

# 2021 Instructions for Form FTB 3801-CR

## Passive Activity Credit Limitations

These instructions are based on the Internal Revenue Code (IRC) as of **January 1, 2015**, and the California Revenue and Taxation Code (R&TC).

### Important Information

#### Rental Real Estate Activities

For taxable years beginning on or after January 1, 2020, the dollar limitation for the offset for rental real estate activities shall not apply to the low-income housing credit program. For more information, see California Revenue & Taxation Code (R&TC) Section 17561(d)(1).

### 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](http://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), California Adjustments - Residents, or Schedule CA (540NR), California Adjustments - Nonresidents or Part-Year Residents, 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 R&TC in the instructions. Taxpayers should not consider the instructions as authoritative law.

#### 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.

#### Military Personnel

Servicemembers domiciled outside of California, and their spouses/RDPs, may exclude the servicemember's military compensation from gross income when computing the tax rate on nonmilitary income. Requirements for military servicemembers domiciled in California remain unchanged. Military servicemembers domiciled in California must include their military pay in gross income. In addition, they must include

their military pay in California source income when stationed in California. However, military pay is not California source income when a servicemember is permanently stationed outside of California. Beginning in 2009, the Military Spouses Residency Relief Act may affect the California income tax filing requirements for spouses of military personnel. For more information, get FTB Pub. 1032, Tax Information for Military Personnel.

#### Nonresident

In determining California taxable income, nonresidents compute prior year items by taking into account only those items with a California source, subject to any limitations provided by law. For example, passive losses are limited to passive gains (IRC Section 469 and R&TC Sections 17551 and 17561). Make this computation even if you were always a nonresident or a former resident who moved out of California.

#### Part-Year Resident

California taxes part-year residents as residents for the period of the year they were California residents and as nonresidents for the period of the year they were nonresidents. Therefore, a part-year resident must compute any suspended passive losses as if they were a California resident for all prior years and as if they were a nonresident for all prior years. These amounts must then be prorated based upon the period of California residency and the period of nonresidency for the year.

#### Renewal Communities

California law does not conform to the tax incentives related to "renewal communities."

#### Expense Treatment for Small Business – IRC Section 179(b)(1)

California law generally conforms to the federal rules for expensing IRC Section 179. However, federal limitation amounts may be different than California limitation amounts. For California purposes, the maximum IRC Section 179 expense deduction allowed for 2021 is \$25,000.

The following may affect the computation of your passive activity credit limitations:

#### Material Participation in Real Property Business – IRC Section 469(c)(7)

Beginning in 1994, and for federal purposes only, rental real estate activities of taxpayers engaged in a real property business are not automatically treated as a passive activity. California did not conform to this provision. For California purposes, all rental activities are treated as passive activities. Therefore, an election under IRC Section 469(c)(7) is inapplicable for purposes of California personal

income or franchise tax and taxpayers should group rental activities without regard to IRC Section 469(c)(7). Get federal Form 8582, Passive Activity Loss Limitations, for general rules regarding grouping of activities.

#### Disclosure Requirements for Groupings

On January 24, 2010, the Internal Revenue Service issued Revenue Procedure 2010-13 regarding disclosure requirements for groupings. California generally conforms to Revenue Procedure 2010-13, which is effective for tax years beginning on or after January 25, 2010. A separate disclosure statement is not required for state purposes. Get federal Form 8582-CR, Passive Activity Credit Limitations, for more information.

### A Purpose

Use form FTB 3801-CR, Passive Activity Credit Limitations, to determine whether you have a passive activity credit for the current taxable year and, if so, how much of the credit is allowed for the current year. The amount of the credit that is disallowed in the current year is carried forward.

### B Special Note

Generally, California law is the same as federal law concerning passive activity credit limitations. Get federal Form 8582-CR for definitions.

Personal service corporations and closely held corporations subject to the passive activity rules must use form FTB 3802, Corporate Passive Activity Loss and Credit Limitations, instead of form FTB 3801, Passive Activity Loss Limitations, and form FTB 3801-CR.

### S Corporations

The passive activity loss rules apply as if the S corporation was an individual. This means that losses from passive activities **may not** be used to offset nonpassive income, except for \$25,000 in losses from rental real estate activities. See IRC Section 469(i). However, the material participation rules apply as if the S corporation was a closely held corporation. The material participation rules for closely held corporations are explained in the instructions for federal Form 8810, Corporate Passive Activity Loss and Credit Limitations. See IRC Section 469(h)(4) and the related regulations for more information.

To compute your California passive activity credit limitations for S corporations, use the worksheets in the instructions for federal Form 8582-CR, **using California amounts**. Enter the amount from Form 100S, California S Corporation Franchise or Income Tax Return, line 20, on form FTB 3801-CR, line 10, in place of the federal modified adjusted gross income.

