



STATE OF CALIFORNIA  
Franchise Tax Board

FTB Publication

**1067**

# 2021 Guidelines for Filing a Group Form 540NR



# Table of Contents

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What's New . . . . .	3
Purpose . . . . .	3
Terms Used in this Publication . . . . .	3
General Information . . . . .	3
Introduction . . . . .	4
Filing Information and Important Due Dates . . . . .	5
Requirement for the Electing Individual to File a California Income Tax Return.. . . . .	5
Why File a Group Nonresident Return . . . . .	5
Who Can Be Included in the Group Nonresident Return . . . . .	5
Individual's Decision to be Included in the Group Nonresident Return . . . . .	6
Election to File a Group Nonresident Return . . . . .	6
Return for Shareholders/Partners/Members . . . . .	6
Return for Directors . . . . .	7
Estimated Tax Requirements . . . . .	7
How to Make Estimated Tax Payments on Form 540-ES . . . . .	7
Moving Estimated Payments . . . . .	8
Important Information – How to Avoid Common Errors . . . . .	8
How to Make an Extension Payment . . . . .	9
Instructions for Completing Group Nonresident Return . . . . .	9
<b>Schedule 1067A</b> , Nonresident Group Return Schedule . . . . .	11
Instructions for Schedule 1067A . . . . .	14
<b>Schedule 1067B</b> , Group Nonresident Return Payment Transfer Request . . . . .	16
<b>Form FTB 3864</b> , Group Nonresident Return Election . . . . .	17
Sample Form 540-ES, Estimated Tax for Individuals . . . . .	19
Sample Form FTB 3519, Payment for Automatic Extension for Individuals.. . . . .	19
Sample Form 540NR, California Nonresident or Part-Year Resident Income Tax Return . . . . .	19
How to Get Additional Information Regarding Group Nonresident Returns . . . . .	20

# 2021 Guidelines for Filing a Group Form 540NR

## What's New

**Nonresident Alien** – For taxable years beginning on or after January 1, 2021, and before January 1, 2026 a nonresident group return can be filed on behalf of electing nonresident aliens receiving California source income from a taxpayer. A nonresident alien, who is not eligible for or has not been issued a federal social security number (SSN) or individual tax identification number (ITIN), could be included in the group return or file an individual return without obtaining an SSN or ITIN.

**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 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. Because this is a credit to the individual and not a credit to the entity then passed through to the individual, the credit is not considered a credit directly attributable to the entity and is not allowed by a partner/member/shareholder included on a group return pursuant to California Revenue & Taxation Code (R&TC) Section 18535(a).

For more information, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **pte elective tax**.

**Reporting Requirements** – For taxable years beginning on or after January 1, 2021, taxpayers who benefited from the exclusion from gross income for the Paycheck Protection Program (PPP) loans forgiveness, other loan forgiveness or the Economic Injury Disaster Loan (EIDL) advance grant and related eligible expense deductions under the federal Coronavirus Aid, Relief and Economic Security (CARES) Act, Paycheck Protection Program and Health Care Enhancement Act, Paycheck Protection Program Flexibility Act of 2020, or the Consolidated Appropriations Act, 2021, should file form FTB 4197, Information on Tax Expenditure Items, as part of the Franchise Tax Board's annual reporting requirement. For more information, get form FTB 4197.

## Purpose

This publication is for corporations, partnerships, and limited liability companies (LLCs) that elect to file a group nonresident return, also commonly referred to as a composite return.

## Terms Used in this Publication

**Business entity** refers to an S corporation, partnership, or LLC that elects to file a group nonresident return on behalf of its individual nonresident shareholders, partners, or members.

**Pass-through income** refers to the shareholder's, partner's, or member's distributive share of income from the business entity derived from California sources or from doing business in California.

**Corporation** refers to a corporation that elects to file a group nonresident return on behalf of its individual nonresident directors.

**Director's compensation** refers to the director's wages, salaries, fees, or other compensation from the corporation for director services sourced to California, including attendance at board of directors' meetings.

**Individual** refers to a shareholder, partner, member, or director who is a natural person and his or her spouse/registered

domestic partner (RDP). Individual also includes the grantor of a grantor trust described under Internal Revenue Code (IRC) Sections 671-679 and not recognized as a separate taxable entity for income tax purposes when the grantor is an individual.

## General Information

**R&TC Section 41 Reporting Requirements** – Beginning in taxable year 2020, partners, members, shareholders, or beneficiaries of pass-through entities conducting a commercial cannabis activity licensed under the California Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) should file form FTB 4197, Information on Tax Expenditure Items. The Franchise Tax Board (FTB) uses information from form FTB 4197 for reports required by the California Legislature.

If the business entity conducted a commercial cannabis activity licensed under the California MAUCRSA, the business entity should report on behalf of the electing nonresident individual shareholders/partners/members their share of total deductions and credits related to the cannabis income on form FTB 4197. Get form FTB 4197 for more information.

**Business Credit Limitation** – For taxable years beginning on or after January 1, 2020, and before January 1, 2023, there is a \$5,000,000 limitation on the application of business credits for taxpayers. The total of all business credits including the carryover of any business credit for the taxable year may not reduce the “net tax” by more than \$5,000,000. Business credits should be applied against “net tax” before other credits. Business credits disallowed due to the limitation may be carried over. The carryover period for disallowed credits is extended by the number of taxable years the credit was not allowed.

**Technical Termination of a Partnership** – For taxable years beginning on or after January 1, 2019, California conforms to the Tax Cuts and Jobs Act (TCJA) repeal of the termination of a partnership by the sale or exchange of 50 percent or more of the total interest in a partnership within a 12 month period.

A partnership may elect to have the repeal of the technical termination apply for taxable years beginning after December 31, 2017, and before January 1, 2019.

**Partnership Audit Regime Amended Return** – For partnerships and LLCs, classified as partnerships that were audited by the Internal Revenue Service (IRS) under its new partnership audit regime and that made a federal alternative payment election (push-out), or were granted a different election to push-out by the FTB, should file an amended group nonresident return for nonresident direct individual partners and members that were included on the original group nonresident return.

