3000 ENTERPRISE ZONE SALES OR USE TAX CREDIT

References 17053.70(a); 17053.70(b); 23612.2(a); 23612.2(b)

A taxpayer engaged in a trade or business within a designated Enterprise Zone (EZ) can take a credit for sales or use tax paid or incurred in connection with the purchase of qualified property.

- In any year, individuals and partnerships may claim a credit equal to the sales or use tax paid or incurred on the purchase of qualified property not to exceed $1 million.
- In any year, corporations may claim a credit equal to the sales or use tax paid or incurred on the purchase of qualified property not to exceed $20 million (see special rule for S corporations and shareholders in Section 3600).

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

3100 Geographic Boundaries and Designation Dates

For a listing of EZs and designation dates, refer to Section 1310. To verify an address, refer to Section 1300.

3110 Enterprise Zone Expiration

A large number of EZs expired in 2006 and 2007 (refer to Section 1200 for a complete listing of expired EZs). The sales or use tax credit is allowed for qualified property purchased and placed in service up to the expiration date (regardless of the ending date of a taxpayer's taxable year). Credits incurred prior to the expiration of the EZ and subject to carryover will continue to be allowed after the expiration of the EZ. The limitation on the use of the credit (limited to tax on income attributed to the zone) will also remain in effect.

3200 Multiple Credits Allowed

Property that qualifies for the EZ sales or use tax credit may also qualify for the Manufacturers' Investment Credit (expired effective January 1, 2004). The taxpayer is allowed to take both credits on the same property.

Example: Taxpayer A purchases an asset for $100,000 and pays $8,000 in sales tax (8% sales tax rate). The asset is qualified property under both the EZ sales or use tax credit and the Manufacturers' Investment Credit provisions. Assuming all other relevant criteria are met to claim both credits:

- The EZ sales or use tax credit is $8,000 (amount of sales or use tax paid).
- The Manufacturers' Investment Credit is $6,000 ($100,000 x 6%).

3300 Qualified Taxpayer

References 17053.70(b)(1); 23612.2(b)(1)

A qualified taxpayer is a person or entity engaged in a trade or business within an EZ.

3310 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.

3400 Qualified Property

References 17053.70(b)(2); 23612.2(b)(2)

Qualified property must be used exclusively in the EZ and is defined as machinery and machinery parts used for:

- Fabricating, processing, assembling, and manufacturing.
- The production of renewable energy resources.
- Air pollution control mechanisms.
- Water pollution control mechanisms.

For taxable years beginning on or after January 1, 1998, qualified property also includes:

- Data processing and communications equipment, such as computers, computer-automated drafting systems, copy machines, telephone systems, and fax machines.
- Motion picture manufacturing equipment central to production and post-production, such as cameras, audio recorders, and digital image and sound processing equipment.

Generally, qualified machinery parts include those parts that are necessary for the operation of the machinery (e.g., a conveyor belt).

Property whose nature is intrinsically mobile or portable must be closely evaluated to verify that that it is used *exclusively* within an enterprise zone. Such property might include vehicles, laptop computers, or other similar assets.

3410 Capitalized Requirement

References 17053.70(b)(2); 17053.70(e); 23612.2(b)(2); 23612.2(e)

Qualified property must be purchased and placed in service before the EZ expires, is no longer binding, or becomes inoperative. Qualified property costs 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.

3420 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.

3425 Credit Addback to Income

Unlike the hiring credit, an addback of the credit is <u>not</u> required. Some earlier tax forms may have been incorrect.

3500 Credit Computation – Asset Value Limitation

References 17053.70(a); 17053.70(b)(2); 23612.2(a); 23612.2(b)(2)

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 EZ. 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 Section 3600).

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 on the amount of the exemption.

3510 Use Tax Paid on Qualified Property

References 17053.70(c) 23612.2(c)

If a taxpayer operating within an EZ 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.

3520 Depreciable Basis

References 17053.70(e); 23612.2(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 EZ. 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).

