SECTION 13000 LOCAL AGENCY MILITARY BASE RECOVERY AREA (LAMBRA) SALES OR USE TAX CREDIT

References 17053.45(a); 17053.45(b)(3)(B); 23645(a); 23645(b)(3)(B)

For each taxable year beginning on or after January 1, 1995, a taxpayer engaged in a trade or business within a designated Local Agency Military Base Recovery Area (LAMBRA) can take a credit for sales or use tax paid or incurred in connection with the purchase of qualified property.

- In any year, individuals may claim a credit equal to the sales or use tax paid or incurred on the purchase of the first $1 million of qualified property.
- In any year, corporations may claim a credit equal to the sales or use tax paid or incurred on the purchase of the first $20 million of qualified property. (See special rule for S corporations and shareholders in EDAM 13600.)

No credit may be claimed for property purchased after the LAMBRA designation expires, is no longer binding, or becomes inoperative.

13100 Geographic Boundaries and Designation Dates

For a listing of LAMBRAs, refer to EDAM 1320. To verify an address, refer to EDAM 1300.

13200 Exclusive Credit

References 17053.45(h); 23645(h)

If the LAMBRA sales or use tax credit is claimed for the purchase of qualified property during the taxable year, no other credit is allowed with respect to that property.

13300 "Taxpayer" Defined

References 17053.45(b)(2); 23645(b)(2)

EDAM 13310 Allowance of the LAMBRA Sales or Use Tax Credit
EDAM 13320 Pass-Through Entities

A "taxpayer" is a person or entity engaged in a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

13310 Allowance of the LAMBRA Sales or Use Tax Credit

Taxpayers engaged in operations within a LAMBRA are allowed to utilize the LAMBRA credit beginning in the first year of operations within the LAMBRA even though they cannot fulfill the definition of a qualified taxpayer before the close of the second year of operations in the LAMBRA when the net increase in jobs is computed. If at the end of the second year the taxpayer does not meet the definition of a "qualified taxpayer", the LAMBRA credit previously utilized must be recaptured.

13320 Pass-Through Entities

The determination of whether a taxpayer is a qualified taxpayer is made at the entity level. The term "pass-through entity" means any partnership or S corporation. The sales or use tax credit is allowed to the pass-through entity and passed through to the partners or shareholders.

13400 Qualified Property

References 17053.45(b)(3); 23645(b)(3)

EDAM 13410 Capitalized Requirement
EDAM 13420 Leased Property

Qualified property is property purchased by the taxpayer for exclusive use in the LAMBRA and includes, but is not limited to, the following:

- High technology equipment, such as computers and electronic processing equipment;
- Aircraft maintenance equipment, such as engine stands, hydraulic mules, power carts, test equipment, hand tools, aircraft start carts, and tugs;
- Aircraft components, such as engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires; and
- Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

13410 Capitalized Requirement

References 17053.45(b)(3); 17053.45(e); 23645(b)(3); 23645(e)

Qualified property must be purchased and placed in service before the LAMBRA expires, is no longer binding or becomes inoperative. Qualified property cost(s) are costs chargeable to a capital account (subject to depreciation) of the qualified taxpayer. If costs are expensed, rather than capitalized, no credit is allowed.

13420 Leased Property

Taxpayers who acquire property by lease arrangement may qualify for the sales or use tax credit. Lease arrangements structured using a financial (conditional sales) contract generally will qualify the taxpayer to take the sales or use tax credit. For reference sources to determine if a lease qualifies as a purchase rather than a lease arrangement, refer to IRS Revenue Ruling 55-540, 1955-2 C.B. 39, and FTB Legal Ruling 94-2, March 23, 1994.

