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AMENDED IN ASSEMBLY APRIL 21, 2014  
AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1661**

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**Introduced by Assembly Member Bonta**

February 12, 2014

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An act to add Chapter 6.4 (commencing with Section 51043) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 17276.20 and 24416.20 of, and to add *and repeal* Sections 17053.31 and 23631-~~to~~ of, the Revenue and Taxation Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1661, as amended, Bonta. The Healthy Options for Everyone (HOPE) Act of 2014.

The Urban Agriculture Incentive Zones Act authorizes a city, county, or city and county to establish by ordinance an Urban Agriculture Incentive Zone within its boundaries for the purpose of entering into enforceable contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands for small-scale agricultural use.

This bill would enact the Healthy Options for Everyone (HOPE) Act of 2014, and authorize a city, county, or city and county, after a public hearing, to establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods within the zone. This bill would require a city, county, or city and county to analyze specific factors,

including, but not limited to, population density and transportation, when considering whether to establish a HOPE Incentive Zone within an area. This bill would encourage ~~cities~~ *those local entities* to issue annual permits at a discounted rate to any farmers’ market operating within a HOPE Incentive Zone, *and would require those local entities to waive all business license fees for a qualified business within the zone.*

The Personal Income Tax Law and Corporation Tax Law, in modified conformity with federal law, allow taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their tax liabilities. Existing law allows net operating losses for taxable years beginning on or after January 1, 2008, to be carried over to each of the 20 taxable years following the taxable year of the loss.

This bill would allow, under both laws, a qualified business, which is any trade or business that has primarily done business within a HOPE Incentive Zone, for taxable years beginning on or after January 1, 2015, *and before January 1, 2022*, to carryover a net operating loss to each of the 25 taxable years following the taxable year of the loss.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would allow, *under both laws*, a credit in the amount of 20% of the gross sales of a qualified business, as defined, that has primarily done business within a HOPE Incentive Zone during the taxable year *for taxable years beginning on or after January 1, 2015, and before January 1, 2022.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Healthy Options for Everyone (HOPE) Act of 2014
- 4 provides cities, counties, and cities and counties with the ability
- 5 to provide incentives for businesses and individuals working within
- 6 HOPE Incentive Zones that can be tailored by local governments
- 7 to fit their area’s unique needs.
- 8 (b) These incentives are intended to reduce the tax burden and
- 9 costs of doing business within a HOPE Incentive Zone which, in

1 turn, will spur the creation of new businesses, or the expansion of  
2 existing businesses, within the zone.

3 (c) Incentives that will be available for individuals and  
4 businesses working or doing business within a HOPE Incentive  
5 Zone will include, but are not limited to, a hiring tax credit, an  
6 expansion of the period for which a net operating loss may be  
7 carried over, a tax credit for low-income individuals employed  
8 within a zone, reductions in electricity rates, assistance for  
9 developing sites within a zone, and low-interest loans for the  
10 installation and maintenance of electricity and water services.

11 SEC. 2. Chapter 6.4 (commencing with Section 51043) is added  
12 to Part 1 of Division 1 of Title 5 of the Government Code, to read:

13  
14 CHAPTER 6.4. HEALTHY OPTIONS FOR EVERYONE (HOPE) ACT  
15 OF 2014  
16

17 51043. This chapter shall be known, and may be cited, as the  
18 Healthy Options for Everyone (HOPE) Act of 2014.

19 51043.1. (a) (1) A city, county, or city and county may, after  
20 a public hearing, establish by ordinance a HOPE Incentive Zone  
21 within its boundaries for the purpose of increasing the availability  
22 of fresh fruits and vegetables, and other grown foods.

23 (2) *A HOPE Incentive Zone shall only be established in a*  
24 *geographic area within the boundaries of the city, county, or city*  
25 *and county that qualifies as a food desert.*

26 (3) *A designation of a HOPE Incentive Zone shall be effective*  
27 *only for a period of seven years from the date of the ordinance*  
28 *that established that zone.*

29 (b) A city, county, or city and county shall analyze the following  
30 factors within a geographic area when considering whether to  
31 establish a HOPE Incentive Zone within that area pursuant to  
32 subdivision (a):

33 (1) Transportation.

