TAXABLE YEAR **2008**

Net Operating Loss (NOL) Carryover Computation and Limitation – Pierce's Disease

CALIFORNIA FORM **3805D**

Attach to your California tax return.

Name(s) as shown on return

SSN, ITIN, or California corporation number

FEIN

Secretary of State (SOS) file number

A. Check the appropriate box for your entity type: ☐ Individual ☐ Estate ☐ Trust ☐ C corporation ☐ S corporation ☐ Exempt organization ☐ Partnership ☐ Limited liability company ☐ Limited liability partnership

B. Enter the address (actual location) where the area affected by Pierce's disease and its vectors (PDV) is located:

Part I Computation of NOL Carryover and Carryover Limitations — Individuals, Exempt Trusts, and Corporations. See instructions.

1 California source farming business income, see instructions	**1**		
2 Enter the average apportionment percentage from Part II, line 4	**2**		
3 California source farming business income apportioned to PDV affected area. Multiply line 1 by line 2. See instructions	**3**		

	(a) Description	(b) Carryover from prior year	(c) Amount deducted this year	(d) Balance available to offset losses	(e) PDV NOL carryover to 2009
4	Enter amount from line 3				
5	PDV NOL carryover beginning in 2001				
6	PDV NOL carryover beginning in 2002				
7	Total the amounts in column (b), column (c), and column (e). See instructions				

Part II Income Apportionment

Use Part II if your farming business has net income from sources within and outside the area affected by PDV.	(a) Total within California	(b) Total within an area affected by PDV	(c) Percentage within an area affected by PDV column (b) ÷ column (a)
PROPERTY FACTOR			
1 Average yearly value of owned real and tangible personal property used in the farming business (at original cost). See instructions for more information. Exclude property not connected with the farming business.			
Inventory			
Buildings			
Machinery and equipment			
Furniture and fixtures			
Delivery equipment			
Land			
Other tangible assets (attach schedule)			
Rented property used in the business			
Total property values			
PAYROLL FACTOR			
2 Employees' wages, salaries, commissions, and other compensation related to farming business income included in the return.			
Total payroll			
3 Total percentage – sum of the percentages in column (c)			
4 Average apportionment percentage (1/2 of line 3). Enter here and on Part I, line 2			

The average apportionment percentage shown on Part II, line 4 represents the portion of the taxpayer's total farming business that is attributable to activities conducted within the affected area by PDV. Those factors with zero balances in the totals of column (a) will not be included in the computation of the average apportionment percentage. For example, if the taxpayer does not have any payroll within or outside the affected area, then the average apportionment percentage would be computed by dividing line 3 by one instead of two as normally instructed.

Instructions for Form FTB 3805D

Net Operating Loss (NOL) Carryover Computation and Limitation – Pierce's Disease

What's New

Net Operating Loss – For taxable years beginning in **2008** and **2009**, California has suspended the net operating loss (NOL) carryover deduction. Corporations may continue to compute and carryover an NOL during the suspension period. **However**, corporations with taxable income of less than $500,000 or with disaster loss carryovers are not affected by the NOL suspension rules. The carryover period for suspended losses is extended by:

- Two years for losses incurred in taxable years beginning before January 1, 2008.
- One year for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

General Information

For taxable years beginning on or after January 1, 2001, and before January 1, 2003, farmers were allowed a deduction for losses sustained due to Pierce's disease and its vectors (PDV) in California. This loss created a net operating loss (NOL) which can be carried forward for nine years at 100%.

The carryover periods for an NOL incurred in years:

- Beginning before January 1, 2002, have been extended for two years.
- Beginning on or after January 1, 2002, and before January 1, 2003, have been extended for one year.

The PDV NOL carryover can be deducted only against income apportioned to the area affected by Pierce's disease and its vectors using a two-factor (Property and Payroll) formula.

To claim these NOLs, the California Department of Food and Agriculture (CDFA) must confirm that a pest infestation occurred due to Pierce's disease and its vectors. For more information, go to the CDFA website at **cdfa.ca.gov** or call 916.651.0253.

PDV NOL Election. If the taxpayer **made an election** on a timely filed tax return to carry forward an NOL due to PDV, no other type of NOL can be carried forward from that taxable year. Taxpayers must elect and designate the carryover category on the original return for the year of a loss and file form FTB 3805D, Net Operating Loss (NOL) Carryover Computation and Limitation – Pierce's Disease, for each year in which an NOL deduction is being taken. The election is irrevocable.

For taxable years beginning on or after January 1, 2002, the NOL allowed in computing the California taxable income of a nonresident or part-year resident is no longer limited by the amount of NOLs from all sources. Only your California sourced income and losses are considered in determining if you have a California NOL. For more information, get form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations - Individuals, Estates, and Trusts, or form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations – Corporations.

If your residency status changes from the time you generate the NOL carryover to the time you apply the NOL carryover deduction, you will need to recompute the NOL carryover amount. For more information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

S Corporations. Pierce's disease NOLs incurred prior to becoming an S corporation cannot be used against S corporation income. However, an S corporation is allowed to deduct a Pierce's disease NOL incurred after the "S" election is made. An S corporation may use the NOL as a deduction against income subject to the 1.5% entity-level tax (3.5% for financial S corporations). The expenses and income giving rise to the loss are also passed through to the shareholders in the year the loss is incurred.

