credit can reduce regular tax below TMT (individuals and fiduciaries). For more information, get Schedule P (540, 540NR, or 541).

This credit is not refundable and cannot be assigned.

F Carryover

If the available credit exceeds the current year tax liability the unused credit may be carried over to reduce the tax for five years or until exhausted, whichever occurs first. Apply the carryover to the earliest taxable year possible. In no event can the credit be carried back and applied against a prior year's tax.

If you have a carryover, retain all records that document this credit and carryover used in prior years. The Franchise Tax Board may require access to these records.

Specific Line Instructions

Qualified taxpayer name – 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.

Part I – Elective Tax Credit Amount

Enter information from the electing qualified PTEs.

Line 1, column (a) – Electing qualified pass-through entity (PTE) name

Enter the name of the electing qualified PTE that paid the PTE elective tax.

Line 1, column (b) – Entity identification number

Enter the electing qualified PTE's corporation number. If the qualified PTE does not have a corporation number, then enter the California Secretary of State (SOS) file number or federal employer identification number (FEIN).

Line 1, column (c) – PTE elective tax credit(s)

Enter 9.3% of the pro rata share or distributive share and guaranteed payments reported by the electing qualified PTEs on Schedule K-1 (100S, 541, 565, or 568). The qualified taxpayer can only claim a credit for payment of the tax made by the electing qualified PTE that is applicable to the same taxable year.

A partnership cannot claim the PTE tax credit.

When completing the table, if additional space is necessary, use additional forms FTB 3804-CR to report all PTE elective tax credit amount(s) and their respective information.

Part II – Available Credit

Line 1 – Total credit from electing qualified PTEs

Enter the total credit reported by the electing qualified PTEs from all form(s) FTB 3804-CR, Part I, line 2.

Line 2 – Credit carryover from prior year

Enter the carryover amount from the PTE elective tax credit from the prior year.

Line 4 - Credit claimed

This amount may be less than the amount on line 3 if your credit is limited by your tax liability. For more information, see General Information E, Limitations and refer to the credit instructions in your tax booklet. Use credit code **242** when you claim this credit.

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