

## Limitation on business tax credits

For each taxable year beginning on or after January 1, 2008 and before January 1, 2010, the total business credits allowable, including carryovers, shall not reduce the net tax below 50 percent of the net tax before application of credits.

- Exceptions:
  - Household and dependent care credit.
  - Adoption costs credit.
  - Renters' tax credit.
  - Personal exemption credit.
  - Qualified joint custody, head of household, and qualified taxpayer with dependent parent credits.
  - Senior head of household credit.
  - Unemployment insurance refunds credit.
  
- Carryover extension. Permits disallowed credits to be carried over and used after the suspension. Extends the usual carryover period for suspended credits by two years.
- Full credit utilization. Permits full credit utilization by permitting assignment of the credit to other subsidiaries for each taxable year beginning July 1, 2008 as of January 1, 2010.
- Report to Legislature. Requires report to Legislature regarding credit utilization by June 30, 2013.
- Two-year net operating loss suspension.
- Disallows the NOL deduction for NOLs and NOL carryovers in the 2008-09 taxable years.
- Extends the carryover period for suspended NOLs by an additional two years, thus allowing the taxpayers to have the same number of years to use the deduction as they would have had without the suspension.
- Extends the carryover period to 20 years for NOLs incurred in taxable years beginning on or after January 1, 2010.
- Allows NOLs attributable to taxable years beginning on or after January 1, 2011 to be carried back to each of the preceding two taxable years.
- Phases in carryback percentages.
- LLC tax acceleration. Requires LLCs to estimate and pay the LLC "fee" (which the courts have determined to be a tax) for the 2009 taxable year in June 2009, rather than in April of the following year, thus forcing LLCs to pay the assessment twice in one year. Imposes a 10 percent underpayment penalty.
- Tax amnesty. (This is to be deleted, pursuant to the September 18 agreement.)
- Requires the Franchise Tax Board to administer a tax amnesty program from February 1 to March 27, 2009. Amnesty applies to liabilities for taxable years beginning on or after January 1, 2003, and before January 1, 2007.
- 50 percent interest penalty: For amounts in each taxable year for which amnesty could have been requested, there shall be added to the tax a 50 percent interest penalty for amounts that are due and payable on the last day of the amnesty period, and

for amounts that become due and payable, as defined, after the last date of the amnesty period.

- Exceptions. The penalty does not apply to any amount attributable to an assessment resulting from:
  - An examination under Section 19032, where the Franchise Tax Board first contacted the taxpayer in writing in connection with that examination before March 27, 2009, and that assessment was not final before March 27, 2009.
  - A proposed assessment under Section 19087 where the Franchise Tax Board first contacted the taxpayer in writing in connection with failing to file a return before March 27, 2009, and that assessment was not final before March 27, 2009.
  - Penalty is not subject to appeal. Provides that Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of the 50 percent interest penalty or the determination of when an amount is considered due and payable. The only exception is for FTB computation errors.
- Definition of "due and payable" date.
  - For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay): The date the amount is established on the records of the Franchise Tax Board, but not before the day after the payment due date.
  - For amounts of any liability disclosed on a return filed after the date payment is due (with regard to any extension of time to pay): The date the amount is established on the records of the Franchise Tax Board.
  - For amounts of any liability determined under Section 19081 or 19082 (pertaining to jeopardy assessments): The date the notice of the Franchise Tax Board's finding is mailed or issued.
  - For all other amounts of liability: The date the assessment is final. (Cal-Tax: reference to Section 19049 was removed from the bill.)
- Repeal of yacht tax "loophole." Provides that a vehicle, vessel or aircraft brought into the state by a California resident within 12 months of purchase is presumed to be subject to the state's use tax. (Current law presumes that such items are California use if they are brought into this state within three months of purchase.)