

2012 Capital Gain or Loss

D (541)

Attach to Form 541 or Form 109.

Name as shown on return

FEIN

Part I Capital Gain and Loss

(a) Description of property: Example, 100 shares 7% preferred of "Z" Co.	(b) How was property held, community, separately, jointly?	(c) Date acquired (mo., day, yr.)	(d) Date sold (mo., day, yr.)	(e) Gross sales price	(f) Cost or other basis, as adjusted, plus expense of sale	(g) Gain (or loss) column (e) less column (f)
1						

- 2 Capital gain from installment sales from form FTB 3805E, line 26 or line 37 2
- 3 Enter your share of net gain or (loss) from partnerships, S corporations, limited liability companies (LLCs), and other fiduciaries . . . 3
- 4 Capital gain distributions. See instructions 4
- 5 Net gain or (loss). Combine line 1, column (g), line 2, line 3, and line 4. 5
- 6 Enter gain, if applicable, from California Schedule D-1. 6
- 7 Capital loss carryover from prior years. There is no capital loss carryover from a decedent to an estate. 7
- 8 Net gain or (loss). Combine line 5, line 6, and line 7. 8

Part II Summary of Part I

	(a) Beneficiaries	(b) Fiduciary	(c) Total
9 Enter the net gain or (loss) from line 8, above. If line 9, column (c), is a net gain, enter the gain on Form 541, line 4 or Form 109, Side 2, Part I, line 4a. If line 9, column (c), is a net loss, complete Part III. See instructions 9			

Part III Computation of Capital Loss Limitation

- 10 Enter here and enter as a loss on Form 541, line 4 or Form 109, Side 2, Part 1, line 4c the smaller of:
The net loss on line 9, column (c) or \$3,000 10

Part IV Computation of Capital Loss Carryover from 2012 to 2013

If the net loss on line 8 is more than \$3,000, determine the capital loss carryover. Attach a copy of Schedule D (Form 1041) to Form 541 or Form 109. See instructions.

Instructions for Schedule D (541) Capital Gain or Loss

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

General Information

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 California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

A Purpose

Use Schedule D (541), Capital Gain or Loss, to report gains and losses from the sale or exchange of capital assets by an exempt organization, estate, or trust. Generally, California law follows federal law.

To report sales or exchanges of property other than capital assets, including the sale or exchange of property used in a trade or business and involuntary conversions (other than casualties and thefts), get California Schedule D-1, Sales of Business Property.

If property is involuntarily converted because of casualty or theft, complete federal Form 4684, Casualties and Thefts, using **California amounts**.

California does not have a special capital gain tax rate.

Qualified Small Business Stock

California does not conform to IRC Section 1202.

In *Cutler v. Franchise Tax Board* (2012) 208 Cal App 4th 1247, 146 Cal Rptr. 3d 244, the California Court of Appeal found that the

California qualified small business stock (QSBS) Provisions of R&TC Sections 18038.5 and 18152.5 discriminated against interstate commerce in violation of the Commerce Clause of the United States Constitution. R&TC Sections 18038.5 and 18152.5 provided for a California deferral and exclusion of gain from the sale of QSBS if eighty percent of the corporation's property and payroll was located in California for substantially all of the taxpayer's holding period of the stock. An unconstitutional statute is invalid and unenforceable. Therefore, the California deferral and exclusion are not available.

B Miscellaneous Information

See the instructions for federal Schedule D (Form 1041), Capital Gains and Losses, for the definition of capital assets.

In computing gross income, no distinction is made between gains and losses allocable to income account and those allocable to corpus account.

C Basis

California law generally follows federal law with respect to basis. In determining the basis of property apply one of the following:

Gift

Generally, use the donor's basis if the transaction results in a gain. Use the lower of the donor's basis or the fair market value (FMV) on the date of the gift if the transaction results in a loss.

Inherited property

Use the FMV at the date of death, unless an alternate valuation date election is made under IRC Section 2032.

For special cases involving property acquired from a decedent before 1987, see former R&TC Sections 18031 through 18033.

The basis of the decedent's one-half of community property is the FMV at date of death. If the decedent's death occurred after December 31, 1986, the basis of the surviving spouse's one-half of community property becomes the FMV on the date of the decedent's death.

Depreciation Methods and Property Expensing

California law has not always conformed to federal law regarding depreciation methods, special credits, or accelerated write offs. Consequently, the recovery period and the basis on which depreciation is calculated may be different from the amounts used for federal purposes.

Before 1987, California law disallowed the use of accelerated cost recovery system (ACRS). California depreciation is calculated in the same manner as in prior years for those assets. The election to expense certain tangible property **does not** apply to estates and trusts.

Figure the original basis using the California law in effect when the asset was acquired, and adjust it according to provisions of California law in effect. For more information get form FTB 3885F, Depreciation and Amortization, and FTB Pub. 1001, or refer to the R&TC.

D Internet Access

You can download, view, and print California tax forms and publications at ftb.ca.gov.

Access other California state agency websites at ca.gov.

Specific Line Instructions

If you file Form 109, California Exempt Organization Business Income Tax Return, attach a copy of your completed Schedule D (541) to Form 109.

Part I – Capital Gain and Loss

Line 2 – If the estate or trust sold property at a gain this taxable year and is to receive any payment in a later taxable year, use the installment method and file form FTB 3805E, Installment Sale Income. If the estate or trust elects out of the installment method, report the gain or loss on line 1. Also, use form FTB 3805E if a payment was received in the taxable year from a sale made in an earlier year on the installment basis.

If the estate or trust elects not to use the installment method and is reporting a note or other obligation at less than face amount on line 1, state that fact in the margin and give the percentage of valuation. Get federal Publication 537, Installment Sales, and Publication 559, Survivors, Executors, and Administrators, for additional information.

Line 4 – Report the amount from Form 1099-DIV, box 2a, on line 4.

Line 7 – Enter the amount of unused capital loss carryover from prior years.

There is no capital loss carryover from a decedent to an estate.

Part II – Summary of Part I

Line 9 – Use line 9 to summarize the gain or loss computed in Part I.

Column (a) — Beneficiaries

Enter the amounts of capital gain or loss allocable to the beneficiaries. **Do not** allocate capital losses to beneficiaries unless the capital losses are required to offset capital gains. Refer to IRC Section 643(a). Any capital loss carryover for the final year is allowed to the beneficiaries, to the extent of their distributive shares.

Nonresident and part-year resident beneficiaries may have to report their loss carryovers, deferred deductions, and deferred income differently from the manner shown on their Schedule K-1 (541), Beneficiary's Share of Income, Deductions, Credits, etc. For more information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

Column (b) — Fiduciary

Enter the amounts of the gain or loss allocable to the fiduciary.

Enter any capital gain paid or permanently set aside for charitable purposes, IRC Section 642(c), in column (b).

Column (c) — Total

The amount entered on line 9, column (c), should be the total of the amounts shown on line 9, column (a) and column (b).

Form 109 filers, see instructions for that form.

Part III – Computation of Capital Loss Limitation

Line 10 – If line 9, column (c), shows a loss, the loss is limited at line 10 to the smaller of the amount of the loss or \$3,000.

Form 109 filers, see instructions for that form.

Part IV – Computation of Capital Loss Carryover from 2012 to 2013

Complete the Capital Loss Carryover Worksheet in the instructions for federal Schedule D (Form 1041). Use California amounts to determine the capital loss carryover.