34 (2) Population density.

35 (3) Income of population.

36 ~~(4) Whether the area qualifies as a “food desert” by the United~~  
37 ~~States Department of Agriculture.~~

38 ~~(5)~~

1 (4) Percentage of population that participates in food assistance  
2 programs, including, but not limited to, a free school lunch  
3 program.

4 ~~(6)~~

5 (5) Percentage of population with dietary-related illnesses.

6 ~~(7)~~

7 (6) Neglected real property.

8 51043.2. (a) A city, county, or city and county may, after  
9 establishing a HOPE Incentive Zone pursuant to Section 51043.1,  
10 enact an ordinance to create incentives for qualified businesses to  
11 conduct business within the zone.

12 (b) The Legislature encourages cities, counties, or a city and  
13 county to issue annual permits at a discounted rate to a farmers’  
14 market operating within a HOPE Incentive Zone.

15 (c) *A city, county, or city and county shall, after establishing a*  
16 *HOPE Incentive Zone pursuant to Section 51043.1, waive all*  
17 *business license fees imposed by the city, county, or city and county*  
18 *for a qualified business within the zone.*

19 51043.3. For the purposes of this chapter, the following terms  
20 have the following meanings:

21 ~~(a)~~

22 (a) *“Food desert” means a low-income census tract where at*  
23 *least 33 percent of the tract’s population or a minimum of 500*  
24 *people in the tract have low access to a supermarket or large*  
25 *grocery store.*

26 (b) (1) *“Low access to a supermarket or large grocery store”*  
27 *means more than one mile from a supermarket or large grocery*  
28 *store in a census tract that is in an urban area, as designated by*  
29 *the United States Census Bureau, and more than 10 miles from a*  
30 *supermarket or large grocery store in a census tract that is not in*  
31 *an urban area.*

32 (2) *For purposes of this subdivision, the distance to*  
33 *supermarkets and large grocery stores is measured by the distance*  
34 *between the geographic center of the 1 kilometer square grid that*  
35 *contains estimates of the population and the nearest supermarket*  
36 *or large grocery store.*

37 (c) *“Low-income census tract” means any census tract where*  
38 *the poverty rate for the tract is at least 20 percent or, for tracts*  
39 *not located within a metropolitan area, the median family income*  
40 *for the tract does not exceed 80 percent of statewide median family*

1 *income, or, for tracts located within a metropolitan area, the*  
2 *median family income for the tract does not exceed 80 percent of*  
3 *the greater statewide median family income or the metropolitan*  
4 *area median family income.*

5 (d) “Primarily” means 80 percent or more.

6 ~~(b)~~

7 (e) “Qualified business” means a business primarily engaged  
8 in the retail sale of canned food, dry *foods* goods, fresh fruits and  
9 vegetables, and fresh meats, fish, and poultry.

10 SEC. 3. Section 17053.31 is added to the Revenue and Taxation  
11 Code, to read:

12 17053.31. (a) ~~There~~ *For taxable years beginning on or after*  
13 *January 1, 2015, and before January 1, 2022, there shall be*  
14 *allowed as a credit against the “net tax,” as defined by Section*  
15 *17039, an amount equal to 20 percent of the gross sales within a*  
16 *HOPE Incentive Zone of a qualified taxpayer during the taxable*  
17 *year.*

18 (b) For purposes of this section, “qualified taxpayer” means a  
19 qualified business, as that term is used in Section 51043.3 of the  
20 Government Code, that has primarily done business within a HOPE  
21 Incentive Zone during the taxable year.

22 (c) “HOPE Incentive Zone” means a zone as established by  
23 Section 51043.1 of the Government Code.