13500 Credit Computation – Asset Value Limitation

References 17053.45(a); 23645(a)

EDAM 13510 Use Tax Paid on Qualified Property
EDAM 13520 Depreciable Basis
EDAM 13530 Business Income Activity Limitation
EDAM 13540 General Provisions – Apportionment of Business Income
EDAM 13541 Property Factor – Income Apportionment
EDAM 13542 Payroll Factor – Income Apportionment
EDAM 13543 Apportionment – Combined Groups
EDAM 13544 Apportioning for Personal Income Tax Taxpayers

The sales or use tax credit is equal to the amount of sales or use tax “paid or incurred” by the taxpayer in connection with the purchase and use of qualified property.

Example: Taxpayer spent $53,750 to purchase property used in the taxpayer's business within the LAMBRA. The sales tax paid on the purchase is $3,750. The sales tax credit is $3,750.

Individuals, estates or trusts, partnerships, and limited liability companies (LLCs) taxed as partnerships may claim a credit on the sales or use tax paid or incurred to purchase up to $1 million of qualified property. Corporations may claim a credit on the sales or use tax paid or incurred to purchase up to $20 million of qualified property. This limitation applies to each taxable year. (See special rule for S corporations and shareholders in EDAM 13600.)

NOTE: Upon acquisition, if the taxpayer/purchaser was exempt from paying sales tax on the property under the California Revenue & Taxation Code (CR&TC), then the taxpayer/purchaser did not pay or incur sales tax in connection with the purchase of the property to the extent of the exemption. Thus, the taxpayer/purchaser is not allowed to take the sales or use tax credit for the exemption amount.

13510 Use Tax Paid on Qualified Property

References 17053.45(c); 23645(c)

If a taxpayer, operating within a LAMBRA, purchases property out of state and pays or incurs a use tax, the credit is allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

13520 Depreciable Basis

References 17053.45(e); 23645(e)

Any taxpayer that elects to claim the sales or use tax credit, shall *not* increase the basis of the qualified property by the amount of the sales or use tax paid or incurred.

Example: Taxpayer spent $53,750 to purchase property used in the taxpayer's business within the LAMBRA. The sales tax included in the purchase price was $3,750. The basis of the property is $50,000 ($53,750 less $3,750 sales tax).

13530 Business Income Activity Limitation

References 17053.45(f)(1); 23645(f)(1)

See EDAM 12530.

13540 General Provisions – Apportionment of Business Income

References 17053.45(f)(1); 17053.45(f)(2)(A); 23645(f)(1); 23645(f)(2)(A)

If a business is located within and outside of a LAMBRA, or in more than one LAMBRA, the taxpayer must determine the portion of the total business income that is attributable to the LAMBRA.

- Business income is defined under the provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA).
- Components of the factors are defined under the provisions of UDITPA.

For taxable years beginning on or after January 1, 1998, business income shall be apportioned to the LAMBRA by multiplying the taxpayer's *California* source business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

For taxable years beginning on or after January 1, 1995, and before January 1, 1998, business income is apportioned to the LAMBRA by multiplying the *worldwide* business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

13541 Property Factor – Income Apportionment

The property factor is a fraction. The numerator of the property factor is the average value of the real and tangible personal property owned or rented and used or available for use by the taxpayer *within the LAMBRA* during the taxable year.

- For taxable years beginning on or after January 1, 1998, the denominator is the average value of all real and tangible personal property owned or rented and used or available for use by the taxpayer during the taxable year *within California.*
- For taxable years beginning on or after January 1, 1995, and before January 1, 1998, the denominator is the average value of all real and tangible personal property owned or rented and used or available for use during the taxable year *worldwide.*

Rented property is valued at 8 times the net annual rental rate. The net annual rental rate is the total rent paid for the property, less any subrental rates paid by subtenants.

13542 Payroll Factor – Income Apportionment

The payroll factor is a fraction. The numerator of the payroll factor is the total compensation paid to employees working for the taxpayer *within the LAMBRA* during the taxable year.

- For taxable years beginning on or after January 1, 1998, the denominator is the total compensation paid to employees working for the taxpayer *in California* during the taxable year.
- For taxable years beginning on or after January 1, 1995, and before January 1, 1998, the denominator is the total compensation paid to employees working *worldwide* during the taxable year.

