2020 Instructions for Schedule D (100S)

S Corporation Capital Gains and Losses and Built-In Gains

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** 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.

Important Information

Like-Kind Exchanges – The Tax Cuts and Jobs Act (TCJA) amended IRC Section 1031 limiting the nonrecognition of gain or loss on like-kind exchanges to real property held for productive use or investment. California conforms to this change under the TCJA for exchanges initiated after January 10, 2019.

The TCJA, signed into law on December 22, 2017, made changes to the IRC. California taxpayers continue to follow the IRC as of the specified date of January 1, 2015, with modifications. In general, the California R&TC **does not** conform to the following changes:

Capital Assets – The IRC Section 1221 exclusion of a patent, invention, model or design (whether or not patented), and secret formula or process that is held by the taxpayer who created the property (and other certain taxpayers) from the definition of a capital asset.

Qualified Opportunity Zone Funds – The establishment of qualified opportunity zones and the temporary deferral of inclusion in gross income for capital gains reinvested in a qualified opportunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund, as defined in IRC Sections 1400Z-1 and 1400Z-2. California has no similar provisions.

If, for California purposes, gains from investment in qualified opportunity zone property had been included in income during previous taxable year, do not include the gain in the current year income.

Withholding – The alternative withholding rates for the sale of California real property is 13.8% for S corporations or 15.8% for financial S corporations.

Buyers are required to withhold on each installment sale payment if the sale of California real property is structured as an installment sale.

Purpose

Schedule D (100S), S Corporation Capital Gains and Losses and Built-In Gains, is divided into Section A and Section B. Use Section A to report all built-in gains subject to the 8.84% tax rate (10.84% for financial S corporations). Use Section B to report all other capital gains subject to the 1.5% tax rate (3.5% for financial S corporations).

Specific Line Instructions

Section A – 8.84% Tax on Built-In Gains

Use Section A, Part I and Part II to report and summarize gains and losses attributable to: (1) sale or exchange of capital assets; and (2) gains on distributions to shareholders of appreciated assets that are capital assets. Be sure to use the California basis for all assets when computing the gain or loss. Get the instructions for federal Schedule D (Form 1120-S), Capital Gains and Losses and Built-In Gains, for more information.

Part I – Short-Term Capital Gains and Losses - Assets Held One Year or Less and Part II – Long-Term Capital Gains and Losses - Assets Held More Than One Year

Line 1 and Line 4

Report short-term or long-term capital gains or losses from form FTB 3725, Assets Transferred from Corporation to Insurance Company, on Schedule D (100S). Make sure to enter on Schedule D (100S), line 1 and/or line 4, under column (a) Description of property: **"FTB 3725."** Enter the amount of short-term or long-term capital gains (losses) from form FTB 3725, on Schedule D (100S), line 1, column (f), and/or line 4, column (f).

Line 2 and Line 5

Use California amounts when figuring the amount to enter for short or long-term capital gains or losses from like-kind exchanges from federal Form 8824, Like-Kind Exchanges. Attach form FTB 3805E, Installment Sale Income, and/or federal Form 8824 to Schedule D (100S).

Part III – Tax on Built-In Gains

When determining the built-in gains tax, C corporations that were required to convert to S corporations for California purposes are deemed to have elected S corporation status on the effective date of their federal election regardless of the effective date for state purposes.

The recognition period for built-in gains under California law is 10 years.

Line 7

To determine if the S corporation is subject to tax on built-in gains, see General Information J, Built-In Gains, in the Form 100S Booklet, and get the instructions for federal Schedule D (Form 1120-S).

Apportioning Corporations Only:

All recognized built-in gains and all recognized built-in losses must be apportioned and allocated to California according to the current year's Schedule R, Apportionment and Allocation of Income, and included on line 7.

Line 9

Compute the California net unrealized built-in gain reduced by the California net recognized built-in gain from prior years if the S corporation:

- Filed its election to be an S corporation after 1986.
- Was a C corporation before it elected to be an S corporation, or acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation.
- Had a California net unrealized built-in gain as defined in IRC Section 1374(d)(1), that was in excess of the California net recognized built-in gain from prior years.

On line 9, enter the smaller of line 7, line 8, or the amount computed above.

Line 10

See form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations, in the Form 100S Booklet, for more information.

Section B – 1.5% Tax on Capital Gains

Use Section B, Part I and Part II to report the sale or disposition of all capital assets acquired as an S corporation or which are not reported in Section A. For more information, get the instructions for federal Schedule D (Form 1120-S).

Property Subject to IRC Section 179 Recapture: Gain on property subject to the IRC Section 179 expense deduction recapture must be included in the taxable income of the S corporation. To accomplish this, the S corporation should complete **two sets** of Schedule D-1, Sales of Business Property, and Schedule D (100S). The first set of Schedule D-1 and Schedule D (100S) will include the gain or loss from the sale or disposition of IRC Section 179 assets as well as gain or loss from non-IRC Section 179 business assets, and will be reported on the Form 100S. Indicate at the top of this Schedule D-1 and Schedule D (100S) "IRC Section 179 and Business Assets." When completing Schedule D-1 and Schedule D (100S) for the Form 100S, skip any instructions to report the gain or loss on Form 100S, Schedule K, S Corporation Shareholder's Shares of Income, Deductions, Credits, etc. or Schedule K-1 (100S), Shareholder's Share of Income, Deductions, Credits, etc. Transfer the gain amount to Form 100S, Side 1, line 4.

The second set of Schedule D-1 and Schedule D (100S) is to report the gain or loss on non-IRC Section 179 business assets for use on the Schedule K and Schedule K-1. To accomplish this, the S corporation should complete a Schedule D-1 and Schedule D (100S) with the gain or loss for the non-IRC Section 179 business assets only. The amounts from this Schedule D-1 and Schedule D (100S) will be reported on the Schedule K and Schedule K-1 (100S). Indicate at the top of this Schedule D-1 and Schedule D (100S) set "Non-IRC Section 179 Business Assets Only."

Part I – Short-Term Capital Gains and Losses – Assets Held One Year or Less

Line 1

Enter short-term capital gains or losses from form FTB 3725 on Schedule D (100S), line 1, column (f). Make sure to enter on Schedule D (100S), line 1, under column (a) Description of property: **"FTB 3725."**

Part II – Long-Term Capital Gains and Losses – Assets Held More Than One Year

Line 4

Enter long-term capital gains or losses from form FTB 3725 on Schedule D (100S), line 4, column (f). Make sure to enter on Schedule D (100S), line 4, under column (a) Description of property: **"FTB 3725."**