
5000 ENTERPRISE ZONE NET OPERATING LOSS (NOL)

References 17276; 17276.1(a); 17276.2; 17276.3
24416; 24416.1(a); 24416.2; 24416.3

Taxpayers are required to annually report their income and expenses. Due to possible fluctuations in income and expenses, a taxpayer may have substantial profits in one year, while losses in another. In years where expenses exceed income, an NOL occurs.

For entities conducting business within an Enterprise Zone (EZ), a qualified taxpayer may elect to carry forward 100% of its NOL for a 15-year period.

An EZ NOL cannot be generated until the first taxable year beginning on or after the area has been officially designated as an EZ.

Note: A large number of EZs expired in 2006 and 2007 (refer to EDAM 1200 for a complete listing of expired EZs). The EZ NOL is allowed for losses attributed to a taxpayer's trade or business activities within the EZ prior to the expiration date. To determine this loss, the loss is computed as if the taxpayer operated in the EZ for the entire year, then the loss is assigned to the EZ based on the number of days the taxpayer conducted business in the EZ (numerator) as compared to the number of days in the tax year (denominator).

Example: A calendar year taxpayer operating in the Eureka EZ, which expired 10/14/2006, incurred an NOL for the full taxable year of \$100,000. Assume the taxpayer's zone payroll and property factors were 80%, so the EZ NOL for the full taxable year would be equal to \$80,000. The taxpayer's EZ NOL is \$62,904 ($\$80,000 * 287 / 365$ (January 1 to October 14 equals 287 days)).

Net operating losses incurred prior to the expiration of an EZ and subject to carryover will continue to be allowed after the expiration of the EZ. The limitation on the use of the net operating loss (limited to income attributed to the zone) will also remain in effect.

5100 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.

5200 Qualified Taxpayer

References 17276.2(a); 24416.2(a)

For purposes of the EZ NOL deduction, a qualified taxpayer includes a person or entity that is engaged in a trade or business within an EZ.

Taxpayers doing business in an area that was previously not a qualified area, but is later designated as qualified, are allowed to elect the NOL for the taxable year beginning on or after the date the area received its designation as an EZ.

5210 Pass-Through Entities

References 17087.5; 17087.6; 17851; 23800; 24271

In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer is made at the entity level.

The income and loss that will flow through to a shareholder, beneficiary, partner, or member retains the same characteristics as it had with the pass-through entity.

The election (see Section 5300) to claim an NOL is made by the entity *and* each investor on their respective returns. The election by the entity to utilize the EZ NOL does not extend to, or bind the investor to utilize the EZ NOL. Further, the investor may utilize the EZ NOL if the entity utilized the general NOL provisions, or had no NOL. Each taxpayer must determine if they in fact have a NOL, and then decide whether the general or EZ NOL will be utilized.

5211 S Corporations

References 23802(d)(1)-(2)

For qualified taxpayers electing S corporation status *after* the designation of the EZ, the qualified NOL attributed to the C corporation years cannot offset S corporation net income.

5300 Making the Election

References 17276.1(a)-(b); 17276.2(b)-(d); 24416.1(a) & (c); 24416.2(b)-(d)

Qualified taxpayers must make an election to claim the EZ NOL. The election must be timely filed with the original return, and be for the taxable year in which the NOL is incurred. The election is irrevocable.

If the taxpayer is eligible to qualify for an NOL under more than one section (operating in more than one economic development area, new small business etc.), the taxpayer must choose which section to elect. Except for the loss incurred under the subdivision elected, taxpayers are prohibited from carrying over any other type of NOL from the same tax year.

Failure to elect to compute the NOL deduction under CR&TC §17276.1 or 24416.1 will cause the NOL to be subject to the limitations and restrictions under CR&TC §17276 or 24416 (general NOL).

A taxpayer makes the election by filing Form FTB 3805Z – Enterprise Zone Deduction and Credit Summary.

In addition, the form FTB 3805Z must be filed for each year in which the NOL deduction is taken.