**New Partnership Audit Regime** – For federal purposes, the Bipartisan Budget Act of 2015 replaced the Tax Equity and Fiscal Responsibility Act of 1982, creating a centralized partnership audit regime, and generally transferring the liability for the tax due to the partnership. All partnerships with taxable years beginning after 2017 are subject to this new regime unless an eligible partnership elects out. For California purposes, taxable years beginning on or after January 1, 2018, partnerships are required to report each change or correction made by the IRS, to the FTB, for the reviewed year within six months after the date of each final federal determination, and will generally be liable for the tax due.

**Backup Withholding** – With certain limited exceptions, payers that are required to withhold and remit backup withholding to the IRS are also required to withhold and remit to the FTB on income sourced to California. If the payee has backup withholding, the payee must contact the FTB to provide a valid Taxpayer Identification Number (TIN), before filing the tax return. Failure to provide a valid TIN may result in a denial of the backup

withholding credit. For more information, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **backup withholding**.

**Doing Business** – A taxpayer is doing business if it actively engages in any transaction for the purpose of financial or pecuniary gain or profit in California or if **any** of the following conditions is satisfied:

- The taxpayer is organized or commercially domiciled in California.
- The sales, as defined in California R&TC Section 25120(e) or (f), of the taxpayer in California, including sales by the taxpayer's agents and independent contractors, exceed the lesser of \$637,252 or 25% of the taxpayer's total sales.
- The real property and tangible personal property of the taxpayer in California exceed the lesser of \$63,726 or 25% of the taxpayer's total real property and tangible personal property.
- The amount paid in California by the taxpayer for compensation, as defined in R&TC Section 25120(c), exceeds the lesser of \$63,726 or 25% of the total compensation paid by the taxpayer.

In determining the amount of the taxpayer's sales, property, and payroll for doing business purposes, include the taxpayer's pro rata share of amounts from partnerships and S corporations.

For more information, see R&TC Section 23101 or go to [ftb.ca.gov](http://ftb.ca.gov) and search for **doing business**.

**Mental Health Services Tax on Income Over \$1 Million** – Nonresident individuals with over \$1 million of California taxable income are eligible to be included in group nonresident returns. An additional 1% mental health services tax will be assessed on their **entire** California taxable income if they elect to be part of the group return. This differs from when individuals file their own return and only the taxable income **in excess** of \$1 million is subject to the additional 1% tax. Individuals should be aware of this difference when making their irrevocable election to be included in the group return.

For individuals included in two or more group returns, the additional 1% tax applies if their combined California taxable income from all their group returns is more than \$1 million. For example, an individual is included in two group returns. The individual's taxable income on each group return is less than \$1 million. However, the combined taxable income from the two group returns is over \$1 million. The individual's income reported on each group return is subject to the additional 1% tax. The business entity/corporation is responsible for finding out from each individual included in the group return if the individual has total California taxable income in excess of \$1 million.

**Single-Sales Factor Formula** – R&TC Section 25128.7 requires all business income of an apportioning trade or business, other than an apportioning trade or business under R&TC Section 25128(b), to apportion its business income to California using the single-sales factor formula. For more information, get Schedule R, Apportionment and Allocation of Income, or go to [ftb.ca.gov](http://ftb.ca.gov) and search for **single sales factor**.

**Market Assignment** – R&TC Section 25136 requires all taxpayers to assign sales, other than sales of tangible personal property, using market assignment.

The market assignment method and single-sales factor apportionment may result in California sourced income or apportionable business income if a taxpayer is receiving income from intangibles or services from California sources. Such income includes:

1. Sales from services to the extent that the purchaser of the service receives the benefit of the service in California.
2. Sales of intangible property to California to the extent that the intangible property is used in California. For marketable securities, the sales are in California if the customer is in California.

3. Sales from the sale, lease, rental, or licensing of real property if the real property is located in California.

4. Sales from the rental, lease, or licensing of tangible personal property if the property is located in California.

For more information, see R&TC Section 25136 and Cal. Code Regs., tit. 18 section 25136-2, get Schedule R, or go to [ftb.ca.gov](http://ftb.ca.gov) and search for **market assignment**.

**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.

## A Introduction

A group nonresident return may be filed by:

1. A business entity, acting as the authorized agent for its electing nonresident individual shareholders/partners/members to report the distributive shares of income from the business entity derived from California sources or from doing business in California. See R&TC Section 18535.
2. A corporation, acting as the authorized agent for its electing nonresident directors, to report the directors' wages, salaries, fees, or other compensation from that corporation for director services sourced to California, including attendance of board of directors' meetings. See R&TC Section 18536.
3. A business entity, acting as the authorized agent for its electing nonresident aliens without an SSN or ITIN, to report the nonresident aliens' compensation for services performed in California. See R&TC Section 18537.

The business entity/corporation files the return and pays the tax on behalf of the electing nonresident individuals. A group nonresident return is considered a group of individual returns that meets the California individual income tax return filing requirement. Thus, a qualified nonresident individual who elects to be included in the group nonresident return does not file a separate personal income tax return for the tax year.

**Income Taxed at the Highest Marginal Rate** – The income reported on the group return is taxed at the highest marginal rate of 12.3%.

**Use Form 540NR** – The business entity/corporation uses Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, for the group nonresident return. Special instructions for completing Form 540NR are explained in Section O, Instructions for Completing Group Nonresident Return.

**Use a Calendar Year End** – The group nonresident return and any estimate payments are due on a calendar year basis, even if the business entity/corporation has a fiscal year end. The group returns for any tax periods ending in 2021 are due April 15, 2022. The group returns for any periods ending in 2022 will be due April 15, 2023. For example:

- If a partnership's taxable year ends on June 30, 2021, then report on the 2021 group return the California source income from each electing partner's Schedule K-1 (565), Partner's Share of Income, Deductions, Credits, etc., for the taxable year ending June 30, 2021. Even though the fiscal year ends June 30, 2021, the estimate payments are not due until 4/15/21, 06/15/21, 9/15/21, and 1/18/22.
- The corporation reports the director's compensation that he or she received in 2021 on the 2021 group return.