3530 Business Income Activity Limitation

References 17053.70(f); 23612.2(f)

The amount of sales or use tax credit and the hiring credit claimed (see Section 2000), including any credit carryover from prior years, may not exceed the amount of tax on the taxpayer's EZ business income in any year. The EZ business income is that portion of the taxpayer's *California source* business income that is apportioned to the EZ. Non-business income or loss is not included in the calculation of business income from the EZ. Each taxpayer claiming the credit must compute the EZ business income and resulting tax.

Example: Corporation A operates exclusively within an EZ. In order to determine the amount of sales or use tax credit allowable, the business income and the tax on that business income must be determined. Corporation A has the following items of income and expense:

Income from business operations	$30,000
Interest from investment which is unrelated to business operations	$2,000
Business expenses	(17,000)
Net Taxable Income	$15,000

Corporation A's income attributed to business operations is:

Income from business operations	$30,000
Business expenses	(17,000)
Net Business Income	$13,000

To determine the sales or use tax credit allowable, the net business income is multiplied by the current tax rate.

Net Business Income	$13,000
x 8.84%	x .0884
Tax associated with business income	$1,149

In this example, the taxpayer can offset the tax with the sales or use tax credit available up to $1,149.

Note: Net tax/tax and alternative minimum tax impose limitations on the allowable offset but were not considered a factor in this example.

3540 General Provisions – Apportionment of Business Income

References 17053.70(f); 23612.2(f)

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

- 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 EZ by multiplying the taxpayer's total 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).

Note: For taxable years ending on or before December 31, 1997, refer to Sections 5700-5715.

Example: For the taxable year ending 12/31/2004, Corporation A operates within and outside an EZ. California business income of $13,000 must be apportioned to the EZ. The following amounts apply to Corporation A's property and payroll:

EZ Property	$	40,000
CA Property	$	100,000
EZ Property/CAProperty		0.40
EZ Payroll	$	5,000
CA Payroll	$	10,000
EZ Paryoll/CA Payroll		0.50
Total EZ Factor (Property + Payroll)		0.90
EZ Apportionment Factor (90% / 2)		0.45

Business Income	$	13,000
EZ Apportionment Factor		x 0.45
EZ Business Income	$	5,850
Current Tax Rate		x .0884
Tax Attributable to EZ	$	517

Example: For the taxable year ending 12/31/2004, Corporation B operates in multiple locations, and in two EZs. California business income of $200,000 must be apportioned to each of the EZs. The following amounts apply to Corporation B's property and payroll:

	EZ 1	EZ 2
EZ Property	$ 40,000	$ 20,000
CA Property	$100,000	$ 100,000
EZ Property/CA Property	0.40	0.20
EZ Payroll	$ 5,000	$ 3,000
CA Payroll	$ 10,000	$ 10,000
EZ Payroll/CA Payroll	0.50	0.30
Total EZ Factor (Property + Payroll)	0.90	0.50
EZ Apportionment Factor / 2	0.45	0.25
CA Business Income	200,000	200,000
EZ Apportionment Factor	0.45	0.25
EZ Income (Business Income x EZ Factor)	$ 90,000	$ 50,000
Current Tax Rate	x .0884	x .0884
Tax Attributable To Each EZ	$ 7,956	$ 4,420

3541 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 EZ d*uring the taxable year.

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*.

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

3542 Payroll Factor – Income Apportionment

The payroll factor is a fraction. The numerator of the payroll factor is the total compensation paid to the taxpayer's employees working within the EZ during the taxable year.

The denominator is the total compensation paid to employees working for the taxpayer *in California* during the taxable year.

3544 Apportionment – Combined Groups

For members of a combined group, the limitation is based on the intrastate apportioned business income for each taxpayer doing business within the EZ. The numerator of the apportionment formula is based on each EZ taxpayer's separate EZ property and payroll amounts. The denominator is based on each EZ taxpayer's separate California property and payroll amounts.