5400 EZ NOL Computation - General Provisions

References 17276.1(a); 17276.2(a)(2)(A); 24416.1(a); 24416.2(a)(2)(A)

An EZ NOL is the loss attributable to the qualified taxpayer's business activities within an EZ prior to the EZ expiration date. EZ NOLs are determined under IRC § 172, as modified by the following CR&TC sections:

- 17276.1
- 17276.2
- 24416.1
- 24416.2

5410 EZ NOL Limited by General NOL

References 17276; 24416

The EZ NOL is compared to the NOL computed under the general NOL provisions of the CR&TC § 17276 / 24416 *prior to any reduction per R&TC 17276/24416(1)(A)-(D)*. The EZ NOL carryover is limited to the lesser of the EZ NOL or the general NOL (prior to any reduction).

Note: If the EZ NOL is limited by the general NOL amount, (prior to any reduction), the amount can still be characterized as an EZ NOL and allowed to be carried over at 100% for 15 years. An election must be made to characterize the NOL as an EZ NOL.

Example: Corp. B incurred the following loss in tax year 2003:

Income from business operations	\$160,000
Interest from investment which is unrelated to Corp. B's business operations	15,000
Expenses of business operations	<u>(189,000)</u>
Net loss	(\$14,000)

To determine the NOL carryover attributed to the EZ business operations, the following must be done:

1. Determine NOL per CR&TC §24416 (prior to any reduction)
2. Determine NOL per CR&TC §24416.2

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The NOL carryover is limited to the lesser of the general NOL (item 1) or the EZ NOL (item 2) above.

1. CR&TC §24416 general NOL - prior to 40% reduction

Net loss of Corp. B	(\$14,000)
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2. CR&TC §24416.2 EZ NOL - exclude non-business income/loss

Income from operations	\$160,000
Expenses of operations	<u>(189,000)</u>
Net loss of Corp. B (EZ)	(\$29,000)

Pattern 1: Assume Corp. B operates entirely within the EZ. Corp. B is allowed to carry over the lesser of the general NOL or the EZ NOL; in this case the general NOL of \$14,000.

Pattern 2: Assume Corp. B conducts 35% of its total business operations in the EZ. Because Corp. B only has 35% of its business operation in the EZ, the \$29,000 business loss must be apportioned before comparing it to the general NOL. In this example, the EZ loss is \$10,150 (\$29,000 x 35%). Corp. B is allowed to carry over the lesser of the general NOL or the EZ NOL; in this case the EZ NOL of \$10,150.

5500 EZ NOL - Loss Attributed to Business Activity

References 17276.2(a)(2)(A) - (B); 24416.2(a)(2)(A) - (B)

An EZ NOL is the loss attributable to the qualified taxpayer's business activities within the EZ prior to the EZ expiration date. Non-business income and/or loss are excluded from the calculation of the EZ NOL.

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

- Business loss 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.

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For taxable years beginning on or after January 1, 1998, business loss is apportioned to the EZ by multiplying the worldwide business loss 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 after January 1, 1996 and before January 1, 1998 (1996 fiscal year taxpayers, 1997 year taxpayers), business loss is apportioned to the EZ by use of a four-factor apportionment formula. Worldwide business loss is multiplied by a fraction, the numerator of which is the property factor, payroll factor, and the double-weighted sales factor. The denominator is four (4).

For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996 (1991-1995 year taxpayers and 1996 calendar year taxpayers), business loss is apportioned to the EZ by multiplying the worldwide business loss 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 before January 1, 1991, business loss attributed to an EZ is determined by multiplying worldwide business loss by a fraction, the numerator of which is the property factor, payroll factor, and sales factor, the denominator of which is three (3).

5510 Property Factor – Loss 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* during 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 during the taxable year *worldwide*.

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 subrental rates paid by subtenants.

5520 Payroll Factor – Loss 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 *worldwide* during the taxable year.

5530 Sales Factor – Loss Apportionment

The sales factor is a fraction.