A Purpose

Use form FTB 3805D to determine the correct amount of NOL carryover that you can deduct this year for prior year losses sustained due to PDV. Attach form FTB 3805D to your California tax return.

B Definitions

Pierce's Disease. Pierce's disease is a pathogen (a plant killing bacterium) which attacks a plant's water-conducting tissues.

Vector. A vector is an insect that carries and transmits a disease-causing organism. The specific "vector" in Pierce's disease is the glassy-winged sharpshooter.

Affected Area. The affected area is the taxpayer's area confirmed by the CDFA as having a pest infestation resulting from Pierce's disease and its vectors.

Business Income. Business income is defined as income arising from transactions and activities in the regular course of the trade or business. Business income includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the regular trade or business operations.

Nonbusiness Income. Nonbusiness income is all income other than business income. See Cal. Code Regs., tit. 18 section 25120 for more references and examples of nonbusiness income.

Farming Business Activities. Farming business activities are generally determined by the transactions and activities in the regular course of the farming trade or business as related to the production of crops, fruits, other agricultural products, or for the sustenance of livestock. For more information, see Cal Code Regs., tit. 18 section 25128.2.

C Determining the Income

California source farming business income is apportioned to an area affected by PDV by multiplying the total California farming business income of the taxpayer by a fraction. The numerator is the property factor plus the payroll factor, and the denominator is two.

Property Factor

Property is defined as the average value of all real and tangible personal property owned or rented by the business and used during the taxable year.

Rented property is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the total rent paid for the property, less total annual subrental rates paid by subtenants.

When determining **income** apportionment on Part II, the **numerator** of the property factor is the average value of the taxpayer's real and tangible personal property owned or rented by the business and used within the affected area during the taxable year (column (b)).

When determining **income** apportionment on Part II, the **denominator** of the property factor is the total average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year within California (column (a)).

Payroll Factor

Payroll is defined as the total amount paid to the business's employees for compensation for the production of farming business income during the taxable year.

Compensation means wages, salaries, commissions, and any other form of remuneration paid directly to employees for personal services.

When determining **income** apportionment on Part II, the **numerator** of the payroll factor is the taxpayer's total compensation paid to employees for working within the affected area during the taxable year (column (b)).

When determining **income** apportionment on Part II, the **denominator** of the payroll factor is the taxpayer's total compensation paid to employees working in CA during the taxable year (column (a)).

Specific Instructions

Part I – Computation of NOL Carryover and Carryover Limitations — Individuals, Exempt Trusts, and Corporations

Use this section to compute the PDV NOL carryover deduction for individuals, exempt trusts, and corporations to reduce current year income from the affected area.

PDV NOL can offset only farming business income attributable to the affected area.

If a PDV NOL carryover deduction is allowable for any taxable year after Pierce's disease has occurred, the affected area will be deemed to remain in existence for the purposes of computing the allowable PDV NOL deduction.

Line 1
Individuals – Use 2008 Schedule CA (540), California Adjustments - Residents, line 18 to figure California source farming business income.

Nonresidents and part-year residents – Use 2008 Schedule CA (540NR), California Adjustments - Nonresidents or Part-Year Residents, line 18 to figure California source farming business income.

Corporations – Compile the California source farming business income using a format similar to the federal Schedule F (Form 1040), Profit or Loss from Farming.

Line 3
This is your California source farming business income apportioned to the PDV affected area. You may reduce this amount by your PDV NOL carryover deduction. Your PDV NOL carryover deduction may not be larger than the income. If it is a loss in the current year or if it limits the amount of NOL you may use this year, you must carry over the PDV NOL to future years.

Line 4
Enter the amount from line 3 in line 4, column (d). If this amount is zero or less, you do not have income apportioned to PDV affected area available to offset the PDV NOL carryover. Transfer the amounts from line 5 and line 6, column (b) to column (e), and enter -0- in column (c), then go to line 7.

Line 5 and Line 6
Enter the amount on line 5 and line 6 as a positive number.

In column (c), enter the smaller of the amount in column (b) or the amount in column (d) from the previous line.

In column (d), enter the result of subtracting column (c) from the balance on the previous line in column (d).

In column (e), enter the result of subtracting the amount in column (c) from the amount in column (b), as applicable.

Example:

(b) Carry-over from prior year	**(c)** Amount deducted this year	**(d)** Balance available to offset losses	**(e)** PDV NOL carryover
		$5,000	
$ 500	$ 500	4,500	$ 0

Line 7
Total the amounts in column (b), column (c), and column (e).

Your PDV NOL carryover deduction for 2008 is the total of column (c). Enter this amount on your California tax return or schedule as follows:

- Form 100, line 21
- Form 100S, line 19
- Form 100W, line 21
- Form 109, line 6
- Schedule CA (540), line 21(e), column B
- Schedule CA (540NR), line 21(e), column B

Part II — Income Apportionment

Use Part II to compute the average income apportionment percentage to the PDV affected area.

If the business operates solely within an affected area and all its property and payroll are solely within that affected area, you do not have to complete this part. Enter 100% (1.00) on Part II, line 4.

Only California source farming business income is apportioned to the PDV affected area. A taxpayer's PDV farming business income is its California source farming business income multiplied by the specific affected area apportionment percentage.

The affected area property and payroll factors used in the determination of apportionable farming business income include only the taxpayer's California amounts in the denominator.