24 (d) *This section shall remain in effect only until December 1,*  
25 *2022, and as of that date is repealed.*

26 SEC. 4. Section 17276.20 of the Revenue and Taxation Code  
27 is amended to read:

28 17276.20. Except as provided in Sections 17276.1, 17276.2,  
29 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided  
30 by Section 172 of the Internal Revenue Code, relating to net  
31 operating loss deduction, shall be modified as follows:

32 (a) (1) Net operating losses attributable to taxable years  
33 beginning before January 1, 1987, shall not be allowed.

34 (2) A net operating loss shall not be carried forward to any  
35 taxable year beginning before January 1, 1987.

36 (b) (1) Except as provided in paragraphs (2) and (3), the  
37 provisions of Section 172(b)(2) of the Internal Revenue Code,  
38 relating to amount of carrybacks and carryovers, shall be modified  
39 so that the applicable percentage of the entire amount of the net  
40 operating loss for any taxable year shall be eligible for carryover

1 to any subsequent taxable year. For purposes of this subdivision,  
2 the applicable percentage shall be:

3 (A) Fifty percent for any taxable year beginning before January  
4 1, 2000.

5 (B) Fifty-five percent for any taxable year beginning on or after  
6 January 1, 2000, and before January 1, 2002.

7 (C) Sixty percent for any taxable year beginning on or after  
8 January 1, 2002, and before January 1, 2004.

9 (D) One hundred percent for any taxable year beginning on or  
10 after January 1, 2004.

11 (2) In the case of a taxpayer who has a net operating loss in any  
12 taxable year beginning on or after January 1, 1994, and who  
13 operates a new business during that taxable year, each of the  
14 following shall apply to each loss incurred during the first three  
15 taxable years of operating the new business:

16 (A) If the net operating loss is equal to or less than the net loss  
17 from the new business, 100 percent of the net operating loss shall  
18 be carried forward as provided in subdivision (d).

19 (B) If the net operating loss is greater than the net loss from the  
20 new business, the net operating loss shall be carried over as  
21 follows:

22 (i) With respect to an amount equal to the net loss from the new  
23 business, 100 percent of that amount shall be carried forward as  
24 provided in subdivision (d).

25 (ii) With respect to the portion of the net operating loss that  
26 exceeds the net loss from the new business, the applicable  
27 percentage of that amount shall be carried forward as provided in  
28 subdivision (d).

29 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
30 Code, the amount described in clause (ii) of subparagraph (B) shall  
31 be absorbed before the amount described in clause (i) of  
32 subparagraph (B).

33 (3) In the case of a taxpayer who has a net operating loss in any  
34 taxable year beginning on or after January 1, 1994, and who  
35 operates an eligible small business during that taxable year, each  
36 of the following shall apply:

37 (A) If the net operating loss is equal to or less than the net loss  
38 from the eligible small business, 100 percent of the net operating  
39 loss shall be carried forward to the taxable years specified in  
40 subdivision (d).

1 (B) If the net operating loss is greater than the net loss from the  
2 eligible small business, the net operating loss shall be carried over  
3 as follows:

4 (i) With respect to an amount equal to the net loss from the  
5 eligible small business, 100 percent of that amount shall be carried  
6 forward as provided in subdivision (d).

7 (ii) With respect to that portion of the net operating loss that  
8 exceeds the net loss from the eligible small business, the applicable  
9 percentage of that amount shall be carried forward as provided in  
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
12 Code, the amount described in clause (ii) of subparagraph (B) shall  
13 be absorbed before the amount described in clause (i) of  
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a  
16 taxable year beginning on or after January 1, 1994, and who  
17 operates a business that qualifies as both a new business and an  
18 eligible small business under this section, that business shall be  
19 treated as a new business for the first three taxable years of the  
20 new business.

21 (5) In the case of a taxpayer who has a net operating loss in a  
22 taxable year beginning on or after January 1, 1994, and who  
23 operates more than one business, and more than one of those  
24 businesses qualifies as either a new business or an eligible small  
25 business under this section, paragraph (2) shall be applied first,  
26 except that if there is any remaining portion of the net operating  
27 loss after application of clause (i) of subparagraph (B) of that  
28 paragraph, paragraph (3) shall be applied to the remaining portion  
29 of the net operating loss as though that remaining portion of the  
30 net operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, the term “net loss” means the  
32 amount of net loss after application of Sections 465 and 469 of the  
33 Internal Revenue Code.

