

Instructions for Form FTB 3523

Research Credit

References in the form and instructions are to the Internal Revenue Code (IRC) as of **January 1, 2009**, and to the California Revenue and Taxation Code (R&TC).

What's New

Assigned Credit Claimed by Assignee – For taxable years beginning on or after January 1, 2010, California Revenue and Taxation Code (R&TC) Section 23663 allows an eligible assignee to claim assigned credits, received this taxable year or carried over from prior years, against its tax liabilities. However, the eligible assignee does not enter assigned credits received under R&TC Section 23663 on this form. The eligible assignee uses form FTB 3544A, List of Assigned Credit Received and/or Claimed by Assignee. For more information on how the eligible assignee reports assigned credits received, get form FTB 3544A, or go to ftb.ca.gov and search for **credit assignment**.

Decrease in Tax Rate – For taxable years beginning on or after January 1, 2011, the maximum personal income tax rate is changed from 9.55% to 9.3%.

Important Information

Federal/State Conformity

In general, for taxable years beginning on or after January 1, 2010, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2009. 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 R&TC in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

Tax Rate – For taxable years beginning on or after January 1, 2009, and before January 1, 2011, the maximum personal income tax rate is 9.55%.

California has not conformed to the federal law for the additional first-year depreciation of certain qualified property placed in service after January 3, 2008, and the election to claim additional research and minimum tax credits in lieu of claiming the bonus depreciation made to the IRC by the Economic Stimulus Act of 2008 (Public Law 110-185, enacted on February 13, 2008).

California has not conformed to the extension and modifications of the Research Credit made to the IRC by the Tax Relief and Health Care Act of 2006 (Public Law 109-432, Section 104 enacted on December 20, 2006).

California has not conformed to the federal changes made to the IRC by the 2005 Energy Tax Act (Public Law 109-58), including, but not limited to federal changes creating the “energy research consortium” credit (Public Law 109-58, Section 1351(a) enacted on August 8, 2005).

Business Tax Credit Limitation – For taxable years beginning on or after January 1, 2008, and before January 1, 2010, business tax credits could only offset 50% of the net tax, if a corporation's taxable income was \$500,000 or more, or if an individual's net business income was \$500,000 or more.

Business tax credits disallowed due to the 50% limitation may be carried over. The carryover period for disallowed credits was extended by the number of taxable years the credits were not allowed. Taxpayers are required to keep track of the disallowed business tax credits on a worksheet and provide it to the Franchise Tax Board (FTB) upon request.

Registered Domestic Partners (RDP)

For purposes of California income tax, references to a spouse, husband, or wife also refer to a California registered domestic partner (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.

General Information

A Purpose

Use form FTB 3523, Research Credit, to compute and claim the research credit for increasing the research activities of a trade or business. Also use this form to claim pass-through research credits received from S corporations, estates, trusts, partnerships, and limited liability companies (LLCs).

S corporations, estates, trusts, partnerships, and LLCs should complete form FTB 3523 to compute the amount of research credit generated. Attach this form to Form 100S, California S Corporation Franchise or Income Tax Return; Form 541, California Fiduciary Income Tax Return; Form 565, Partnership Return of Income; or Form 568, Limited Liability Company Return of Income. Show the distributive share of the pass-through credit for each shareholder, beneficiary, partner, or member on Schedule K-1 (100S, 541, 565, or 568), Share of Income, Deductions, Credits, etc. Get Schedule K-1 (100S, 541, 565, or 568) instructions for reporting requirements.

B Description

The credit is 15% of the excess of qualified research expenses for the taxable year over the base period research expenses. Corporations are allowed the 15% credit amount plus credit for 24% of the basic research payments.

Instead of the regular credit, taxpayers may elect the alternative incremental credit in which taxpayers are assigned a smaller three-tiered fixed-base percentage and a reduced three-tiered credit rate (1.49%, 1.98%, and 2.48%).

To claim the California research credit, you **do not** have to claim the federal research credit.

California conforms to the federal definition for qualified research expenses under IRC Section 41(b).

IRC Section 41(b) states that the “qualified research expense” means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

- In-house research expenses and contract research expenses.
- “Qualified services,” means engaging in qualified research e.g., direct supervision or direct support of research activities.
- “Qualified supplies,” means any tangible property other than land or improvements to, and property of a character subject to the allowance for depreciation.
- Qualified wages.

Qualified research expenses do not include any amounts paid or incurred on or after January 1, 1999, for tangible personal property eligible for the exemption from sales or use tax under R&TC Section 6378. The eligible property is tangible personal property used primarily for the following:

1. In teleproduction or other postproduction services
2. To maintain, repair, measure, or test any property described in item 1

Get federal Form 6765, Credit for Increasing Research Activities, for additional information on the federal definition. For the full definition of “qualified research expenses,” the taxpayer should refer to IRC Section 41(b).