Example: For taxable year ending 12/31/1998, Corp. A operates within and outside a LAMBRA. Total business income of $13,000 needs to be apportioned to the LAMBRA. The following amounts apply to Corp. A's property and payroll:

LAMBRA Property	$40,000
CA Property for Corp. A	$100,000
LAMBRA Payroll	$5,000
CA Payroll for Corp. A	$10,000

LAMBRA Property/CA Property	=.40	
LAMBRA Payroll/CA Payroll	=.50	
	.90/2 = .45	LAMBRA Apportionment Factor

Business income	$13,000
Apportionment Factor	x 0.45
LAMBRA Business Income	$5,850
Current Tax Rate	x .0884
Tax attributable to LAMBRA business income	$517

For an example of apportionment rules pre-1998, refer to EDAM 23440, *General Provisions - Income Apportionment*.

13543 Apportionment – Combined Groups

For taxable years beginning on or after 1/1/1998: For members of a combined group, the limitation is based on the intrastate apportioned business income for each taxpayer doing business within the LAMBRA. The numerator of the apportionment formula is based on each LAMBRA taxpayer's separate LAMBRA property and payroll amounts and the denominator is based on each LAMBRA taxpayer's separate California property and payroll amounts.

For taxable years beginning on or after January 1, 1995, and before January 1, 1998: For members of a combined group, the credit limitation will be based on the combined groups worldwide business income (before CA apportionment). The numerator of the apportionment formula is based on each LAMBRA taxpayer's separate LAMBRA payroll and property amounts and the denominator is based on the combined groups worldwide payroll and property amounts.

For an example of apportionment under this method refer to EDAM 23000.

Example: For taxable year ended 12/31/2001, parent corporation A has two subsidiaries, B and C. Corporations A and B operate within a LAMBRA. The combined group operates within and outside California and apportions its income to California using Schedule R. The combined group's business income apportioned to California was $1,000,000. Corporation A and B's share of California business income is $228,000 and $250,000 respectively. Corporation A and B's separate LAMBRA and separate California property and payroll factor amounts are shown below.

Business income apportioned to the LAMBRA was determined as follows:

	A	B
<u>Property Factor</u>		
LAMBRA Property	$1,000,000	$ 800,000
California Property	$1,000,000	$1,200,000
Apportionment %	100%	66.66%
Payroll Factor		
LAMBRA Payroll	$800,000	$ 800,000
California Payroll	$800,000	$1,000,000
Apportionment %	100%	80%
Average Apport. % (Property + Payroll Factors)/2	100%	73.33%

Apportioned		
Business Income	$228,000	$250,000
LAMBRA Income	$228,000	$183,333

13544 Apportioning for Personal Income Tax Taxpayers

The following examples show the application of the apportioning rules to personal income tax taxpayers.

***Example**:* Ray Smith is vice president of an S corporation that has two locations, one within a LAMBRA and one outside the LAMBRA. Eighty percent (80%) of the S corporation's business is attributable to the LAMBRA. (**NOTE**: This percentage was determined by the S corporation, using Worksheet IV from the FTB 3807 Business Booklet, at the time the S corporation return was prepared). Ray divides his time equally (50% & 50%) between the two offices of the S corporation.

Mary Smith (Ray's spouse) works for the S corporation at its office located within the LAMBRA.

Ray and Mary Smith have the following 1999 items of California income and expense:

Ray's salary from the S corp.	$100,000
Mary's salary from the S corp.	75,000
Interest on savings account	1,000
Dividends	3,000
Schedule K-1 (100S) from the S corp.	
Ordinary income	40,000
LAMBRA business expense deduction	(5,000)*
Ray's unreimbursed employee expenses from Schedule A	(2,000)

*The LAMBRA business expense deduction is a separately stated item on Schedule K-1 (100S).

