

2009 Instructions for Form FTB 3805Q

Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2005**, and to the California Revenue and Taxation Code (R&TC).

What's New

Net Operating Loss Carrybacks for Small Businesses

In general, California law does not conform to the federal law regarding the net operating loss (NOL) carryback election. Also, California law **does not** conform to the new federal law that allows small businesses to elect to carryback the NOL three, four, or five years.

Important Information

For taxable years beginning in **2008** and **2009**, California has suspended the 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.
- For NOLs incurred in taxable years beginning on or after January 1, 2008, California has extended the NOL carryover period from 10 taxable years to 20 taxable years following the year of the loss.
- California will allow NOLs incurred in taxable years beginning on or after January 1, 2011, to be carried back to each of the preceding two taxable years. An NOL carryback shall not be carried back to any taxable year beginning before January 1, 2009.

The allowable NOL carryback percentage varies. For an NOL incurred in a taxable year beginning on or after:

- January 1, 2011, and before January 1, 2012, the carryback amount shall not exceed 50% of the NOL.
- January 1, 2012, and before January 1, 2013, the carryback amount shall not exceed 75% of the NOL.
- January 1, 2013, the carryback amount shall be 100% of the NOL.

For taxable years that began in 2002 and 2003, California suspended the NOL carryover deduction. Corporations continued to compute and carryover an NOL during the suspension period. However, the deduction for disaster losses was not affected by the NOL suspension rules.

The carryover period for an NOL incurred in taxable 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 general net operating loss (NOL) carryover percentage varies. See General Information F, Types of NOLs, for more information.
- In 1998, the Franchise Tax Board (FTB) implemented the new principal business activity (PBA) code chart that is based on the North American Industry Classification System (NAICS) in the corporate tax booklets. However, the California R&TC still uses the Standard Industrial Codes (SIC) for purposes of the new business and eligible small business NOL.

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2005. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

A Purpose

Use form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations, to figure the current year NOL and to limit NOL and disaster loss carryover deductions.

Exempt trusts should use form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Individuals, Estates, and Trusts.

The California NOL is figured the same way as the federal NOL, except that for California:

- The carryover period and the amount to be carried over differ from federal allowances. See General Information F, Types of NOLs, for more information.
- An NOL may be carried over only to future years (no carrybacks are allowed).

Note: California will allow NOLs incurred in taxable years beginning on or after January 1, 2011, to be carried back to each of the preceding two taxable years.

If the corporation has a current year NOL under R&TC Sections 24416.2, 24416.5, and 24416.6 (relating to Enterprise Zone (EZ), Local Agency Military Base Recovery Area (LAMBRA), or Targeted Tax Area (TTA) NOLs), the corporation **must elect** on its return for the taxable year in which the loss is incurred to carryover the loss either under that section or the loss under R&TC Section 24416 (relating to general NOLs). If the corporation elects to compute the NOL under R&TC Section 24416.1(c) (relating to EZ, LAMBRA, or TTA NOLs), the corporation must:

- Make the election in a statement attached to the original return.
- Use the applicable economic development area (EDA) form to calculate the NOL.

The election is irrevocable. Get form FTB 3805Z, Enterprise Zone Deduction and Credit Summary, FTB 3807, Local Agency Military Base Recovery Area Deduction and Credit Summary, or FTB 3809, Target Tax Area Deduction and Credit Summary for more information.

B Apportioning Corporations

The loss carryover for a corporation that apportions income is the amount of the corporation's loss, if any, after adding income or loss apportioned to California with income or loss allocable to California under Chapter 17 of the Corporation Tax Law. The loss carryover may be deducted from income of that corporation apportioned and allocable to California in subsequent taxable years.

C Combined Reporting

Corporations that are members of a unitary group filing a single return must use intrastate apportionment, separately computing the loss carryover for each corporation in the group using its individual apportionment factors (R&TC Section 25108). Complete a separate form FTB 3805Q for **each** taxpayer included in the combined report. Attach the separate forms for each taxpayer member **behind** the combined form FTB 3805Q for all members.