## B Filing Information and Important Due Dates

Form Type	Form Number	Can be Filed Electronically?	Due Dates for Tax Year 2021
Group Return	<b>Form 540NR</b> , California Nonresident or Part-Year Resident Income Tax Return  See Section O and the sample on page 19 for special instructions.	No.	<b>4/15/22</b> – Original due date  <b>10/15/22</b> – Extended due date  California extension is automatic.
Extension Tax Payment Voucher	<b>Form FTB 3519</b> , Payment for Automatic Extension for Individuals  See Section N and the sample on page 19 for special instructions.	Yes. Use Web Pay for Individuals at <b>ftb.ca.gov/pay</b> .  For mandatory e-pay, see Section K.	<b>4/15/22</b>
Estimate Tax Payment Voucher	<b>Form 540-ES</b> , Estimated Tax for Individuals  See Sections J, K, L and the sample on page 19 for special instructions.	Yes. Use Web Pay for Individuals at <b>ftb.ca.gov/pay</b> .  For mandatory e-pay, see Section K.	<b>Due dates for taxable year 2021.</b> <b>4/15/22</b> – 1st installment <b>6/15/22</b> – 2nd installment <b>9/15/22</b> – 3rd installment <b>1/15/23</b> – 4th installment

When the due date falls on a weekend or holiday, the deadline to file and pay without penalty is extended to the next business day.

Due to the federal Emancipation Day holiday observed on April 15, 2022, tax returns filed and payments mailed or submitted on April 18, 2022, will be considered timely.

## C Requirement for the Electing Individual to File a California Income Tax Return

The requirement to file a California personal income tax return is determined on an individual basis. See “Do I Have to File?” in the Form 540NR tax booklet.

For 2021, a full-year nonresident is required to file a return if the individual has any California source income and has more than \$19,310 gross income from all sources or more than \$15,448 adjusted gross income from all sources. For prior years, get the Form 540NR booklet for the appropriate year.

## D Why File a Group Nonresident Return

A group nonresident return is filed on behalf of the electing nonresident individuals for their convenience. When filing an individual return, a nonresident must report all income from

all sources in addition to the California source income. On the group nonresident return, only the California source pass-through income, director's compensation, or nonresident alien's compensation is reported. The income is taxed at the highest marginal tax rate of 12.3% and no deductions or credits are allowed except those directly attributable to the business entity's activity.

## E Who Can Be Included in the Group Nonresident Return

To be included in the group nonresident return, **all** the following requirements must be met:

- Only individuals can be included on the group return. Individual means a natural person and his or her spouse/RDP. Individual also includes the grantor of a grantor trust described under IRC Sections 671-679 and not recognized as a separate taxable entity for income tax purposes when the grantor is an individual.
 

**Example:** The ABC partnership consists of a general partner and 20 limited partners. The general partner is a corporation. The limited partners consist of 15 nonresident individuals, an S corporation, a nonresident estate, an LLC, a limited liability partnership (LLP), and a trust (which is not a grantor trust). The 15 nonresident individuals may qualify to be included in the group nonresident return. None of the other partners can be included in the group nonresident return.
- The individual must be a full-year nonresident of California. For information to help you determine your residency status, get FTB Pub. 1031, Guidelines for Determining Resident Status.
- The income from the business entity/corporation is the only California source income of the individual, unless the other California source income is being reported on another group nonresident return.

**Example:** A nonresident individual has California source income from a business entity and from an individually owned California rental property. This individual cannot be included in the group return of the business entity because the individual has income from an individually owned California rental property.

**Example:** A nonresident individual has California source income from the ABC partnership and the XYZ partnership. The individual does not have California source income from any other source. The individual can elect to be included in the group nonresident return of both partnerships. The individual cannot elect to be included in the group nonresident return of only one of the partnerships.

**Example:** A nonresident individual is a corporate director of a corporation and received California source director fees. The individual is also a partner in a partnership that derives income from California sources. The individual can be included in the group nonresident returns of both the corporation and the partnership. The individual cannot be included in only one of the group nonresident returns.

**Example:** XYZ partnership does business in California and has three partners -- two nonresident individuals (A and B) and partnership CDF. Partnership CDF has two partners -- nonresident individual M and a C corporation. Individuals A, B, and M wish to file one group return to include all of the partners deriving California sourced income from XYZ partnership.

Tiered partnerships (and other tiered ownership structures) are not allowed to file a group return to combine all of their business entities and individual nonresident partners on one group return. Each of the tiered partnerships must file a separate group nonresident return for their electing individual

nonresident partners and cannot include any business entities in the group nonresident return.

XYZ partnership may file a group nonresident return for individuals A and B. XYZ partnership cannot include partnership CDF or any of CDF's partners in the group nonresident return. For taxable years beginning on or after January 1, 2009, partnership CDF may elect to file a group nonresident return for nonresident individual partner M. However, the C corporation may not be included in the group nonresident return because group nonresident returns cannot include business entities.

## F Individual's Decision to be Included in the Group Nonresident Return

**The Individual's Decision is Irrevocable** – Each nonresident individual must decide whether to be included in the group nonresident return prior to its filing. Once the group nonresident return is filed, the election to be included in the group nonresident return is irrevocable for the taxable year. Once filed, the group return cannot be amended to either include or exclude a nonresident individual. Similarly, once an electing nonresident individual is included in the group return, the individual may not subsequently file a separate individual return for the taxable year.

**Exception:** The individual may discover after the group return was filed that he or she did not qualify to be included in the group nonresident return. For example, the individual had income from other California sources that were not reported on any other group nonresident return. The individual must file a return on a separate basis reporting all his or her California source income. Having other sources of California losses will not disqualify the individual from being included in a group nonresident return.

**Residents of Arizona, Guam, Oregon, and Virginia** – If you file your own individual return, you may qualify to claim the other state tax credit. This credit is not allowed if you are included in the group return. Thus, you may want to consult with a tax advisor before making the irrevocable election to be included in the 2021 group return.

**Business Entity's/Corporation's Responsibility to Inform Individuals** – The business entity/corporation is responsible for:

- Allowing each nonresident individual the annual option of being included in the group nonresident return.
- Informing each nonresident individual of the terms and conditions of filing a group nonresident return specified on form FTB 3864, Group Nonresident Return Election, included in this publication.

The business entity/corporation is responsible for finding out from each individual included in the group return if the individual has total California taxable income in excess of \$1 million. If so, it is the business entity/corporation's responsibility to report and pay the additional 1% mental health services tax on the group return. See General Information, for more information.