The Smith's LAMBRA income is computed as follows:

Ray's LAMBRA salary ($100,000 x 50%)	$50,000
Mary's LAMBRA salary ($75,000 x 100%)	75,000
Pass-through ordinary income from the S-Corp. ($40,000 x 80%)	32,000
LAMBRA business expense deduction from the S-Corp.	(5,000)
Ray's unreimbursed employee business expenses (2,000 x 50%)	(1,000)
Total LAMBRA income	$151,000

Ray and Mary must compute the tax on the total LAMBRA income of $151,000 (as if it represents all of their income). Using the tax rate schedule for the filing status married filing joint; the 1999 tax on

$151,000 is $10,659. The $10,659 is the first limitation on LAMBRA credits for the 1999 tax year. The second limitation on the credits is the net tax on all income.

NOTE: The standard deduction and personal or dependency exemptions are not included in the computation of LAMBRA income since they are not related to trade or business activities.

13600 S Corporation & Shareholder Credit Amounts

References 17053.45(a); 23645(a); 23803(a)

S corporations operating within a LAMBRA may claim a credit on the sales or use tax paid or incurred to purchase up to $20 million of qualified property. This limitation applies to each taxable year. The S corporation may only use one-third (1/3) of the credit to reduce the tax on the S corporation's LAMBRA business income.

An S corporation's sales or use tax credit may reduce the LAMBRA tax at both the corporate and shareholder levels. One hundred percent (100%) of the LAMBRA credits are passed through to the S corporation shareholders. However, S corporation shareholders are only allowed to claim a credit on the sales or use tax paid or incurred on the purchase of up to $1 million of qualified property of the S corporation for each taxable year. The shareholders claim their pro-rata share of this credit as recomputed under the California personal income tax law (Part 10).

The sales or use tax credit is first computed for the S corporation using the actual qualified acquisition costs not to exceed $20 million. The amount of credit passing through to the shareholders is then computed using the actual qualified acquisition costs not to exceed $1 million. This credit based on the $1 million limitation is passed through to the shareholders based on their pro rata share. The Schedules K (100S) and K-1 (100S) must state the credit amounts allocable to the shareholders.

Example: Corp. Z, an S corporation, purchases $2 million of qualified property, and elects to take the LAMBRA sales or use tax credit. Corp. Z is allowed to claim a sales or use tax credit of $50,000 ($2,000,000 x 7.5% x 1/3 = $50,000). [Cost (not to exceed $20,000,000) x sales tax rate x 1/3 S corporation credit limitation]

The corporation's two shareholders allocate between them a sales or use tax credit of $75,000 ($1,000,000 x 7.5% = $75,000). [Cost (not to exceed $1,000,000) x sales tax rate]

NOTE: The State Board of Equalization, in an unpublished (non-citable) decision, concluded that the $20 million limitation applied to the S-Corp and the $1 million limitation applied collectively to the S-Corp shareholders. *Appeal of Barry and Wendy Breslow, Cal. St. Bd. Of Equal., November 6, 2001.*

13700 Sales or Use Tax Credit and the Hiring Credit

References 17053.45(f)(1); 23645(f)(1)

The amount of credit(s) allowed, in any taxable year, when a taxpayer is eligible to take both the sales or use tax credit and the hiring credit, is limited to the amount of tax imposed on the LAMBRA business income. Thus, the taxpayer must aggregate the credits and limit the total amount of credits to tax imposed on the LAMBRA business income.

13800 Credit Usage and Carryover

References 17053.45(d); 17053.45(f)(1); 23645(d); 23645(f)(1)

EDAM 13810 Credit Will Not Reduce Certain Taxes
EDAM 13820 Depreciation
EDAM 13830 Credit Recapture
EDAM 13831 Special LAMBRA Recapture

The portion of the credit that exceeds the "net tax"/"tax" for the taxable year, may be carried over and added to the credit, if any, in the following year. The credit is carried over to succeeding years, until it is exhausted.

The aggregate amount of the LAMBRA credit, including any credit carryover from prior years, that may reduce the "net tax"/"tax" for the taxable year, shall not exceed the amount of tax imposed on the taxpayer's business income attributable to the LAMBRA, determined as if that income represented all of the income of the taxpayer.