Unlike the loss treatment for a federal consolidated return, a California loss carryover for one member in a combined report may not be applied to the income of another member included in the combined report. Get FTB Pub. 1061, Guidelines for Corporations Filing a Combined Report, for more information.

D Water's-Edge

For water's-edge taxpayers, R&TC Section 24416(c) imposes a limitation on the NOL deduction if the NOL is generated during a non-water's-edge taxable year. The NOL carryover is limited to the lesser amount as re-determined by computing the income and factors of the original worldwide combined reporting group as if the water's-edge election had been in force for the taxable year of the

loss. If R&TC Section 24416(c) applies, the NOL carryover for each corporation may be decreased, but not increased.

E S Corporations

An S corporation is allowed to carryover a loss that is incurred during a taxable year in which it has in effect a valid election to be treated as an S corporation. The loss is also separately calculated under the pass-through rules and passed to the shareholders in the year incurred and is taken into account in determining each shareholder's NOL carryover, if any.

If a corporation changes from a C corporation to an S corporation, the loss incurred while the corporation was a C corporation may not be applied to offset income subject to the 1.5% tax imposed on an S corporation. However, losses incurred while the corporation was a C corporation may be applied against the built-in gains which are subject to tax. If the corporation incurred losses while it was a C corporation and an S corporation, and the S corporation is using C corporation losses to offset its built-in gains, the S corporation must complete two forms FTB 3805Q and attach

them to Form 100S, California S Corporation Franchise or Income Tax Return. The unused losses incurred while the S corporation was a C corporation are "unavailable" except as provided for above unless and until the S corporation reverts back to a C corporation or the carryover period expires.

However, if an S corporation changes to a C corporation, any S corporation NOLs are lost.

F Types of NOLs

The table below shows the types of NOLs available, a description, and the percentages and carryover periods for each type of loss.

***Note:** The NOL carryover deduction is suspended for 2008 and 2009 taxable years, if the corporation taxable income is \$500,000 or more. The carryover period for suspended losses is extended by two years for losses incurred in taxable years beginning before January 1, 2008, and by one year for losses incurred in taxable years after January 1, 2008 and before January 1, 2009.