## G Election to File a Group Nonresident Return

The business entity/corporation makes an annual election to file a group nonresident return on behalf of the electing nonresident individuals. Once made, the election is irrevocable for the taxable year. Make the election by attaching a completed and signed form FTB 3864, to the Form 540NR filed for the group.

## H Return for Shareholders/Partners/Members

Shareholders/partners/members report on the group nonresident return their distributive share of income from the business

entity derived from California sources or from doing business in California.

## Reporting of Gains/Losses

**Capital Gains/Losses** – All limitations normally applied at the individual level apply on the nonresident group return. For instance, an individual's California source capital losses from a business entity may only be deducted to the extent of California source capital gains, plus \$3,000. The allowable capital loss for each electing nonresident is totaled and entered on the return. The filing status of nonresident electing individuals is deemed to be single, limiting each to a \$3,000 capital loss. The business entity must keep track of the allocable share of the California source capital gains and losses (including carryovers) for each electing nonresident individual.

**IRC Section 1231** net losses are allowed in full.

**Passive Losses** – The business entity must complete a single form FTB 3801, Passive Activity Loss Limitations, for the electing nonresident individuals included in the group return. Only California source passive losses are reported on form FTB 3801. Passive losses will be allowed only to the extent of passive income. When losses are not allowed, they are suspended at 100% for each electing nonresident individual. When suspended passive losses are released by current year passive income, the suspended prior year losses offset the current year passive income on the group return. Suspended prior year losses are also released upon disposition of the entire interest in the passive activity. The business entity must keep track of the allocable share of the suspended California source passive losses for each electing nonresident individual included in the group return.

## Individual Deductions Not Allowed on the Group Nonresident Return

Individual deductions are not allowed on the group nonresident return. Individual deductions include, but are not limited to, the deduction for self-employment tax, the IRC Section 179 deduction, charitable contributions, itemized deductions, and the standard deduction. However, there is an exception for the deduction for contributions to a deferred compensation plan.

## Net Operating Loss (NOL)

An NOL is also an individual deduction. An individual cannot claim an NOL deduction on the group nonresident return. An individual who reports a net loss on the group nonresident return forgoes any NOL deduction that could have resulted on an individual nonresident return from that net loss.

## Contributions to a Deferred Compensation Plan

Partners of a partnership and members of an LLC (but not shareholders of an S corporation) are allowed a deduction on the group nonresident return under IRC Section 401 through Section 424, as modified by California. If an electing nonresident individual has earned income from any other source, no deduction is allowed. The definition for "earned income" means the net earnings from self-employment per IRC Section 401(c)(2).

The deduction is computed by multiplying the allowable federal deduction by the electing nonresident individual's California apportionment percentage.

## Credits

Credits that can be claimed on the group nonresident return are credits that are directly attributable to the business entity's activities such as the new employment credit, the low-income housing credit, and the research credit. Get the business

entity tax booklets for more information on credits that can be claimed. Attach the applicable business credit forms to the group Form 540NR.

Individual credits, such as the personal, blind, senior, or dependent exemption credits, the other state tax credit, and the PTE elective tax credit are not allowed on the group nonresident return. To use individual credits, such as the other state tax credit or the PTE elective tax credit, the individual should file a separate Form 540NR and should not be included in the group return. See Section F, Individual's Decision to be Included in the Group Nonresident Return, for more information.

If the credits directly attributable to the business entity's activities exceed the amount of tax for a given year and are available for carryover, the business entity will properly account for such credit with respect to each individual included in the group nonresident return.

Nonbusiness income from intangibles should generally be allocated to each shareholder's/partner's/member's state of residence. For more information, see instructions for Form 565, Partnership Return of Income, or Form 568, Limited Liability Company Return of Income.

## Special Information for Partnerships and LLCs Subject to Apportionment

Cal. Code Regs., tit. 18 section 17951-4 applies to the income computation of the nonresident partners/members of a partnership/LLC. The regulation provides that 100% of the nonresident's distributive share of the partnership's business income plus any guaranteed payment, is subject to apportionment. Guaranteed payments are treated as part of a partner's distributive share of partnership business income. See R&TC Section 17854.

**Investment Partnership** – If the partnership qualifies as an investment partnership under R&TC Section 17955(c), generally the dividends, interest, gains, and losses from that partnership will be sourced in the partner's/member's state of residence.

If the partnership does not qualify as an investment partnership under R&TC Section 17955(c) or if the partnership does qualify as an investment partnership but the partner/member is disqualified under R&TC Section 17955(b), pertaining to investment activities interrelated with trade or business within this state, then the normal apportionment and allocation rules apply in determining the character of the income as business or nonbusiness. Business income should be apportioned using the partnership factors.

## Withholding Requirements of S Corporation/ Partnership/LLC

Withholding is required if either of the following apply:

- California source income is allocable under IRC Section 704 to a foreign nonresident partner/member.
- California source income distributed to a domestic (nonforeign) nonresident shareholder/partner/member exceeds \$1,500 in the calendar year.

Withholding is not required if the shareholder/partner/member has received authorization waiving the withholding from the FTB. However, there is no provision in the tax law to allow a waiver of withholding for a foreign nonresident partner/member.

Non-California partnerships are subject to withholding requirements on a sale of California real property at a rate of 3 1/3% (.0333) of sales price or 12.3% of gain. The alternative withholding rate for the gain on the sale of California real property by S corporations is 13.8% and 15.8% for financial S corporations. The withholding rates are 8.84% for foreign

corporate partners/members, 12.3% for foreign nonresident individual partners/members, and 7% for all domestic nonresident shareholders/partners/members.

For withholding rates and additional information regarding California withholding requirements, get FTB Pub. 1016, Real Estate Withholding Guidelines; FTB Pub. 1017, Resident and Nonresident Withholding Guidelines, or call the Withholding Services and Compliance phone service at **888.792.4900**.

## I Return for Directors

Directors report on the group nonresident return their director's wages, salaries, fees, or other compensation from the corporation for director services sourced to California, including attendance at board of directors' meeting.

**Deductions Are Not Allowed** – Directors are not allowed to claim any deductions on the group nonresident return. This includes, but is not limited to, expenses related to their director compensation, itemized deductions, standard deduction, net operating losses, and adjustments to income such as individual retirement account deductions.