Example: A taxpayer has $4,900 in LAMBRA credits (sales or use tax credit and hiring credit). Tax imposed on LAMBRA business income is $4,700 and the taxpayer's overall "net tax"/"tax" is $4,000. The maximum amount of credit is limited to the lesser of the tax on the LAMBRA business income, or the tax on the taxpayer's overall "net tax"/"tax".

Total LAMBRA credit	$4,900
Tax on LAMBRA income	$4,700
First limitation:	
Lesser of total credit or tax on LAMBRA income	$4,700
Second limitation:	
Lesser of tax on LAMBRA income or "*net tax*"/"*tax*"	$4,000
Maximum credit allowed:	
Lesser of *LAMBRA tax limitation* or "*net tax*"/"*tax*" *limitation*	$4,000
Total LAMBRA credit	$4,900
Maximum credit allowed	$4,000
Carryover	$ 900

In the event that a credit carryover is allowable for any taxable year after the LAMBRA designation has expired; the LAMBRA is deemed to remain in existence for the purpose of computing the business income limitation.

13810 Credit Will Not Reduce Certain Taxes

The LAMBRA sales or use tax credit cannot reduce the:

- Minimum franchise tax (corporations, limited partnerships, limited liability partnerships, LLCs, and S corporations);
- Annual tax (partnerships, LLCs classified as partnerships and Qsubs);
- Built-in gains tax (S corporations);
- Excess net passive income tax (S corporation);
- Alternative minimum tax (corporations, exempt organizations, individuals and fiduciaries); or
- Regular tax below tentative minimum tax.

13820 Depreciation

References 17053.45(e); 18036; 23645(e); 24916

Taxpayers electing to utilize the sales or use tax credit are not entitled to increase the basis of the property for which sales or use tax was paid or incurred in connection with the purchase of the property.

Depreciation of the capitalized cost of the asset may be claimed using any method of depreciation allowable beginning in the year the asset is placed in service.

NOTE: If the business expense deduction is taken for the same property, depreciation will start with the taxable year following the year in which the property is placed in service. The depreciation is calculated on the remaining basis *after* reduction for the sales or use tax credit and business expense deduction amounts.

13830 Credit Recapture

References 17053.45(g)(1); 23645(g)(1): See also Cal. Code Regs. (CCR) § 17267.2-1(a); 24356.7-1

Recapture of the LAMBRA sales or use tax credit is required if the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA at any time before the close of the second taxable year after the property is placed in service. The amount of the credit previously claimed for that property is added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

Example: Corp. A purchases property on June 11, 1998 that qualifies Corp. A to take the LAMBRA sales or use tax credit. Corp. A's taxable year ends December 31 of each year. Corp. A disposes of the property August 5, 2000. The credit is recaptured in the 2000 tax year as the property was disposed of before the close of the second taxable year [12/31/2000] after the property was placed in service.

NOTE: The State Board of Equalization in an unpublished and (uncitable) decision agreed that the statute requires the closure of two taxable years after the end of the taxable year in which the property is placed in service and the election to claim the deduction on the original return is made. *Appeal of Accurate Metal Fabricators, Inc. 32552, Cal. St. Bd. Of Equal., July 3, 2000.*

13831 Special LAMBRA Recapture

References 17053.45(b)(2); 17053.45(g)(2); 23645(b)(2); 23645(g)(2)

See EDAM 12625.

13900 Record Keeping Requirements

To support the sales or use tax credit claimed, the taxpayer must keep all records that document the purchase of the qualified property. This includes items such as purchase receipts and proof of payment. In addition, taxpayers should keep all records that identify or describe:

- The property purchased (such as serial numbers, etc.);
- The amount of sales or use tax paid or incurred upon purchase;
- The location where the property is used; and
- If purchased from a manufacturer located outside California, records to substantiate that property of comparable quality and price was not available for purchase in California.