For payments made to certain nonprofit qualified research consortia, 75% (instead of 65%) of the payments are treated as qualified research expenses. A qualified research consortium is a tax-exempt organization described in IRC Section 501(c)(3) or Section 501(c)(6) that is organized and operated primarily to conduct scientific research and is not a private foundation.

C Limitations

The research credit is not refundable.

- The basic and qualified research must have been conducted within California.

If your business is conducted both within and outside of California, for purposes of determining the base amount, gross receipts are the receipts from the sale of property that is held primarily for sale to customers (in the ordinary course of your trade or business) and that is delivered or shipped to customers in California.

- A taxpayer and spouse/RDP may claim only one credit. If separate tax returns are filed, the credit may be taken by either or divided equally between them.
- S corporations may claim only 1/3 of the credit against the 1.5% entity-level tax (3.5% for financial S corporations) after applying the limitations relating to passive activity losses and credits. If you are an S corporation claiming this credit, compute the credit at 100%. Multiply the credit computed on this form by 1/3 and transfer the amount to Schedule C (100S), S Corporation Tax Credits.
- S corporations can pass through 100% of this credit to their shareholders on a pro-rata basis. Partnerships allocate the credit among the partners according to the partner's distributive share as determined in a written partnership agreement. See R&TC Section 17039(e).
If a C corporation had unused credit carryovers when it elected S corporation status, the carryovers were reduced to 1/3 and transferred to the S corporation. The remaining 2/3 were disregarded. The allowable carryovers may be used to offset the 1.5% tax on net income in accordance with the respective carryover rules. These C corporation carryovers may not be passed through to shareholders. For more information, get Schedule C (100S).
- If a taxpayer owns an interest in a disregarded business entity [a Single Member Limited Liability Company (SMLLC) not recognized (disregarded) by California and for tax purposes is treated as a sole proprietorship owned by an individual or a branch owned by a corporation], the amount of the credit that can be utilized is limited to the difference between the taxpayer's regular tax computed with the income of the disregarded entity, and the taxpayer's regular tax computed without the income of the disregarded entity. If the disregarded entity reports a loss, the taxpayer may not claim the credit this year but can carry over the credit amount received from the disregarded entity. For more information on disregarded business entities, get Form 568, Limited Liability Company Tax Booklet.

This credit cannot reduce the minimum franchise tax (corporations and S corporations), annual tax (partnerships and QSub), alternative minimum tax (corporations, exempt organizations, individuals, and fiduciaries), built-in gains tax (S corporations), or excess net passive income tax (S corporations).

This credit can reduce regular tax below tentative minimum tax (TMT). Get Schedule P (100, 100W, 540, 540NR, or 541), Alternative Minimum Tax and Credit Limitations, for more information.

This credit may be limited further. See IRC Section 41(g) and line 17b instructions for more information.

D Assignment of Credits

Assigned Credits to Affiliated Corporations – For taxable years beginning on or after July 1, 2008, credit earned by members of a combined reporting group may be assigned to an affiliated corporation that is a member of the same combined reporting group. A credit assigned may only be applied by the affiliated corporation against their tax in a taxable year beginning on or after January 1, 2010.

For more information, get form FTB 3544, Election to Assign Credit Within Combined Reporting Group, or form FTB 3544A.

E Carryover

If the available credit exceeds the current year tax liability, the unused credit can be carried over to succeeding years until exhausted. Apply the carryover to the earliest taxable year(s) possible. In no event can this credit be carried back and applied against a prior year's tax.

Specific Line Instructions

Part I – Credit Computation

For purposes of computing the credit, all members of a controlled group of corporations, as defined in IRC Section 41(f)(5), and all members of a group of businesses under common control, are treated as a single taxpayer. The credit allowed for each member is based on its proportionate shares of the group's qualified research expenses and basic research payments.

Use Section A or Section B of Part I to compute the credit for the entire group, but enter only this member's share of the credit on line 17 or line 39, whichever applies. Attach a statement showing how this member's share of the credit was computed, and write "See attached" next to the entry space for line 17 or line 39.

Section A – Regular Credit

Line 1

Corporations (other than S corporations, personal holding companies, and service organizations) may be eligible for a "basic research" credit if the cash payments exceed the base period amount as determined on line 2 of this section.

Enter the basic research payments paid in cash during the 2010 taxable year and made to a qualified university or scientific research organization. To be eligible, the basic research must be performed pursuant to a written contract, performed by a qualified organization, and be performed within California. See IRC Section 41(e) and R&TC Section 23609 for more information.

