

2023 Group Nonresident Return Election**3864**

Attach to Form 540NR and to the appropriate business entity return.

Business entity's/corporation's name	FEIN	CA corporation no. or CA Secretary of State (SOS) file no.	
Business address (number and street, suite, PO box, or PMB no.)	Telephone		Nature of business activity <input type="radio"/>
City, state, and ZIP code	State in which the principal business activity is conducted <input checked="" type="radio"/>		Shareholders/Partners/Members/Directors
Principal California business address <input type="radio"/>	Number non-electing <input checked="" type="radio"/>	Number electing <input checked="" type="radio"/>	

TERMS AND CONDITIONS OF FILING A GROUP NONRESIDENT RETURN

The above business entity/corporation and its electing nonresident individuals included in the filing of the group nonresident return agree to the following terms and conditions:

- a. Attach a Signed form FTB 3864 to the Group Nonresident Return.** Each year the business entity/corporation must make an election to file a group return on behalf of its electing nonresident individuals. Make the election by attaching a completed form FTB 3864 to the group nonresident return (Form 540NR). An authorized general partner, member-manager, corporate officer, or an attorney-in-fact of the business entity/corporation must sign the form FTB 3864.
- b. Group Nonresident Return Must be a Calendar Year.** A group nonresident return is not allowed to have a fiscal year end. If the business entity has a fiscal year end, report on the 2023 group nonresident return the individual's distributive share of California source income from the business entity's taxable year ending in 2023. If the corporation has a fiscal year end, report on the 2023 group nonresident return the director's compensation that he or she received in 2023.
- c. Form 540NR, California Nonresident or Part-Year Resident Income Tax Return.** Use Form 540NR for the group nonresident return. Prepare the Form 540NR as instructed in FTB Pub. 1067, Guidelines for Filing a Group Form 540NR.
- d. Individual's Election to be Included in the Group Nonresident Return is Irrevocable.** Each year the business entity/corporation will allow each nonresident individual the election to be included in the group nonresident return. Only a qualified nonresident individual may elect to be included in the group nonresident return. Once the group nonresident return is filed for the year, the individual's election is irrevocable.
- e. Qualified Nonresident Individual.** A qualified individual must be an individual and must be a full-year nonresident of California. In addition, the income from the business entity/corporation must be the only California source income of the individual, unless the other California source income is being reported on another group nonresident return. Partnerships, LLCs, corporations, estates, 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), and other entities cannot be included on the group nonresident return.
- f. Power-of-Attorney Maintained by Business Entity/Corporation.** The business entity/corporation shall maintain a file of power-of-attorney executed by each electing nonresident individual. The power-of-attorney shall authorize the business entity/corporation to include the electing nonresident individual in the group nonresident return filed. **Do not** attach the power-of-attorney to the return.
- g. Deductions.**
 - Shareholders/partners/members are not allowed deductions except those necessary to determine each individual's distributive share of income from the business entity. However, a deduction is allowed for contributions to qualified deferred compensation plans attributable to earned income of a partner/member as provided in Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, as modified by the California Revenue and Taxation Code (R&TC) beginning with Section 17501. No deduction to a qualified deferred compensation plan is allowed if the individual has earned income from any other source.
 - Directors are not allowed any deductions.
 - Nonresident Aliens also are not allowed any deductions pursuant to RTC 18537(b)

See FTB Pub.1067 for more information.

h. Credits.

- Shareholders/partners/members are not allowed credits except those directly attributable to the business entity's activity. In the event the allowable 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.
- Directors are not allowed any credits.
- Nonresident Aliens also are not allowed any credits (other than withholding) pursuant to RTC 18537(b).

See FTB Pub. 1067 for more information.

i. Tax Assessed at the Highest Marginal Rate. Each individual included in the group nonresident return will be assessed tax on his or her California source income at the highest marginal rate of 12.3%.

j. Mental Health Tax. Nonresident individuals with more than \$1 million of California taxable income can be included in the group return. However, these individuals are subject to an additional 1% tax on their **entire** California taxable income when included in 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. If so, it is the business entity/corporations' responsibility to report and pay the additional 1% tax on the group return.

k. Estimated Tax. The business entity/corporation shall make estimated tax payments for the group pursuant to R&TC Section 19136. Payment for the group will be made under the FEIN of the business entity or corporation as instructed in FTB Pub. 1067.

l. Tax Assessments, Protest, Claims, Appeals, and Court Procedures. The business entity/corporation shall receive any notices of proposed tax to be assessed and any assessments of tax with respect to the group nonresident return. Additionally, the business entity/corporation, or its designated representative, shall represent the individuals in protest, claims for refund, appeal procedures, or in court proceeding related to tax matters associated with the group nonresident filing. The business entity/corporation shall pay any tax assessments and any attributable interest and penalties for the group nonresident return. The penalties will be computed as if all the electing individuals included in the return did not participate in any other group nonresident return for that same tax year. The business entity's/corporation's agreement to pay tax, interest and penalties does not absolve the individuals of their respective obligations to pay their California taxes, interest, and penalties, if such obligations are not satisfied by the business entity/corporation.

m. Agree to Act as Withholding Agent. If an electing nonresident individual has a tax deficiency attributable to California source income that was distributable by the business entity or paid by the corporation to the individual for any tax year, the business entity/corporation agrees that it shall act as a withholding agent. The business entity agrees to accept (without contesting jurisdiction) Orders to Withhold against funds to be distributed to such individuals. The funds need not be paid over to the Franchise Tax Board until they are clearly identified as being currently distributable.

n. Business Entity to File Appropriate California Return. The business entity shall file Form 100S, California S Corporation Franchise or Income Tax Return/Form 565, California Partnership Return of Income/Form 568, Limited Liability Company Return of Income, as appropriate. A business entity doing business within and outside of California must determine the portion of the total net income that has its source in California using the allocation and apportionment provisions in the Uniform Division of Income for Tax Purposes Act (UDITPA). Refer to R&TC Sections 25120 through 25141 and applicable regulations.

o. Corporation to File Appropriate California Return. The corporation shall file Form 100, California Franchise or Income Tax Return, or Form 100S.

The terms and conditions set forth above are agreed to on behalf of the above-named business entity/corporation and its electing nonresident individuals. I have been authorized by the above-named business entity/corporation and its electing individuals to accept the terms and conditions set forth above.

Authorized signature (As specified in item a.)	Title	Date	Telephone
▶			

Print name

Business entity's name

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