34 (c) Section 172(b)(1) of the Internal Revenue Code, relating to  
35 years to which the loss may be carried, is modified as follows:

36 (1) Net operating loss carrybacks shall not be allowed for any  
37 net operating losses attributable to taxable years beginning before  
38 January 1, 2013.

39 (2) A net operating loss attributable to taxable years beginning  
40 on or after January 1, 2013, shall be a net operating loss carryback

1 to each of the two taxable years preceding the taxable year of the  
2 loss in lieu of the number of years provided therein.

3 (A) For a net operating loss attributable to a taxable year  
4 beginning on or after January 1, 2013, and before January 1, 2014,  
5 the amount of carryback to any taxable year shall not exceed 50  
6 percent of the net operating loss.

7 (B) For a net operating loss attributable to a taxable year  
8 beginning on or after January 1, 2014, and before January 1, 2015,  
9 the amount of carryback to any taxable year shall not exceed 75  
10 percent of the net operating loss.

11 (C) For a net operating loss attributable to a taxable year  
12 beginning on or after January 1, 2015, the amount of carryback to  
13 any taxable year shall not exceed 100 percent of the net operating  
14 loss.

15 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
16 Internal Revenue Code, relating to special rules for REITs, and  
17 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
18 excess interest loss, and Section 172(h) of the Internal Revenue  
19 Code, relating to corporate equity reduction interest losses, shall  
20 apply as provided.

21 (4) A net operating loss carryback shall not be carried back to  
22 any taxable year beginning before January 1, 2011.

23 (d) (1) (A) For a net operating loss for any taxable year  
24 beginning on or after January 1, 1987, and before January 1, 2000,  
25 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
26 to substitute “five taxable years” in lieu of “20 taxable years”  
27 except as otherwise provided in paragraphs (2) and (3).

28 (B) For a net operating loss for any taxable year beginning on  
29 or after January 1, 2000, and before January 1, 2008, Section  
30 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
31 substitute “10 taxable years” in lieu of “20 taxable years.”

32 (2) For any taxable year beginning before January 1, 2000, in  
33 the case of a “new business,” the “five taxable years” in paragraph  
34 (1) shall be modified to read as follows:

35 (A) “Eight taxable years” for a net operating loss attributable  
36 to the first taxable year of that new business.

37 (B) “Seven taxable years” for a net operating loss attributable  
38 to the second taxable year of that new business.

39 (C) “Six taxable years” for a net operating loss attributable to  
40 the third taxable year of that new business.

1 (3) For any carryover of a net operating loss for which a  
2 deduction is denied by Section 17276.3, the carryover period  
3 specified in this subdivision shall be extended as follows:

4 (A) By one year for a net operating loss attributable to taxable  
5 years beginning in 1991.

6 (B) By two years for a net operating loss attributable to taxable  
7 years beginning prior to January 1, 1991.

8 (4) The net operating loss attributable to taxable years beginning  
9 on or after January 1, 1987, and before January 1, 1994, shall be  
10 a net operating loss carryover to each of the 10 taxable years  
11 following the year of the loss if it is incurred by a taxpayer that is  
12 under the jurisdiction of the court in a Title 11 or similar case at  
13 any time during the income year. The loss carryover provided in  
14 the preceding sentence shall not apply to any loss incurred after  
15 the date the taxpayer is no longer under the jurisdiction of the court  
16 in a Title 11 or similar case.

17 (5) (A) For a net operating loss for any taxable year beginning  
18 on or after January 1, 2015, *and before January 1, 2022*, in the  
19 case of a “qualified business,” Section 172(b)(1)(A)(ii) of the  
20 Internal Revenue Code is modified to substitute “25 taxable years”  
21 in lieu of “20 taxable years.”