**Credits Are Not Allowed** – Directors are not allowed to claim any credits on the group return. Credits include, but are not limited to, the personal, blind, senior, or dependent exemption credit and all special credits such as the other state tax credit. To use individual credits, the director should file a separate Form 540NR and should not be included in the group return. See Section F, Individual's Decision to be Included in the Group Nonresident Return, for more information.

**S Corporations Filing A Group Nonresident Return for Both Directors and Shareholders** – An S corporation that has both electing nonresident directors and nonresident shareholders must file only one group nonresident return including both directors and shareholders.

## J Estimated Tax Requirements

Generally, taxpayers with a tax liability less than \$500 do not need to make estimated tax payments. If the tax is underpaid, a penalty for the underpayment of estimated tax will be assessed based on the net tax of the group nonresident return. Get Form 540-ES, Estimated Tax for Individuals, and form FTB 5805, Underpayment of Estimated Tax by Individuals and Fiduciaries, for more information.

**Estimated Tax Payments** – Installments due for each taxable year shall be:

- 30% of the required annual payment for the 1st required installment
- 40% of the required annual payment for the 2nd required installment
- No installment is due for the 3rd installment
- 30% of the required annual payment for the 4th required installment

## K How to Make Estimated Tax Payments on Form 540-ES

**Mandatory Electronic Payments (e-pay)** – You are required to remit all your payments electronically once you make an estimate or extension payment exceeding \$20,000 or you file an original return with a total tax liability over \$80,000. Once you meet this threshold, all subsequent payments regardless of amount, tax type, or taxable year must be remitted electronically. The first payment that would trigger the mandatory e-pay requirement does not have to be made electronically. Individuals who do not send the payment electronically may be subject to a 1% noncompliance penalty. Electronic payments can be made using Web Pay. For more information, go to [ftb.ca.gov/e-pay](http://ftb.ca.gov/e-pay).



You can request a waiver from mandatory e-pay if one or more of the following is true:

- You have not made an estimated tax or extension payment in excess of \$20,000 during the current or previous taxable year.
- Your total tax liability reported for the previous taxable year did not exceed \$80,000.
- The amount you paid is not representative of your total tax liability.

For more information or to obtain the waiver form, go to [ftb.ca.gov/forms](http://ftb.ca.gov/forms) and search for **4107**.

**Caution:** Do not include estimate payments due for the business entity with your group return payments. Business entity payments must be made separately from the group payments to avoid delays and errors in processing returns.

To make group nonresident return estimated tax payments:

1. Whether required to pay electronically or not, Web Pay for Individuals may be used to make your estimated tax payments electronically. For Web Pay instructions, go to [ftb.ca.gov/pay](http://ftb.ca.gov/pay) for more information.
2. If not using Web Pay, mail your estimate payments using Form 540-ES. **Caution:** If you make estimated tax payments with any other estimated tax voucher, such as the Form 100-ES, Corporation Estimated Tax, the payments will not be properly credited for the group nonresident return.
3. Type or print the following information in the top margin of the Form 540-ES:

GROUP FILING PROGRAM MS L170  
ATTN: IVS (732)

4. Enter the name, address, and federal employer identification number (FEIN) as follows:
  - First name: Enter "A" if a partnership or LLC. Enter "C" if a corporation.
  - Last name: Enter "PTSP" if a partnership or LLC. Enter "SGNF" if a corporation.
  - Address: Enter the business entity's or corporation's name and address.
  - Social security number (SSN) or Individual Taxpayer Identification Number (ITIN): Enter the FEIN of the business entity/corporation.

See the sample on page 19 of this publication.

5. Mail the estimate voucher with payment to the address shown on the Form 540-ES.

To avoid penalties and interest, submit your payments by the estimate payment due dates. See Section B, Filing Information and Important Due Dates.

Use MyFTB for Individuals to verify receipt of your payment. For more information, go to [ftb.ca.gov](http://ftb.ca.gov) and login or register for MyFTB.

## L Moving Estimated Payments

You may need to move estimated tax payments **"from the group nonresident return to the individual nonresident return"** or **"from the individual nonresident return to the group nonresident return."**

**Caution:** The election to be included in the group return is irrevocable once the group return is filed for the taxable year. Therefore, after the group return is filed, individuals cannot elect out of the group return and move their share of the group return's tax payments to their individual account.

**Schedule 1067B** – Use Schedule 1067B, Group Nonresident Return Payment Transfer Request, to authorize us to move estimated tax payments.

1. Complete one Schedule 1067B to move payments to the group. Complete a **separate** Schedule 1067B to move

payments to the individual. **Do not** combine these requests on one Schedule 1067B.

2. A general partner, member-manager, corporate officer, or attorney-in-fact of the business entity/corporation must sign the form.
3. Fax or mail the completed form to:  
Fax: 916.845.9392  
Mailing address:

GROUP FILING PROGRAM MS L170  
ATTN: INFORMATION VALIDATION SECTION (732)  
FRANCHISE TAX BOARD  
PO BOX 1468  
SACRAMENTO CA 95812-1468

**Time Period to Move the Payments** – Once a request is received, it takes six to eight weeks to move the estimated tax payments and have the payments available to be claimed on the return. Allow sufficient time for the transfers to take place before filing the group and individual returns.

- If an individual files a separate return before the transfer to the individual becomes effective, the individual will not get credit for these payments when the return is processed and a tax-due notice will be issued.
- If the group nonresident return is filed before estimated tax payments can be transferred to the individual, the estimated payments may be applied to the group nonresident return during processing and be unavailable for transfer to the individual.
- If the group nonresident return is processed before estimated tax payments from an individual can be transferred to the group, a tax-due notice will be issued.

**To Ensure Proper Credit for the Estimated Tax Payments on the Individual's Return**, the individual should write "Group Return Payment" and the FEIN of the business entity/corporation to the left of the amount on line 82 of their individual Form 540NR return.

## M Important Information – How to Avoid Common Errors

**Use Forms for the Correct Tax Year** – You can download, view, and print current and prior year forms at [ftb.ca.gov/forms](http://ftb.ca.gov/forms).

**Fiscal Year End Returns are not Allowed** – Use a calendar year for the group nonresident return, even if the business entity/corporation has a fiscal year end. See Section A, Introduction.

Also make any estimated tax payments on a calendar year basis. See Section B, Filing Information and Important Due Dates.