Biopharmaceutical and Biotech Research Activities

For taxable years beginning on or after January 1, 1996, corporations (other than S corporations, personal holding companies, and service organizations) that are engaged in certain biopharmaceutical research and biotech research and development activities (as defined below), and that make payments to hospitals run by public universities (as defined below) or qualified cancer centers (as defined below), may be eligible to claim the "basic research" credit if they meet specific criteria.

The taxpayer's biopharmaceutical activities must satisfy both of the following:

- Meet at least one of the biopharmaceutical research activities described in Codes 2833 to 2836, inclusive, or any research activities that are described in Codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 Edition.
- Use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components to provide pharmaceutical products for human or animal therapeutics and diagnostics. For biotechnology research and development, taxpayers must be involved in research and development activities regarding the application of recombinant DNA technology or pharmaceutical delivery systems.

If the taxpayer's activities meet the criteria mentioned in the previous paragraphs and such payments are made to a cancer center, the cancer center must be a "qualified cancer center" which is defined as meeting all of the following criteria:

- Is owned by a tax-exempt organization described in IRC Section 501(c)(3).
- Is tax-exempt under federal law. See IRC Section 501(a).
- Is not a private foundation.
- Has been designated a "specialized laboratory cancer center."
- Has received Clinical Cancer Research Center status from the National Cancer Institute.

If the taxpayer's activities meet the criteria mentioned above and such payments are made to a hospital owned by a public university, the hospital must be an organization described in IRC Section 170(b)(1)(A)(iii), and the public university that runs such hospital must be an institution of higher education as described in IRC Section 3304(f).

Line 2

Enter the base amount as defined in IRC Section 41(e) and R&TC Section 23609. The base period will generally be the three taxable years preceding the taxpayer's first taxable year beginning after December 31, 1983. If you were not in existence during the base period for California purposes, you are subject to a minimum floor amount equal to 50% of your current basic research payments. If you do business both within and outside California, see General Information C, Limitations. The amount of line 2 may not exceed the amount of line 1. The current basic research payments that do not exceed the base period amount shall be treated as contract research expenses included on line 8, (subject to the 65% or 75% limitation).

Lines 5 and 6

See General Information B, Description, for information regarding qualified research expenses.

Line 7

See IRC Section 41(b)(2)(A)(iii) for rules on leased computer property if you receive payments from anyone for the rental or lease of substantially identical property. Also, see General Information B, Description, for information regarding qualified research expenses.

Line 8

Include 65% of any amount paid or incurred for qualified research performed on your behalf, in California. For corporations only, include 65% of the portion of line 1 basic research payments that does not exceed the line 2 base period amount.

However, use 75% in place of 65% for payments made to a qualified research consortium. See General Information B, Description, for information regarding qualified research consortium.

Line 10

Compute the fixed-base percentage as follows:

Existing companies – The fixed-base percentage is the ratio that the aggregate qualified research expenses for at least three taxable years from 1984 to 1988 bear to the aggregate gross receipts for such taxable years. Round off the percentage to the nearest 1/100th of 1% (i.e., four decimal places).

Start-up companies – A start-up company is one that had **both** gross receipts and qualified research expenses during either of the following periods:

1. For the first time in a taxable year beginning after December 31, 1983.
2. For fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989.

A start-up company has a 10-year phase-in period leading up to a credit based on five years of experience. The fixed-base percentage is three percent for each of the company's first five taxable years beginning on or after January 1, 1994, that the company has qualified research expenses. To determine the fixed-bases percentage for the sixth through tenth years, see IRC Section 41(c)(3)(B)(ii).

The maximum percentage that can be entered on line 10 is 16% (.16).

Line 11

Enter the average annual gross receipts for the four taxable years preceding the taxable year for which the credit is being determined (called the credit year). You may be required to annualize gross receipts for any short taxable year. See IRC Section 41(c)(1)(B) and Section 41(f)(4) for more information.

For purposes of line 10 and line 11, reduce gross receipts for any taxable year by returns and allowances made during the taxable year. In the case of a business that operates within and outside of California, include only the gross receipts from the sale of property held primarily for sale to customers in the ordinary course of your trade or business that is delivered or shipped to customers in California, regardless of "free on board" (f.o.b.) point or any other condition of the sale. This includes sales to the U.S. government, that are delivered or shipped to customers in California. Throwback sales and receipts from services, rents, operating leases and interest, royalties and licenses are excluded from the computation.

Line 14

The base amount cannot be less than 50% of the current year qualified research expenses. This rule applies both to existing and start-up companies.