Note: For taxable years ending on or before December 31, 1997, refer to Sections 5700-5715.

Example: For the taxable year ending 12/31/2004, parent corporation A has two subsidiaries, B and C. Corporations A and B operate within the EZ. The combined group operates within and outside California and apportions its income to California using Schedule R. Assume the combined group's business income apportioned to California was $1,000,000 and corporation A and B's share of California business income is $228,000 and $250,000 respectively. Corporation A and B's separate EZ and separate California property and payroll factor amounts are shown below.

Business income apportioned to the EZ was determined as follows:

	A	B
Property Factor		
EZ Property	$1,000,000	$ 800,000
California Property	$1,000,000	$1,200,000
Apportionment %	100%	66.66%
Payroll Factor		
EZ 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
EZ Income	$228,000	$183,333

Note: Corporations operating in multiple EZs must compute the business income activity limitation for each EZ (see example Section 3540)

3545 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 an EZ and one outside the EZ. Eighty percent (80%) of the S corporation's business is attributable to the EZ (determined by the S corporation using Worksheet V from the FTB 3805Z 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 in the EZ.

Ray and Mary Smith have the following 2004 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
EZ business expense deduction	(5,000)*
Ray's unreimbursed employee expenses from Schedule A	(2,000)

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

The Smith's EZ income is computed as follows:

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

Ray and Mary must compute the tax on the total EZ 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 2004 tax on $151,000 is $10,091. The $10,091 is the first limitation on EZ credits for the 2004 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 EZ income since they are not related to trade or business activities.

3600 S Corporation & Shareholder Credit Amounts

References 17053.70(b)(2)(B); 23612.2(b)(2)(B); 23803

S corporations operating within an EZ 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 EZ income.

An S corporation's sales or use tax credit may reduce the EZ tax at both the corporate and shareholder levels. One hundred percent (100%) of the EZ credits are passed through to the S corporation shareholders. However, S corporation individual 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 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 individual 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 takes the EZ 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 level income tax credit and the $1 million limitation applied collectively to calculating the share of credit for each of the S-Corp shareholders. *Appeal of Barry and Wendy Breslow,* Cal. St. Bd. Of Equal., November 6, 2001.

3700 Sales or Use Tax Credit and the Hiring Credit

References 17053.70(f)(1); 23612.2(f)(1)

The amount of credit 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 EZ income. Thus, the taxpayer must aggregate the credits and limit the total amount of credits to tax imposed on the EZ income.

3800 Credit Usage and Carryover

References 17053.70(d); 17053.70(f); 23612.2(d); 23612.2(f)

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 may be carried over to succeeding years until it is exhausted.

The aggregate amount of EZ credits, 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 EZ, determined as if that income represented all of the income of the taxpayer.

Example: A taxpayer has $4,900 in EZ credits (sales or use tax credit and hiring credit). Tax imposed on EZ 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 EZ business income, or the tax on the taxpayer's overall net tax/tax.

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

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

3810 Credit Will Not Reduce Certain Taxes

The EZ sales or use tax credit cannot reduce the:

- Minimum franchise tax (corporations, limited partnerships, limited liability partnerships, LLCs, and S corporations),
- Built-in gains tax (S corporations),
- Excess net passive income tax (S corporation),
- The annual tax (partnerships, LLCs classified as partnerships, and Q Subs),
- Alternative minimum tax (corporations, exempt organizations, individuals, and fiduciaries).

However, the EZ sales or use tax credit may reduce regular tax below tentative minimum tax.

3820 Depreciation

References 17053.70(e); 17267.2(f); 18036; 23612.2(e); 24356.7(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.

3830 Credit Recapture

There are no recapture provisions for the EZ sales or use tax credit.

3900 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 and payment of sales or use tax. 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.
- Sales or use tax returns filed with the Board of Equalization.
- Audit reports issued by the Board of Equalization for audits related to use tax paid, or fixed asset audits.
- 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.