22 (B) For purposes of this paragraph, “qualified business” means  
23 a qualified business, as that term is used in Section 51043.3 of the  
24 Government Code, that has primarily done business within a HOPE  
25 Incentive Zone, as established by Section 51043.1 of the  
26 Government Code, during the taxable year.

27 (e) For purposes of this section:

28 (1) “Eligible small business” means any trade or business that  
29 has gross receipts, less returns and allowances, of less than one  
30 million dollars (\$1,000,000) during the taxable year.

31 (2) Except as provided in subdivision (f), “new business” means  
32 any trade or business activity that is first commenced in this state  
33 on or after January 1, 1994.

34 (3) “Title 11 or similar case” shall have the same meaning as  
35 in Section 368(a)(3) of the Internal Revenue Code.

36 (4) In the case of any trade or business activity conducted by a  
37 partnership or “S” corporation paragraphs (1) and (2) shall be  
38 applied to the partnership or “S” corporation.

1 (f) For purposes of this section, in determining whether a trade  
2 or business activity qualifies as a new business under paragraph  
3 (2) of subdivision (e), the following rules shall apply:

4 (1) In any case where a taxpayer purchases or otherwise acquires  
5 all or any portion of the assets of an existing trade or business  
6 (irrespective of the form of entity) that is doing business in this  
7 state (within the meaning of Section 23101), the trade or business  
8 thereafter conducted by the taxpayer (or any related person) shall  
9 not be treated as a new business if the aggregate fair market value  
10 of the acquired assets (including real, personal, tangible, and  
11 intangible property) used by the taxpayer (or any related person)  
12 in the conduct of its trade or business exceeds 20 percent of the  
13 aggregate fair market value of the total assets of the trade or  
14 business being conducted by the taxpayer (or any related person).  
15 For purposes of this paragraph only, the following rules shall apply:

16 (A) The determination of the relative fair market values of the  
17 acquired assets and the total assets shall be made as of the last day  
18 of the first taxable year in which the taxpayer (or any related  
19 person) first uses any of the acquired trade or business assets in  
20 its business activity.

21 (B) Any acquired assets that constituted property described in  
22 Section 1221(1) of the Internal Revenue Code in the hands of the  
23 transferor shall not be treated as assets acquired from an existing  
24 trade or business, unless those assets also constitute property  
25 described in Section 1221(1) of the Internal Revenue Code in the  
26 hands of the acquiring taxpayer (or related person).

27 (2) In any case where a taxpayer (or any related person) is  
28 engaged in one or more trade or business activities in this state, or  
29 has been engaged in one or more trade or business activities in this  
30 state within the preceding 36 months (“prior trade or business  
31 activity”), and thereafter commences an additional trade or business  
32 activity in this state, the additional trade or business activity shall  
33 only be treated as a new business if the additional trade or business  
34 activity is classified under a different division of the Standard  
35 Industrial Classification (SIC) Manual published by the United  
36 States Office of Management and Budget, 1987 edition, than are  
37 any of the taxpayer’s (or any related person’s) current or prior  
38 trade or business activities.

39 (3) In any case where a taxpayer, including all related persons,  
40 is engaged in trade or business activities wholly outside of this

1 state and the taxpayer first commences doing business in this state  
2 (within the meaning of Section 23101) after December 31, 1993  
3 (other than by purchase or other acquisition described in paragraph  
4 (1)), the trade or business activity shall be treated as a new business  
5 under paragraph (2) of subdivision (e).

6 (4) In any case where the legal form under which a trade or  
7 business activity is being conducted is changed, the change in form  
8 shall be disregarded and the determination of whether the trade or  
9 business activity is a new business shall be made by treating the  
10 taxpayer as having purchased or otherwise acquired all or any  
11 portion of the assets of an existing trade or business under the rules  
12 of paragraph (1).

13 (5) "Related person" shall mean any person that is related to  
14 the taxpayer under either Section 267 or 318 of the Internal  
15 Revenue Code.

16 (6) "Acquire" shall include any gift, inheritance, transfer incident  
17 to divorce, or any other transfer, whether or not for consideration.