**Use Web Pay or Form 540-ES to Make Estimated Tax Payments for the Group Nonresident Return** – Follow the instructions to make electronic payments on Web Pay or see Section K, How to Make Estimated Tax Payments on Form 540-ES, for mailing in your estimated tax payments.

**Caution:** You may be required to make your estimated tax payments electronically. See Section K for more information. If not otherwise required by law, you may mail your estimated tax payments using Form 540-ES. Estimated tax payments made on Form 100-ES will not be credited to the group nonresident return.

**Election to be Included in the Group Nonresident Return is Irrevocable** – Inform individuals included in the group that once the group nonresident return is filed, it cannot be amended to either include or exclude a nonresident individual.

**Include Only Individuals in the Group Nonresident Return** – You cannot include in the group nonresident return Partnerships, LLCs, C corporations, S corporations, Estates, or Trusts (other than the grantor of grantor trusts described under IRC Sections 671-679 and not recognized as a separate taxable entity for income tax purposes).



**Use Form 540NR and Attach all parts of the Schedule 1067A and a Signed Form FTB 3864** – Use Form 540NR to file the group return. Follow the instructions in Section O, Instructions for Completing Group Nonresident Return, for completing the return. Attach all parts of Schedule 1067A, Nonresident Group Return Schedule, and the form FTB 3864. An authorized general partner, member-manager, corporate officer, or an attorney-in-fact of the business entity must sign form FTB 3864. A new election must be signed each year and attached to each group nonresident return filed.

**Use Form FTB 3519 to Make an Extension Payment for the Group Nonresident Return** – Form FTB 3519, Payment for Automatic Extension for Individuals, is the extension payment voucher to use for the group nonresident return. Follow the instructions in Section N, How to Make an Extension Payment. **Caution:** The payment will not be properly credited to the group nonresident return if you use any other extension payment voucher, such as the form FTB 3537, Payment for Automatic Extension for LLCs.

## N How to Make an Extension Payment

Get form FTB 3519, for more information.

Use form FTB 3519 only if both apply:

- You cannot file your 2021 return by April 15, 2022.
- You owe tax for 2021.

**Caution:** Do not include extension payments due for the business entity with your group return payments. Business entity payments must be made separate from the group payments to avoid delays and errors in processing returns.

To make a group nonresident return extension payment:

1. Whether required to pay electronically or not, Web Pay for Individuals may be used to make your extension payment electronically. For Web Pay instructions, go to [ftb.ca.gov/pay](http://ftb.ca.gov/pay) for more information.
2. If not using Web Pay, mail in your form and payment. Type or print the following information in the top margin of the form FTB 3519:

GROUP FILING PROGRAM MS L170  
ATTN: IVS (732)

3. Enter the name, address, and FEIN as follows:
  - First name: Enter “A” if a partnership or LLC. Enter “C” if a corporation.
  - Last name: Enter “PTSP” if partnership or LLC. Enter “SGNF” if a corporation.
  - Address: Enter the business entity’s/corporation’s name and address.
  - SSN or ITIN: Enter the FEIN of the business entity/corporation.

See the sample on page 19 of this publication.

4. Mail the voucher with payment to the address shown on the form FTB 3519.

**Caution:** An extension payment made with any other extension voucher, such as the form FTB 3537 for LLCs, will not be properly credited to the group.

## O Instructions for Completing Group Nonresident Return

First complete Schedule 1067A. Then, complete the group nonresident return using personal income tax Form 540NR. Follow the instructions for the Form 540NR with the following modifications:

- **Identify the Return as a Group Nonresident Return** – Type or print the following information in the top margin of Form 540NR; Side 1:  
GROUP FILING PROGRAM MS L170  
ATTN: IVS (732)

- **Fiscal Year not Allowed** – You cannot file using a fiscal year end. Group nonresident returns must be for a calendar year. For more instructions and examples, see Section A, Introduction.

- **Name and Address** – Enter the name and address as follows:
  - First name: Enter “A” if a partnership or LLC. Enter “C” if a corporation.
  - Last name: Enter “PTSP” if a partnership or LLC. Enter “SGNF” if a corporation.
  - Additional Information: Enter the business entity’s/corporation’s name.
  - Street Address: Enter the business entity’s/corporation’s address.

See the sample on page 19 of this publication.

- **SSN or ITIN** – Enter the FEIN of the business entity/corporation.
- **Filing Status** – Use the Single filing status. To the right of the Single filing status, write “Group Nonresident Return.”
- Skip line 6 through line 31.
- **Line 32, CA Adjusted Gross Income.**

Group nonresident return for:	Enter on Form 540NR, line 32
Shareholders/partners/members	Total from Schedule 1067A, Part I, line 1(e)
Directors	Total from Schedule 1067A, Part II, line 2(e)
Both S corporation directors and shareholders	Total from Schedule 1067A, Part II, line 3(e)
Nonresident aliens with no SSN/ITIN	Total from Schedule 1067A, Part III, line 4(b)

- **Line 35, CA Taxable Income.** Enter the same amount entered on line 32.
- Skip line 36 through line 39.
- **Line 40, CA Regular Tax Before Credits.**

Group nonresident return for:	Enter on Form 540NR, line 40
Shareholders/partners/members	Total from Schedule 1067A, Part I, line 1(f)
Directors	Total from Schedule 1067A, Part II, line 2(f)
Both S corporation directors and shareholders	Total from Schedule 1067A, Part II, line 3(f)
Nonresident alien with no SSN/ITIN	Total from Schedule 1067A, Part III, line 4(c)

- Skip line 41.
- Line 42, enter the amount from line 40.
- Skip line 50 through line 55.

• **Line 58 through line 60, Credits.**

Group nonresident return for:	Enter on Form 540NR, line 58 through line 60
Shareholders/partners/members	Line 58 and line 59, the credit name, code number, and total amount of each type of credit. Only credits directly attributable to the business entity's activities can be claimed. See Credits in Section H, Return for Shareholders/Partners/ Members, for more information.
Directors	Skip these lines. Directors are not allowed to claim any credits.