## C Who Must File

Form FTB 3801-CR is filed by individuals, estates, trusts, and S corporations with any of the following credits from passive activities:

Credit	Code
Orphan drug credit carryover	185
Low-income housing	172
Research	183

Enter the code number for your credit on your tax return when you are able to claim the credit.

## D Passive Activities

See the instructions for federal Form 8582-CR for information about passive activities and passive activity credits.

### Dispositions

Unallowed passive activity credits, unlike unallowed passive activity losses, are not allowable when you dispose of your interest in an activity in a taxable transaction. However, you may elect to increase the basis of the credit property by the amount of the original basis reduction of the property to the extent that the credit has not been allowed under the passive activity rules. No basis adjustment may be elected on a partial disposition of an interest in a passive activity.

## E Passive Activity Credit Carryovers

Passive activity credits are suspended and carried forward indefinitely. Unlike losses, suspended credits are not allowed when you dispose of the activity. However, you may elect to increase your basis (by the amount of the original basis reduction) to the extent the credit has not been used.

The credit becomes allowable under the passive loss rules when there is sufficient passive income to allow its use or it is within the scope of the rental real estate rule. Once the credit becomes allowable under the passive loss rule, it is subject to the other limitations applicable to the use of credits, such as the limitation that credits may not reduce regular tax below tentative minimum tax.

In addition, the treatment of passive activity credits is determined in all respects by the general rules applicable to those credits, including carryover periods.

## F Overview of Form

The form consists of four parts.

### Part I — 2021 Passive Activity Credits

Use Part I to combine your credits from passive activities to determine if you have passive activity credits for 2021.

If your credits from all passive activities exceed the tax attributable to net passive income, you may have a suspended passive activity credit for 2021. Generally, you have net passive income if form FTB 3801, line 3 shows income. See the instructions for line 6 for details.

### Part II — Special Allowance for Rental Real Estate Activities with Active Participation

Use Part II to figure the credit allowed if you have any credits from rental real estate activities in which you actively participated (other than low-income housing credit). Get instructions for federal Form 8582-CR, see "Rental Activities."

### Part III — Passive Activity Credits Allowed

Use Part III to figure the amount of the passive activity credit (as determined in Part I) that is allowed for 2021 for all passive activities.

### Part IV — Election to Increase Basis of Credit Property

Use Part IV if you disposed of your entire interest in a passive activity in 2021 and elect to increase the basis of credit property used in a passive activity.

## Specific Line Instructions

For purposes of these instructions, "worksheet" refers to Worksheet 1 through Worksheet 9 in the instructions for federal Form 8582-CR. Use California amounts when completing these worksheets. Use only the credits subject to the California passive credit limitation rules (described in General Information C, Who Must File). Keep these worksheets for your records.

### Part I

#### 2021 Passive Activity Credits

**Line 1a through Line 1c** – Individuals and qualifying estates that actively participated in rental real estate activities (other than rental real estate activities with low-income housing credits) should include the credits from these activities on line 1a and line 1b.

Use Worksheet 1 to figure the amounts to enter on line 1a and line 1b.

A qualifying estate is one that is treated as actively participating for the two taxable years following the death of the taxpayer. The decedent must have actively participated in the rental real estate activity in the taxable year of death.

If you were married/RDP filing a separate return and lived with your spouse/RDP at any time during the year, even if you actively participated in rental real estate activities, include the credits on Worksheet 4 but not on Worksheet 1.

You may take credits that arose in a prior tax year (other than low-income housing credits) under the special allowance only if you actively participated in the rental real estate activity for both that prior year and this year. If you did not actively participate for both years, include the credits on Worksheet 4 but not on Worksheet 1.

**Line 2a through Line 2c** – Individuals, including limited partners, and qualifying estates who had low-income housing credits for property placed in service before 1990, should include the credits from those activities on line 2a and line 2b.

However, if you have low-income housing credits for property placed in service after 1989, include those credits on Worksheet 3 instead of Worksheet 2. If you held an indirect interest in the property through a partnership, S corporation, or other pass-through entity, use Worksheet 3 only if you acquired your interest in the pass-through entity after 1989.

If you were married/RDP filing a separate return and lived with your spouse/RDP at any time during the year, include the credits on Worksheet 4 but not on Worksheet 2 or Worksheet 3.

**Line 3a through Line 3c** – Individuals, including limited partners, and qualifying estates who had low-income housing credits for property placed in service after 1989, should include those credits on line 3a and line 3b instead of Worksheet 2. If you held an indirect interest in the property through a partnership, S corporation, or other pass-through entity, use line 3a and line 3b only if you also acquired your interest in the pass-through entity after 1989.