18 (7) (A) For taxable years beginning on or after January 1, 1997,  
19 the term "new business" shall include any taxpayer that is engaged  
20 in biopharmaceutical activities or other biotechnology activities  
21 that are described in Codes 2833 to 2836, inclusive, of the Standard  
22 Industrial Classification (SIC) Manual published by the United  
23 States Office of Management and Budget, 1987 edition, and as  
24 further amended, and that has not received regulatory approval for  
25 any product from the Food and Drug Administration.

26 (B) For purposes of this paragraph:

27 (i) "Biopharmaceutical activities" means those activities that  
28 use organisms or materials derived from organisms, and their  
29 cellular, subcellular, or molecular components, in order to provide  
30 pharmaceutical products for human or animal therapeutics and  
31 diagnostics. Biopharmaceutical activities make use of living  
32 organisms to make commercial products, as opposed to  
33 pharmaceutical activities that make use of chemical compounds  
34 to produce commercial products.

35 (ii) "Other biotechnology activities" means activities consisting  
36 of the application of recombinant DNA technology to produce  
37 commercial products, as well as activities regarding pharmaceutical  
38 delivery systems designed to provide a measure of control over  
39 the rate, duration, and site of pharmaceutical delivery.

1 (g) In computing the modifications under Section 172(d)(2) of  
2 the Internal Revenue Code, relating to capital gains and losses of  
3 taxpayers other than corporations, the exclusion provided by  
4 Section 18152.5 shall not be allowed.

5 (h) Notwithstanding any provisions of this section to the  
6 contrary, a deduction shall be allowed to a “qualified taxpayer” as  
7 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
8 and 17276.7.

9 (i) The Franchise Tax Board may prescribe appropriate  
10 regulations to carry out the purposes of this section, including any  
11 regulations necessary to prevent the avoidance of the purposes of  
12 this section through splitups, shell corporations, partnerships, tiered  
13 ownership structures, or otherwise.

14 (j) The Franchise Tax Board may reclassify any net operating  
15 loss carryover determined under either paragraph (2) or (3) of  
16 subdivision (b) as a net operating loss carryover under paragraph  
17 (1) of subdivision (b) upon a showing that the reclassification is  
18 necessary to prevent evasion of the purposes of this section.

19 (k) Except as otherwise provided, the amendments made by  
20 Chapter 107 of the Statutes of 2000 shall apply to net operating  
21 losses for taxable years beginning on or after January 1, 2000.

22 SEC. 5. Section 23631 is added to the Revenue and Taxation  
23 Code, to read:

24 23631. (a) ~~There~~ *For taxable years beginning on or after*  
25 *January 1, 2015, and before January 1, 2022, there* shall be  
26 allowed as a credit against the “tax,” as defined by Section 23036,  
27 an amount equal to 20 percent of the gross sales within a HOPE  
28 Incentive Zone of a qualified taxpayer during the taxable year.

29 (b) For purposes of this section, “qualified taxpayer” means a  
30 qualified business, as that term is used in Section 51043.3 of the  
31 Government Code, that has primarily done business within a HOPE  
32 Incentive Zone during the taxable year.

33 (c) “HOPE Incentive Zone” means a zone as established by  
34 Section 51043.1 of the Government Code.

35 (d) *This section shall remain in effect only until December 1,*  
36 *2022, and as of that date is repealed.*

37 SEC. 6. Section 24416.20 of the Revenue and Taxation Code  
38 is amended to read:

39 24416.20. Except as provided in Sections 24416.1, 24416.2,  
40 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss

1 deduction shall be allowed in computing net income under Section  
2 24341 and shall be determined in accordance with Section 172 of  
3 the Internal Revenue Code, except as otherwise provided.

4 (a) (1) Net operating losses attributable to taxable years  
5 beginning before January 1, 1987, shall not be allowed.

6 (2) A net operating loss shall not be carried forward to any  
7 taxable year beginning before January 1, 1987.