Line 17a

Unless you made an election to reduce the research credit, deductions under IRC Section 174 or any other deduction or credit provision for research expenses or basic research payments must be reduced by the amount of your current year's research credit. Attach a schedule to your tax return that lists the deduction amounts (or capitalized expenses) that were reduced. Identify the lines of your tax return (schedule or forms for capitalized items) on which the reductions were made.

Line 17b – S corporations, estates, trusts, partnerships, and LLCs:

The amount of research credit passed through to your shareholders, beneficiaries, partners, or members is the pro-rata or distributive share of the amount on line 17a multiplied by the shareholder's, beneficiary's, partner's, or member's applicable credit reduction percentage as follows:

- 90.45% (.9045) for individuals and estates or trusts
- 91.16% (.9116) for corporations
- 98.5% (.985) for S corporations

In some cases, the pass-through entity may not know what type of entity the shareholder, beneficiary, partner, or member is. In these cases, the pass-through entity will report the pro-rata share or distributive amount of research credit on Schedule K-1 (100S, 541, 565, or 568) without the IRC Section 280C(c) reduction. The pass-through entity will note in the other information section of the Schedule K-1 (100S, 541, 565, or 568) to reduce the credit by the shareholder's, beneficiary's, partner's, or member's applicable credit reduction percentage.

Example 1: For the taxable year ending December 31, 2010, ABC, Inc., an S corporation, generated \$3,000 in research credit. ABC, Inc. elects the reduced regular research credit. ABC, Inc. figures its research credit as follows:

Step 1: $\$3,000 \times 1/3 = \$1,000$

Step 2: $\$1,000 \times 98.5\% (.985) = \985

This amount is the research credit available to ABC, Inc. for its 2010 taxable year.

John Anderson is the sole shareholder (100%) in ABC, Inc. John materially participates in the business of ABC, Inc., holds no interest in any passive activity, and does not have any non-passive activity credit carryover from previous years. The election by ABC, Inc. to reduce the research credit also applies to John. His taxable year 2010 pass-through research credit is computed as follows:

Step 1: $\$3,000 \times 100\% (1.0) = \$3,000$

Step 2: $\$3,000 \times 90.45\% (.9045) = \$2,714$

This amount is the pass-through research credit available to John for his 2010 taxable year.

Example 2: Partnership AB has two partners each with 50% ownership. Partner A is an individual, and Partner B is a corporation. The partnership elects the reduced regular research credit. The amount of regular credit computed by the partnership on line 17a is \$2,000. Partnership AB would figure each partner's credit from the line 17a amount as follows:

Partner A – $\$2,000 \times 50\% (.50) \times 90.45\% (.9045) = \905

Partner B – $\$2,000 \times 50\% (.50) \times 91.16\% (.9116) = \912

These amounts are the research credit available to Partner A and Partner B for their 2010 taxable years.

Amounts received from S corporations, estates, trusts, partnerships, and LLCs, may be limited due to IRC Section 41(g) and the related regulations.

Section B – Alternative Incremental Credit

Complete this section **ONLY** if you are electing the alternative incremental credit instead of the regular credit. For taxable years ending on or after January 3, 2001, make the election on a timely filed original tax return for the taxable year to which the election applies. Once made, the election applies to the current taxable year and all later years unless you receive the FTB's consent to revoke the election.

Line 18

Corporations (other than S corporations, personal holding companies, and service organizations) may be eligible for a "basic research" credit if the 2010 taxable year payments in cash made to a qualified university or scientific research organization (under a written contract) exceed a base period amount (based on your general university giving and certain other maintenance-of-effort levels for the three preceding years). To be eligible, conduct the basic research within California.

Enter your 2010 taxable year payments on line 18. See IRC Section 41(e) and R&TC Section 23609(d) for details. Also see line 1 instructions for more information.

Line 19

Enter the base amount as defined in IRC Section 41(e) and R&TC Section 23609. If you do business both within and outside of California, see General Information C, Limitations. The amount on line 19 may not be more than the amount on line 18. This amount may be classified as 2010 taxable year contract research expenses on line 25 (subject to the 65% or 75% limitation).

Lines 22 and 23

See General Information B, Description, for information regarding qualified research expenses.

Line 24

See line 7 instructions.

Line 25

Include 65% of any amount paid or incurred for qualified research performed on your behalf in California. For corporations only, include 65% of the portion of line 18 basic research payments that does not exceed the line 19 base period amount.

However, use 75% in place of 65% for payments made to a qualified research consortium. See General Information B, Description, for information regarding qualified research consortium.