Type of NOL and Description	Taxable Year NOL Incurred	NOL Carried Over	Carryover* Period
General NOL (GEN) Available as a result of a loss incurred in taxable years after 1986 and allowed under R&TC Section 24416. Does not include losses incurred from activities that qualify as a new business, an eligible small business, EZ, LARZ, LAMBRA, TTA, disaster loss, or Pierce's disease.	On or after 01/01/2008 2004-2007 2002-2003 2000-2001 1987-1999	100% 100% 60% 55% None	20 Years 10 Years 10 Years 10 Years Expired
Disaster Losses (DIS) Casualty losses in areas of California declared by the President of the United States or the Governor of California to be in a state of disaster. If the disaster is declared by the Governor of California only, subsequent state legislation is required for the disaster provision to be activated. An election may be made under IRC Section 165(i) permitting the disaster loss to be taken against the previous year's income. If the corporation made this election, see Part II, current year NOLs, line 3 and federal Form 4684 instructions for when the election must be filed. If special legislation is enacted under R&TC Section 24347.5 and the specified disaster loss exceeds income in the year it is claimed, 100% of the excess may be carried over for up to five taxable years. If any excess loss remains after the five-year period, 50% of that remaining loss may be carried over for up to 10 additional taxable years for losses occurred in any taxable year beginning before January 1, 2000; 55% for losses incurred in any taxable year beginning on or after January 1, 2000, and before January 1, 2002; 60% for losses incurred in any taxable year beginning on or after January 1, 2002, and before January 1, 2004; or 100% for losses incurred in any taxable year beginning on or after January 1, 2004.	See "List of events that have been declared as disasters on the next page."	100% See instructions	First 5 Years 10 Years Thereafter
New Business NOL (NB) Get FTB Legal Ruling 96-5 for more information. NB means any trade or business activity that is first commenced in California on or after January 1, 1994. 100% of an NB NOL may be carried over, but only to the extent of the net loss from the new business. The term "new business" also includes any taxpayer engaged in biopharmaceutical activities or other biotechnology activities described in Codes 2833 to 2836 of the SIC Manual. Also, it includes any taxpayer that has not received regulatory approval for any product from the United States Food and Drug Administration. See R&TC Section 24416(g)(7)(A) for more information. If a taxpayer's NOL exceeds the net loss from the new business, the excess may be carried over as a general NOL. If a taxpayer acquires assets of an existing trade or business which is doing business in California, the trade or business conducted by the taxpayer or related person is not a new business if the fair market value (FMV) of the acquired assets exceeds 20% of the FMV of the total assets of the trade or business conducted by the taxpayer or any related person. To determine whether the acquired assets exceed 20% of the total assets, include only the assets that continue to be used in the same trade or business activity as were used immediately prior to the acquisition. For this purpose, the same trade or business activity means the same division classification listed in the SIC Manual. If a taxpayer or related person has been engaged in a trade or business in California within the preceding 36 months and then starts an additional trade or business in California, the additional trade or business qualifies as a new business only if the activity is classified under a different division classification of the SIC Manual. Business activities conducted by the taxpayer or related persons wholly outside California are disregarded in determining whether the trade or business conducted within California is a new business. Related persons are defined in IRC Sections 267 or 318.	On or after 01/01/2008 On or after 01/01/2000 and before 01/01/2008 On or after 01/01/1994 and before 01/01/2000 Year of business Year 1 Year 2 Year 3	100% 100% For the first three years of business 100% 100% 100%	20 Years 10 Years 8 Years 7 Years 6 Years
Eligible Small Business NOL (ESB) Get FTB Legal Ruling 96-5 for more information. ESB NOL incurred in a trade or business activity that has gross receipts, less returns and allowances, of less than \$1 million during the taxable year. 100% of an NOL may be carried over, but only to the extent of the net loss from the eligible small business. If a taxpayer's NOL exceeds the net loss from an eligible small business, the excess may be carried over as a general NOL. The corporation should use the same SIC Code division classifications described in the new business NOL section to determine what constitutes a trade or business activity.	On or after 01/01/2008 On or after 01/01/2000 and before 01/01/2008 On or after 01/01/1994 and before 01/01/2000	100% 100% None	20 Years 10 Years Expired
Title 11 Bankruptcy (T11) NOL incurred from 1987 through 1993 by corporations who were under the jurisdiction of the court in Title 11 Bankruptcy proceedings prior to January 1, 1994.	1987-1993	None	Expired

Specific Line Instructions

Part I – Current year NOL

Use Part I of this form to figure the current year NOL eligible for carryover.

Line 2 – If the corporation incurred a disaster loss during the 2009 taxable year, enter the amount of the loss on this line. Enter as a positive number.

Line 3 – If the amount is zero or less, the corporation does not have a current year general NOL. Go to Part II for computation of general NOL carryovers, the current year disaster loss, and carryover from disaster losses.

Line 6 – Go to Part II, Current Year NOLs, to record the corporation's 2009 NOL carryover to 2010. Complete columns (b), (c), (d), and (h) only, for each type of loss that the corporation incurred.

If the corporation has an eligible qualified new business or a small business and the NOL is greater than the amount of net loss from such a business, use the general NOL first. If the corporation operates one or more new businesses and one or more eligible small businesses, determine the amount of the loss attributable to the new business(es), the small business(es), and the general NOL in the following manner. The NOL is first treated as a new business NOL to the extent of the loss from the new business. Any remaining NOL is then treated as an eligible small business NOL to the extent of the loss from the eligible small business. Any further remaining NOL is treated as an NOL under the general rules.

Part II – NOL carryover and disaster loss carryover limitations

Use Part II to limit current year disaster loss and NOL carryover deductions to current year income and to record all of the corporation's loss carryover information.

If the corporation has losses from more than one source and/or more than one category, the corporation must compute the allowable NOL carryover for **each** loss separately.