- The numerator of the sales factor is composed of the gross receipts as defined under the provisions of CR&TC §25134 - 25136, derived during the taxable year from transactions and activities occurring within the taxpayers trade or business in the EZ.
- The denominator is composed of the gross receipts as defined under the provisions of CR&TC §25134 - 25136, derived during the taxable year from transactions and activities related to worldwide operations

General rules regarding the double weighting of the sales factor are applicable.

Example - Two-factor apportionment: For the taxable year ending 12/31/2004, Corp. A operates within and outside an EZ. Corp. A's business loss of \$13,000 needs to be apportioned to the EZ. The following amounts apply to Corp. A's property and payroll:

EZ Property	\$40,000	
Worldwide (WW) Property	\$100,000	
EZ Payroll	\$5,000	
WW Payroll	\$10,000	
EZ Property/WW Property	=.40	
EZ Payroll/WW Payroll	= <u>.50</u>	
	.90/2 = .45	EZ Apportionment Factor
Business loss		\$(13,000)
Apportionment Factor		<u>x 0.45</u>
EZ NOL		\$(5,850)

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5540 Apportionment – Combined Groups

For members of a combined group, the EZ NOL calculation will be based on the combined groups worldwide business loss (before CA apportionment). The numerator of the apportionment formula will be based on each EZ taxpayer's separate EZ payroll and property amounts (and sales as discussed in Section 5530), and the denominator will be based on the combined groups worldwide payroll and property amounts (and sales as discussed in Section 5530).

Example: For the taxable year ending 12/31/2004, Parent Corporation A has two subsidiaries, B and C. Corporations A and B operate within an EZ. The combined group operates within and outside California and apportions its income or loss to California using Schedule R. Assume the combined group's business loss is \$1,000,000.

Business loss apportioned to the EZ was determined as follows:

	A	B	C	Combined
<u>Property Factor</u>				
EZ Property	\$2,000,000	\$1,000,000	\$0	\$3,000,000
Worldwide Property				\$5,000,000
Apportionment %	40%	20%		60%
<u>Payroll Factor</u>				
EZ Payroll	\$2,000,000	\$800,000	\$0	\$2,800,000
Worldwide Payroll				\$4,000,000
Apportionment %	50%	20%		70%
Average Apport. % (Property + Payroll Factors)/2	45%	20%		65%
Business Loss				\$(1,000,000)
EZ NOL	\$(450,000)	\$(200,000)		\$(650,000)

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5550 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. (**Note:** This percentage was 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 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 Loss	200,000
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 loss 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 loss from the S-Corp. (\$200,000 x 80%)	(160,000)
EZ business expense deduction from the S-Corp.	(5,000)
Ray's unreimbursed employee business expenses	<u>(1,000)</u>

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	(2,000 x 50%)	
Total EZ loss		\$(41,000)

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

5600 Carryover / Carryback

References 17276.1(a); 24416.1(a)

For each taxable year, a qualified taxpayer engaged in a trade or business within a designated EZ may elect to carryover 100% of its NOL. No NOL carrybacks are allowed.

The NOLs may be carried over to each of the 15 taxable years following the year of loss, or until exhausted, whichever occurs first. If an NOL carryover remains after the EZ designation has expired, the EZ shall be deemed to remain in existence for purposes of computing the EZ income limitation and for purposes of allowing the EZ NOL deduction.

5610 Carryover from Years Prior to January 1, 1997

References 17276.1(c); 24416.1(d)

For taxable years beginning on or after January 1, 1997, the EZ incentives were repealed and replaced by new EZ incentives. However, any EZ NOL carryover attributable to taxable years beginning *prior* to January 1, 1997 shall, if previously elected, continue to be carried over as an EZ NOL carryover amount.

5700 EZ NOL Deduction - General Provisions

References 17276.2(a)(2)(B); 17276.2(a)(2)(C)(ii); 24416.2(a)(2)(B); 24416.2(a)(2)(C)(ii)

The EZ NOL deduction can only offset business income attributable to operations of the taxpayer within the designated EZ.