**Line 4a through Line 4c** – Individuals should include on line 4a and line 4b credits from passive activities which were not entered on line 1a and line 1b, line 2a and line 2b, or line 3a and line 3b. Estates (other than qualifying estates), trusts, and S corporations, should include credits from all passive activities on line 4a and line 4b.

**Line 1, Line 2, Line 3, and Line 4** – If you are using a different form to report credits from the same activity, keep them separate by listing the activity each time for each credit.

**Line 6** – If form FTB 3801, line 3, shows net income or if you did not complete form FTB 3801 because you had net passive income, you will have to figure the tax on the net passive income. If you have an overall loss on an entire disposition of your interest in a passive activity, reduce net passive income, if any, on form FTB 3801, line 3, to the extent of the loss (but not below zero) and use only the remaining net passive income in the computation below. If you had a net passive activity loss, enter -0- on line 6, and go to line 7.

Figure the tax on net passive income as follows:

- Taxable income including net passive income . . . . . A \_\_\_\_\_
- Tax on line A . . . . . B \_\_\_\_\_
- Taxable income without net passive income . . . . . C \_\_\_\_\_
- Tax on line C . . . . . D \_\_\_\_\_
- Subtract line D from line B and enter the result on form FTB 3801-CR, line 6 . . . . . E \_\_\_\_\_

When using taxable income in the above computation, it is not necessary to refigure items that are based on a percentage of adjusted gross income.

**Line 7** – If line 7 is zero because the tax on net passive income on line 6 is more than your credits from passive activities on line 5, all of your passive activity credits are allowed. In this case, enter the amount from line 5 on line 17. Report the credits on the related credit forms. Do not complete Worksheet 5 through Worksheet 9.

## Part II

### Special Allowance for Rental Real Estate Activities with Active Participation

**Line 9** – Married/RDP persons filing separate returns who lived together at any time during the year are not eligible to complete Part II.

**Line 10** – Enter your federal modified adjusted gross income from federal Form 8582-CR, line 10. For RDPs, enter your federal modified adjusted gross income from your refigured federal Form 8582-CR, line 10. For S corporations, enter your net income for tax purposes from Form 100S, line 20.

If you are a military servicemember domiciled outside of California, subtract your military pay from your modified federal adjusted gross income.

**Line 15** – Figure the tax attributable to the amount on line 14 as follows:

- A. Taxable income . . . . . A \_\_\_\_\_
- B. Tax on line A . . . . . B \_\_\_\_\_
- C. Enter amount from form FTB 3801-CR, line 14 . . . . . C \_\_\_\_\_
- D. Subtract line C from line A . . . . . D \_\_\_\_\_
- E. Tax on line D . . . . . E \_\_\_\_\_
- F. Subtract line E from line B and enter the result on form FTB 3801-CR, line 15 . . . . . F \_\_\_\_\_

When using taxable income in the above computation, it is not necessary to refigure items that are based on a percentage of adjusted gross income.

## Part III

### Passive Activity Credits Allowed

**Line 17** – If you have only one type of credit, the amount on line 17 is the credit allowed for the year. Enter this amount on the appropriate credit form. Your unallowed credit would be line 5 minus line 17.

If you have more than one type of credit, or credits from more than one activity, use Worksheet 5 through Worksheet 9 in the instructions for federal Form 8582-CR to allocate the allowed and unallowed credits. Keep a record of each unallowed amount and the activity to which it belongs so you can claim the credit if it becomes allowable in a future year.

## Credits from Publicly Traded Partnerships (PTPs)

A credit from a passive activity held through a PTP is allowed to the extent of the tax attributable to net passive income from that partnership.

Do not enter credits from PTPs on the worksheets or on form FTB 3801-CR. Instead, use the following steps to compute the allowed and unallowed credits from passive activities held through PTPs.

### Computation of Passive Activity Credits Allowed for PTPs

Complete Step 1 and Step 2 only if you have net passive income from a PTP with passive activity credits.

In the following instructions, the term “credits” includes current year credits and prior year unallowed credits.

**Step 1** — Figure the tax attributable to net passive income from each PTP with passive activity credits by following the steps shown in the computation in line 6 instructions. Complete a separate tax computation for each PTP with net passive income.

**Step 2** — Passive activity credits from each PTP are allowed to the extent of the tax attributable to net passive income from that same PTP. Figure the allowed and unallowed credits from each PTP. Report the allowed credits on the appropriate credit form. Keep a record of the unallowed credits for use in a future year.

## Part IV

### Election to Increase Basis of Credit Property

Complete Part IV if you disposed of your entire interest in a passive activity or former passive activity in a fully taxable transaction and you elect to increase the basis of the credit property used in that activity by the unallowed credit that reduced the property's basis.

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