When to use an NOL carryover

If the corporation NOL carryover deduction is not suspended, use the corporation's NOLs and disaster losses in the order the losses were incurred. There is no requirement to deduct NOL carryovers before disaster loss carryovers.

Line 1 – The NOL carryover deduction is suspended for 2008 and 2009 taxable years, if the corporation taxable income is \$500,000 or more. The corporation 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.

Line 2 – Prior Year NOLs

Column (a) – Enter the year the loss was incurred.

Column (b) – If the loss is due to a disaster, enter the disaster code from the list below. If the loss is from a new business or eligible small business, enter the SIC Code for the new business or eligible small business from the Standard Industrial Classification Manual. **Do not** enter the code from the PBA chart available in the 2009 Form 100, Form 100W, or Form 100S booklets. If the loss was from an S corporation, enter the entity's California corporation number from Schedule K-1 (100S), Shareholder's Share of Income, Deductions, Credits, etc.

List of events that have been declared disasters:

Year	Code	Event
2009	40	Santa Barbara Wildfires
2008	39	Southern California Wildfires 10,11/2008
2008	38	Humboldt County Wildfires
2008	37	California Wildfires 2008
2007	36	Riverside County Winds
2008	35	Inyo Complex Fire
2007	34	Southern California Wildfires
2007	33	Santa Barbara and Ventura County Fires
2007	32	El Dorado County Wildfires
2007	31	California Severe Freeze 01/07
2006	30	Riverside and Ventura County Wildfires
2006	29	San Bernardino County Wildfires
2006	28	Northern California flooding, mudslides, and landslides (03/06 to 04/06)
2006	27	Northern California flooding, mudslides, and landslides (12/05 to 01/06)
2005	26	Shasta County Wildfires
2005	25	Southern California flooding, debris flows, and mudslides
2004	24	San Joaquin Levee Break
2003	23	San Simeon earthquake
2003	22	Southern California fires and other related casualties
2000	21	Napa County earthquake
1999	19	Winter Freeze 98/99
1998	18	El Niño 98
1997	17	Disaster floods 96/97
1996		
1995	15	Storms, flooding, and other related casualties
1994	14	San Luis Obispo fire and other related casualties (expired)*
1994	13	Los Angeles, Orange, and Ventura County earthquake and other related casualties (expired)*

* Corporations that elected to deduct the disaster loss in the prior year under IRC Section 165(i), the final year to deduct the disaster loss carryover was last year. Corporations that did not elect IRC Section 165(i), the final year to deduct the disaster loss carryover is this year.

Column (c) – Enter the type of NOL: General (GEN), New Business (NB), Eligible Small Business (ESB), or Disaster (DIS). For more information see the table in General Information F, Types of NOLs.

If using a Pierce's disease, or an EDA NOL, get the applicable form for the NOL type.

Column (d) – Enter 100% of the initial loss for the year given in column (a).

Column (e) – Enter the NOL carryover amount from the 2008 form FTB 3805Q, Part II, column (h).

Column (f) – Enter the smaller of the amount in column (e) or the amount in column (g) of the previous line.

Column (g) – Enter the result of subtracting column (f) from the balance in column (g) of the previous line.

Column (h) – Subtract the amount in column (f) from the amount in column (e) and enter the result.

Current Year NOLs

If a disaster loss occurs between the date of the publication and the end of the taxable year, go to ftb.ca.gov for an updated version of this form, which will include information for any subsequent disaster loss. Then follow the line 3 instructions.

Line 3 – Current year Disaster Loss

If the corporation did not elect to deduct the current year disaster loss in the prior year:

- In column (d), enter your 2009 disaster loss from Part I, line 2.
- In column (f), enter the disaster loss used in 2009.
- In column (h), enter column (d) less column (f).

If the corporation elected to deduct the 2009 disaster loss on the 2008 tax return, and the corporation has an excess amount to be carried over to 2009, enter the carryover amount in Part II, line 2, column (e). Use the Prior Year NOL instructions for column (a) through column (h) except:

- In column (a), enter 2009.
- In column (b), enter the new disaster code.
- In column (d), enter the total disaster loss incurred in 2009.