

Legal Division Guidance 2011-10-01

(NOLs – "New Business" and "Eligible Small Business" Provisions)

Q: Do the "new business" and "eligible small business" provisions of RTC sections 17276.20 and 24416.20 continue to apply for taxable years after 2007 under California law?

A: No. RTC sections 17276.20 and 24416.20 modify the federal NOL carryover rules under IRC section 172. Under RTC sections 17276.20(b)(1) and 24416.20(b)(1), the amount of NOLs eligible for carryover for California purposes into subsequent years are limited based on the provisions of those subdivisions. NOLs attributable to taxable years beginning on or after January 1, 2004, are eligible to be carried over without reduction into subsequent taxable years.

RTC sections 17276.20(b)(2) and 24416.20(b)(2) ("new business provision") and RTC sections 17276.20(b)(3) and 24416.20(b)(3) ("eligible small business provision") provide exceptions to the NOL carryover limitations discussed above and allow 100 percent carryovers if certain "new business" or "eligible small business" requirements are met. Since NOLs attributable to taxable years beginning on or after January 1, 2004, are now eligible for 100 percent carryover, the new business provision and the eligible small business provision are currently no longer relevant because NOLs may be fully carried over without any limitations.

In addition, RTC sections 17276.20(d)(1)(B) and 24416.20(e)(1)(B) reduce the 20 year federal NOL carryover period under IRC section 172 b)(1)(A)(ii). The "new business" exceptions in RTC sections 17276.20(d)(2) and 24416.20(e)(2) provide exceptions to the NOL carryover period reduction. Since the modifications to the federal NOL carryover period rules for California purposes no longer apply to taxable years beginning on or after January 1, 2008, the "new business" exception is no longer applicable because California currently conforms to the 20 year federal NOL carryover period pursuant to IRC section 172.