- Skip line 61.
- Line 62, add line 58 through line 60. These are your total credits.
- Line 63, subtract line 62 from line 42. If less than zero, enter 0.
- Skip line 71.
- **Line 72, Mental Health Services Tax.** (See General Information, for more information)

Group nonresident return for:	Enter on Form 540NR, line 72
Shareholders/partners/members	Total from Schedule 1067A, Part I, line 1(h)
Directors	Total from Schedule 1067A, Part II, line 2(g)
Both S corporation directors and shareholders	Total from Schedule 1067A, Part II, line 3(g)
Nonresident aliens with no SSN/ITIN	Total from Schedule 1067A, Part III, line 4(d)

- Skip Line 73 and line 74.
- **Line 75, Total Tax.**

Group nonresident return for:	Enter on Form 540NR, line 75
Shareholders/partners/members	Total from Schedule 1067A, Part I, line 1(i)
Directors	Total from Schedule 1067A, Part II, line 2(h)
Both S corporation directors and shareholders	Total from Schedule 1067A, Part II, line 3(h)
Nonresident alien with no SSN/ITIN	Total from Schedule 1067A, Part III, line 4(e)

- **Line 81, California Income Tax Withheld.** (Withholding from Form W-2 only.)

Group nonresident return for:	Enter on Form 540NR, line 81
Shareholders/partners/members	<b>Do not</b> make an entry. Skip to line 82.
Directors	Total from Schedule 1067A, Part II, line 2(j)

Nonresident aliens with no SSN/ITIN	Total from Schedule 1067A, Part III, line 4(f)
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- **Line 82, 2021 CA Estimated Tax and Other Payments.**  
Enter the total of any:
  - a. California estimated tax payment you made (Form 540-ES) for 2021,
  - b. Overpayment from your 2020 California group nonresident return that you applied to your 2021 estimated tax, and
  - c. Payment you sent with form FTB 3519.
  - d. If you are including Nonconsenting Nonresident (NCNR) tax, write LLC on the dotted line to the left of the amount on line 82, and attach Schedule K-1 (568) with the amount of NCNR tax claimed.

**Caution:** If claiming payments made by an individual included in the group nonresident return, you may need to have those payments moved to the group account before filing the group return. See Section L, Moving Estimated Payments.

- **Line 83, Withholding (Form 592-B and/or 593).**

Group nonresident return for:	Enter on Form 540NR, line 83
Shareholders/partners/members	The total California tax withheld from Forms 592-B, Resident and Nonresident Withholding Tax Statement and 593, Real Estate Withholding Statement for the individuals included in the group nonresident return. Attach a copy of the Forms 592-B and 593 to the group nonresident return.
Directors	<b>Do not</b> make an entry.
Nonresident aliens with no SSN/ITIN	Do not make an entry.

- Complete the remaining lines of the Form 540NR as appropriate.
- If an amount is due, you may make the payment online. To make a payment online, go to [ftb.ca.gov/pay](https://ftb.ca.gov/pay) for more information. If you are mailing in your payment, use black or blue ink, make the check or money order payable to the "Franchise Tax Board" for the full amount. Write the FEIN of the business entity/corporation, and "2021 Group 540NR" on the check or money order.
- Make all checks or money orders payable in U.S. dollars and drawn against a U.S. financial institution.
- Complete, sign, and attach form FTB 3864 to Form 540NR. The form FTB 3864 must be signed by an authorized person or attorney-in-fact. Signing form FTB 3864 means the business entity/corporation and all the electing individuals agree to the terms and conditions for filing a group nonresident return.
- Attach Schedule 1067A.
- Attach business credit form used to report credits on Form 540NR, lines 58-60.
- Do not attach any federal returns.
- Mail the group nonresident return using one of the appropriate addresses shown in the Refund or Amount You Owe Section on Form 540NR.

# Instructions for Schedule 1067A

## General Information

Complete the applicable Part(s) of Schedule 1067A and attach all Parts of Schedule 1067A and any supplemental schedules, if applicable, to the group nonresident return (Form 540NR). The additional schedules must contain the same columns in the same order as the Schedule 1067A.

Use this table to determine which parts of Schedule 1067A to complete. If a Part of Schedule 1067A is not applicable, leave blank.

Group Nonresident Return for:	Complete
Shareholders/partners/members	Side 1 – Part I
Directors	Side 2 – Part II
Nonresident Aliens with no SSN/ITIN	Side 3 – Part III
Both S corporation directors and shareholders	Side 1 and Side 2 - Part I and Part II

## Instructions for Part I

### Side 1 Entity Information

Enter the name, federal employer identification number (FEIN), doing business as (DBA), and the California corporation number or California Secretary of State (SOS) file number of the business entity that is filing the group nonresident return on behalf of its electing shareholders/partners/members.

### Part I – Electing Nonresident Individuals (Shareholders/Partners/Members) Included in the Group Nonresident Return

#### Columns (a) and (b)

- Enter the social security number (SSN) or individual taxpayer identification number (ITIN) and name of each electing individual. If the individual has a spouse/RDP, include the spouse's/RDP's information in both columns.
- For a qualified grantor trust (described in IRC Sections 671-679 and not recognized as a separate taxable entity for income tax purposes), do not enter the name of the trust. Enter the grantor's name and SSN.

Only individuals (and the grantor of a grantor trust not recognized as a separate taxable entity) can be included on the group nonresident return. **Do not** enter partnerships, LLCs, corporations, estates, trusts, or other entities.

**Column (c)** Enter the individual's distributive share of California source income. For example, if a partnership's taxable year ends on June 30, 2021 then report on the 2021 group return the California source income from each electing partner's Schedule K-1 (565) for the taxable year ending June 30, 2021.

**Column (d)** Deferred compensation deductions are for partners and members only. S corporation shareholders do not qualify for this deduction. See FTB Pub. 1067, Section H, Return for Shareholders/Partners/Members, for more information.

**Column (g)** Enter the allowable amount of credits. Only credits directly attributable to the business entity's activities can be claimed. See FTB Pub. 1067, Section H, Return for Shareholders/Partners/Members, for more information.

If the credits exceed the amount of tax for a given year and credits are available for carryover, the business entity will properly account for such credit with respect to each individual included in the group nonresident return.

**Column (h)** If the nonresident individual's total CA taxable income from **all** sources is more than \$1 million, then multiply the amount from column (e) by 1%.

If a taxpayer's distributive share of California source income is over \$1 million from a single business entity, then an additional 1% mental health services tax will be assessed on the **entire** California taxable income if the taxpayer elects to be part of the group return.