Line 27

Enter the average annual gross receipts for the four taxable years preceding the taxable year for which the credit is being determined (called the credit year). You may be required to annualize gross receipts for any short taxable year. See IRC Sections 41(c)(1)(B) and 41(f)(4) for more information.

For purposes of line 27, reduce gross receipts for any taxable year by returns and allowances made during the taxable year. In the case of a business that operates within and outside of California, include only the gross receipts from the sale of property held primarily for sale to customers in the ordinary course of your trade or business that is delivered or shipped to customers in California, regardless of f.o.b. point or any other condition of the sale. This includes sales to the U.S. government, that are delivered or shipped to customers in California. Throwback sales and receipts from services, rents, operating leases and interest, royalties and licenses are excluded from the computation.

Line 39a

See line 17a instructions.

Line 39b

See line 17b instructions.

Line 40 – Individuals, shareholders, beneficiaries, partners, and members:

If the S corporation, estate, trust, partnership, and LLC elected the reduced research credit, the amount of research credit passed through to you on Schedule(s) K-1 (100S, 541, 565, or 568) should reflect a research credit amount in which the applicable credit reduction percentage has been applied. Make your election of the credit reduction consistent with that of the pass-through entity. However, the credit reduction percentage may differ from that of the pass-through entity.

In some cases, the pass-through entity may not know what type of entity the shareholder, beneficiary, partner, or member is. In these cases, the pass-through entity will report the pro-rata or distributive amount of research credit on Schedule K-1 (100S, 541, 565, or 568) without the IRC Section 280C(c) reduction. The pass-through entity will note in the other information section of the Schedule K-1 (100S, 541, 565, or 568) to reduce the credit by the shareholder's, beneficiary's, partner's, or member's applicable credit reduction percentage as follows:

- 90.45% (.9045) for individuals and estates or trusts
- 91.16% (.9116) for corporations
- 98.5% (.985) for S corporations

The amount of research credit passed through to you on Schedule(s) K-1 (100S, 541, 565, or 568) may be limited due to IRC Section 41(g) and the related regulations. Specifically, the amount of credit entered on this line is limited to the amount of tax attributable to your interest in the proprietorship, S corporation, estate, trust, or partnership generating the credit. Use the formula below to determine the credit limitation. If you have pass-through research credits from more than one business interest, compute the research credit limitation separately for each business interest by applying the formula below to each pass-through credit.

$$\text{Credit Limit} = \frac{\text{Taxable income attributable to your interest in the sole proprietorship or pass-through entity (Schedule K-1)}}{\text{Total taxable income for the year (Form 540, line 19; Long Form 540NR, line 19; or Form 541, line 20)}} \times (\text{Net income tax})$$

For purposes of completing the above formula, **net income tax** is regular tax (from Form 540, line 35; Long Form 540NR, line 42; or Form 541, line 21) **plus** alternative minimum tax (from Form 540, line 61; Long Form 540NR, line 71; or Form 541, line 26).

The percentage representing taxable income attributable to your interest in the business to your total taxable income for the year cannot exceed 100%. If in the current taxable year you had no income attributable to a particular business interest, you cannot claim any research credit related to that business this year; however, the credit can be carried over to succeeding years until exhausted. Likewise, any current year pass-through research credit that exceeds the IRC Section 41(g) limitation may be carried over to succeeding years until exhausted.

All pass-through credit carryovers will be subject to the IRC Section 41(g) limitation in each subsequent year.

Line 44

If any part of the amount on line 41 is from a passive activity, complete form FTB 3801-CR, Passive Activity Credit Limitations, or form FTB 3802, Corporate Passive Activity Loss and Credit Limitations, to determine your allowable credit. Complete form FTB 3801-CR or form FTB 3802 (**using California amounts**) before completing the rest of this form.

Line 45

Enter any prior year research credit carryover **from non-passive activities only**. Any prior year research credit carryover from passive activities should have been included in the computation of allowable credits from passive activities (form FTB 3801-CR or form FTB 3802) on line 44.

Individuals, shareholders, beneficiaries, partners, and members: If the non-passive research credit carryover was generated from a pass-through entity, apply the IRC Section 41(g) limitation to the credit carryover before entering the allowable carryover on line 45. See the instructions for line 40 above on how to compute the IRC Section 41(g) limitation.

Line 47a

The amount of this credit you may claim on your tax return may be limited further. Refer to the credit instructions in your tax booklet for more information. These instructions also explain how to claim this credit on your tax return. Use credit code number **183** to claim this credit. See General Information C, Limitations, for more information.

Line 47b

Corporations that completed form FTB 3544 for this credit, enter the amount from column (g) on this line.