In the event an EZ NOL deduction is allowable for any taxable year after the EZ designation has expired, the EZ is deemed to remain in existence for the purpose of computing the business income limitation and allowing an EZ NOL deduction.

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5710 Business Income Activity Limitation

References 17276.2(a)(2)(C); 24416.2(a)(2)(C)

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

For taxable years beginning *after* January 1, 1996 and before January 1, 1998 (1996 fiscal year taxpayers, 1997 year taxpayers), business income is apportioned to the EZ by use of a four-factor apportionment formula. Worldwide business income is multiplied by a fraction, the numerator of which is the property factor, payroll factor, and the double-weighted sales factor. The denominator is four (4).

For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996 (1991-1995 year taxpayers and 1996 calendar year taxpayers), business income is apportioned to the EZ 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). For an example of apportionment under this method refer to Section 23444.

For taxable years beginning before January 1, 1991, income or loss attributed to an EZ is determined by multiplying worldwide business income or loss by a fraction, the numerator of which is the property factor, payroll factor, and sales factor, the denominator of which is three (3).

5711 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* 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 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 eight (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.

5712 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.

- 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 before January 1, 1998, the denominator is the total compensation paid to employees working *worldwide* during the taxable year.

5713 Sales Factor – Income Apportionment

The sales factor is a fraction.

- The numerator of the sales factor is composed of the gross receipts as defined under the provisions of CR&TC §25134 - 25136, derived during the taxable year from transactions and activities occurring within the taxpayer's trade or business in the EZ.
- The denominator is composed of the gross receipts as defined under the provisions of CR&TC §25134 - 25136, derived during the taxable year from transactions and activities related to worldwide operations.

General rules regarding the double weighting of the sales factor are applicable.

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

EZ Property	\$40,000	
CA Property	\$100,000	
EZ Payroll	\$5,000	
CA Payroll	\$10,000	
EZ Property/CA Property	= .40	
EZ Payroll/CA Payroll	= <u>.50</u>	
	.90/2 = .45	EZ Apportionment Factor
Business income	\$13,000	
Apportionment Factor	<u>x 0.45</u>	
EZ Business Income	\$5,850	

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5714 Apportionment – Combined Groups

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

For taxable years beginning 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 will be based on each EZ taxpayer's separate EZ payroll and property amounts (and sales as previously discussed), and the denominator will be based on the combined groups worldwide payroll and property amounts (and sales as previously discussed). For an example of apportionment under this method refer to Section 23444.

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 was \$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
<u>Property Factor</u>		
EZ Property	\$1,000,000	\$ 800,000
California Property	\$1,000,000	\$1,200,000
Apportionment %	100%	66.66%
 <u>Payroll Factor</u>		
EZ Payroll	\$800,000	\$ 800,000
California Payroll	\$800,000	\$1,000,000
Apportionment %	100%	80%

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Average Apport. % (Property + Payroll Factors)/2	100%	73.33%
Apportioned Business Income	\$228,000	\$250,000
EZ Income	\$228,000	\$183,333

5715 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 (**Note:** This percentage was 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 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
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).

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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%)	<u>(1,000)</u>
Total EZ income	\$151,000

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.

5800 NOL Suspensions

References 17276.3(c); 24416.3(c)

For taxable years beginning in 2002 and 2003, California has suspended the Net Operating Loss (NOL) carryover deduction. Taxpayers may continue to compute and carryover an NOL during the suspension period. The carryover period for suspended losses is extended by two years for losses incurred before January 1, 2002 and by one year for losses incurred after January 1, 2002 and before January 1, 2003. The deduction for disaster losses is not affected by the NOL suspension rules.

Enterprise Zone NOLs incurred by qualified taxpayers are *not* suspended for taxable years beginning in 1991 and 1992.

5900 Alternative Minimum Tax

References 17062; 23456

Taxpayers claiming an EZ NOL deduction must also determine their NOL for alternative minimum tax purposes.

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