8 (b) (1) Except as provided in paragraphs (2) and (3), the  
9 provisions of Section 172(b)(2) of the Internal Revenue Code,  
10 relating to amount of carrybacks and carryovers, shall be modified  
11 so that the applicable percentage of the entire amount of the net  
12 operating loss for any taxable year shall be eligible for carryover  
13 to any subsequent taxable year. For purposes of this subdivision,  
14 the applicable percentage shall be:

15 (A) Fifty percent for any taxable year beginning before January  
16 1, 2000.

17 (B) Fifty-five percent for any taxable year beginning on or after  
18 January 1, 2000, and before January 1, 2002.

19 (C) Sixty percent for any taxable year beginning on or after  
20 January 1, 2002, and before January 1, 2004.

21 (D) One hundred percent for any taxable year beginning on or  
22 after January 1, 2004.

23 (2) In the case of a taxpayer who has a net operating loss in any  
24 taxable year beginning on or after January 1, 1994, and who  
25 operates a new business during that taxable year, each of the  
26 following shall apply to each loss incurred during the first three  
27 taxable years of operating the new business:

28 (A) If the net operating loss is equal to or less than the net loss  
29 from the new business, 100 percent of the net operating loss shall  
30 be carried forward as provided in subdivision (e).

31 (B) If the net operating loss is greater than the net loss from the  
32 new business, the net operating loss shall be carried over as  
33 follows:

34 (i) With respect to an amount equal to the net loss from the new  
35 business, 100 percent of that amount shall be carried forward as  
36 provided in subdivision (e).

37 (ii) With respect to the portion of the net operating loss that  
38 exceeds the net loss from the new business, the applicable  
39 percentage of that amount shall be carried forward as provided in  
40 subdivision (d).

1 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
2 Code, the amount described in clause (ii) of subparagraph (B) shall  
3 be absorbed before the amount described in clause (i) of  
4 subparagraph (B).

5 (3) In the case of a taxpayer who has a net operating loss in any  
6 taxable year beginning on or after January 1, 1994, and who  
7 operates an eligible small business during that taxable year, each  
8 of the following shall apply:

9 (A) If the net operating loss is equal to or less than the net loss  
10 from the eligible small business, 100 percent of the net operating  
11 loss shall be carried forward to the taxable years specified in  
12 paragraph (1) of subdivision (e).

13 (B) If the net operating loss is greater than the net loss from the  
14 eligible small business, the net operating loss shall be carried over  
15 as follows:

16 (i) With respect to an amount equal to the net loss from the  
17 eligible small business, 100 percent of that amount shall be carried  
18 forward as provided in subdivision (e).

19 (ii) With respect to that portion of the net operating loss that  
20 exceeds the net loss from the eligible small business, the applicable  
21 percentage of that amount shall be carried forward as provided in  
22 subdivision (e).

23 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
24 Code, the amount described in clause (ii) of subparagraph (B) shall  
25 be absorbed before the amount described in clause (i) of  
26 subparagraph (B).

27 (4) In the case of a taxpayer who has a net operating loss in a  
28 taxable year beginning on or after January 1, 1994, and who  
29 operates a business that qualifies as both a new business and an  
30 eligible small business under this section, that business shall be  
31 treated as a new business for the first three taxable years of the  
32 new business.

33 (5) In the case of a taxpayer who has a net operating loss in a  
34 taxable year beginning on or after January 1, 1994, and who  
35 operates more than one business, and more than one of those  
36 businesses qualifies as either a new business or an eligible small  
37 business under this section, paragraph (2) shall be applied first,  
38 except that if there is any remaining portion of the net operating  
39 loss after application of clause (i) of subparagraph (B) of paragraph  
40 (2), paragraph (3) shall be applied to the remaining portion of the

1 net operating loss as though that remaining portion of the net  
2 operating loss constituted the entire net operating loss.

3 (6) For purposes of this section, “net loss” means the amount  
4 of net loss after application of Sections 465 and 469 of the Internal  
5 Revenue Code.