For individuals included in two or more group returns, the additional 1% tax applies if their combined California taxable income from all their group returns is more than \$1 million. For example, a taxpayer is included in two group returns. The taxpayer's distributive share on each group return (amount in column (c)) is less than \$1 million, however, the combined taxable income from the two group returns is over \$1 million. The taxpayer's **entire** income reported on **each** group return is subject to the additional 1% mental health services tax.

**Column (j)** Enter the total amount withheld for nonresident and backup withholding from Form 592-B reported for the taxable year.

**Note:** If Part I and/or Part II is filled out but **not** Part III, attach Part I through Part III and any supplemental schedules, if applicable, to Form 540NR. Then mail the group nonresident return using the applicable address shown in the Refund or Amount You Owe section of Form 540NR.

## Instructions for Part II

### Side 2 Entity Information

Enter the corporation name, FEIN, DBA, and the California corporation number or California SOS file number of the corporation that is filing the group nonresident return on behalf of its electing nonresident directors.

### Part II – Electing Nonresident Directors Included in the Group Nonresident Return

**Columns (c) and (d)** Report each director's wages, salary, fees, or other compensation from the corporation for director services sourced to California, including attendance of board of director meetings. Enter in Column (c) the California source amount the corporation reported on a Form 1099. Enter in Column (d)

the California source amount the corporation reported on a Form W-2.

**Column (e)** Enter in Column (e) the total of Column (c) and Column (d).

**Column (g)** If the nonresident director's total CA taxable income from **all** sources is more than \$1 million, then multiply the amount from column (e) by 1%.

If a director's compensation from California source is over \$1 million from a single business entity, then an additional 1% mental health services tax will be assessed on the **entire** California taxable income if the director elects to be part of the group return.

For directors included in two or more group returns, the additional 1% tax applies if their combined California taxable income from all their group returns is more than \$1 million. For example, a director is included in two group returns. The director's compensation from California source on each group return is less than \$1 million, however, the combined taxable income from the two group returns is over \$1 million. The director's **entire** income reported on **each** group return is subject to the additional 1% mental health services tax.

**Column (i)** Enter your total California income tax withheld from your Form(s) W-2, box 17 or CA Sch. W-2, Wage and Tax Statement, box 17.

**Column (j)** Enter the total amount withheld for nonresident and backup withholding from Form 592-B reported for the taxable year.

**Note:** If Part I and/or Part II is filled out but **not** Part III, attach Part I through Part III and any supplemental schedules, if applicable, to Form 540NR. Then mail the group nonresident return using the applicable address shown in the Refund or Amount You Owe section of Form 540NR.

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## Instructions for Part III

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### Side 3 Entity Information

Nonresident alien means every individual other than a California resident who is neither a United States (U.S.) citizen nor a U.S. resident.

Enter the name, FEIN, DBA, and the California corporation number or California SOS file number of the business entity that is filing the group nonresident return on behalf of its nonresident aliens without an SSN/TIN.

#### Columns (a)

- Enter the First Name, Middle Initial and Last Name of the nonresident alien. "Nonresident alien" shall have the same meaning as described in R&TC Sections 17015 and 18624(f). If the individual has a spouse/RDP, include the spouse's/RDP's information in the column.

**Note:** If a nonresident alien subsequently becomes eligible for and is issued a Social Security Number (SSN) or Individual Tax Identification Number (ITIN), the Franchise Tax Board may require the nonresident individual to provide a letter or other form documenting the nonresident alien's SSN or ITIN.

- For a qualified grantor trust (described in IRC Sections 671-679 and not recognized as a separate taxable entity for income tax purposes), do not enter the name of the trust. Enter the grantor's First Name, Middle Initial and Last Name.

Only individuals (and the grantor of a grantor trust not recognized as a separate taxable entity) can be included on the group nonresident return. Do not enter partnerships, LLCs, corporations, estates, trusts, or other entities.

**Column (b)** Enter the nonresident alien's California source compensation from the business entity.

**Column (d)** If the nonresident alien's total CA taxable income from all sources is more than \$1 million, then multiply the amount from column (c) by 1%.

If a taxpayer's distributive share of California source income is over \$1 million from a single business entity, then an additional 1% mental health services tax will be assessed on the entire California taxable income if the taxpayer elects to be part of the group return.

For individuals included in two or more group returns, the additional 1% tax applies if their combined California taxable income from all their group returns is more than \$1 million. For example, a taxpayer is included in two group returns. The taxpayer's distributive share on each group return (amount in column (b)) is less than \$1 million, however, the combined taxable income from the two group returns is over \$1 million. The taxpayer's entire income reported on each group return is subject to the additional 1% mental health services tax.

**Column (f)** Enter the total amount withheld for nonresident and backup withholding from Form 592-B reported for the taxable year.

If Part III is filled out, attach all Parts of Schedule 1067A and any supplemental schedules, if applicable, to Form 540NR. Then mail the group nonresident return to the address below:

GROUP FILING PROGRAM MS 170  
ATTN: 732 IVS AUDIT (NONRESIDENT ALIEN)  
FRANCHISE TAX BOARD  
PO BOX 1565  
SACRAMENTO CA 95812-1565



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# How to Get Additional Information Regarding Group Nonresident Returns

**Correspondence Address** – Send correspondence regarding the group nonresident return to:

GROUP FILING PROGRAM MS L170  
ATTN: INFORMATION VALIDATION SECTION (732)  
FRANCHISE TAX BOARD  
PO BOX 1468  
SACRAMENTO CA 95812-1468

**Caution: Do not** mail Form 540NR or Form 540-ES to this address. Mail Form 540NR and Form 540-ES to the address shown on each form.

**Telephone:** 916.845.3465 for information on the group nonresident return.

**Fax:** 916.845.9392

**Forms by Internet** – You can download, view, and print California tax forms and publications at [ftb.ca.gov/forms](http://ftb.ca.gov/forms).

**Forms by Telephone and Mail** – Get the 540NR personal income tax booklet or the business entity tax booklet for the telephone number and address to order California tax forms and publications.

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## Additional Information

**Access Your Tax Information** – Go to [ftb.ca.gov](http://ftb.ca.gov) and login or register for MyFTB to view estimated tax payments, recent payments applied to your balance due, and the total balance due on your account.

Access other California state agency websites at [ca.gov](http://ca.gov).

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## 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.