6 (c) For any taxable year in which the taxpayer has in effect a  
7 water’s-edge election under Section 25110, the deduction of a net  
8 operating loss carryover shall be denied to the extent that the net  
9 operating loss carryover was determined by taking into account  
10 the income and factors of an affiliated corporation in a combined  
11 report whose income and apportionment factors would not have  
12 been taken into account if a water’s-edge election under Section  
13 25110 had been in effect for the taxable year in which the loss was  
14 incurred.

15 (d) Section 172(b)(1) of the Internal Revenue Code, relating to  
16 years to which the loss may be carried, is modified as follows:

17 (1) Net operating loss carrybacks shall not be allowed for any  
18 net operating losses attributable to taxable years beginning before  
19 January 1, 2013.

20 (2) A net operating loss attributable to taxable years beginning  
21 on or after January 1, 2013, shall be a net operating loss carryback  
22 to each of the two taxable years preceding the taxable year of the  
23 loss in lieu of the number of years provided therein.

24 (A) For a net operating loss attributable to a taxable year  
25 beginning on or after January 1, 2013, and before January 1, 2014,  
26 the amount of carryback to any taxable year shall not exceed 50  
27 percent of the net operating loss.

28 (B) For a net operating loss attributable to a taxable year  
29 beginning on or after January 1, 2014, and before January 1, 2015,  
30 the amount of carryback to any taxable year shall not exceed 75  
31 percent of the net operating loss.

32 (C) For a net operating loss attributable to a taxable year  
33 beginning on or after January 1, 2015, the amount of carryback to  
34 any taxable year shall not exceed 100 percent of the net operating  
35 loss.

36 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
37 Internal Revenue Code, relating to special rules for REITs, and  
38 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
39 excess interest loss, and Section 172(h) of the Internal Revenue

1 Code, relating to corporate equity reduction interest losses, shall  
2 apply as provided.

3 (4) A net operating loss carryback shall not be carried back to  
4 any taxable year beginning before January 1, 2011.

5 (e) (1) (A) For a net operating loss for any taxable year  
6 beginning on or after January 1, 1987, and before January 1, 2000,  
7 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified  
8 to substitute “five taxable years” in lieu of “20 years” except as  
9 otherwise provided in paragraphs (2), (3), and (4).

10 (B) For a net operating loss for any income year beginning on  
11 or after January 1, 2000, and before January 1, 2008, Section  
12 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
13 substitute “10 taxable years” in lieu of “20 taxable years.”

14 (2) For any income year beginning before January 1, 2000, in  
15 the case of a “new business,” the “five taxable years” referred to  
16 in paragraph (1) shall be modified to read as follows:

17 (A) “Eight taxable years” for a net operating loss attributable  
18 to the first taxable year of that new business.

19 (B) “Seven taxable years” for a net operating loss attributable  
20 to the second taxable year of that new business.

21 (C) “Six taxable years” for a net operating loss attributable to  
22 the third taxable year of that new business.

23 (3) For any carryover of a net operating loss for which a  
24 deduction is denied by Section 24416.3, the carryover period  
25 specified in this subdivision shall be extended as follows:

26 (A) By one year for a net operating loss attributable to taxable  
27 years beginning in 1991.

28 (B) By two years for a net operating loss attributable to taxable  
29 years beginning prior to January 1, 1991.

30 (4) The net operating loss attributable to taxable years beginning  
31 on or after January 1, 1987, and before January 1, 1994, shall be  
32 a net operating loss carryover to each of the 10 taxable years  
33 following the year of the loss if it is incurred by a corporation that  
34 was either of the following:

35 (A) Under the jurisdiction of the court in a Title 11 or similar  
36 case at any time prior to January 1, 1994. The loss carryover  
37 provided in the preceding sentence shall not apply to any loss  
38 incurred in an income year after the taxable year during which the  
39 corporation is no longer under the jurisdiction of the court in a  
40 Title 11 or similar case.

1 (B) In receipt of assets acquired in a transaction that qualifies  
2 as a tax-free reorganization under Section 368(a)(1)(G) of the  
3 Internal Revenue Code.

4 (5) (A) For a net operating loss for any taxable year beginning  
5 on or after January 1, 2015, *and before January 1, 2022*, in the  
6 case of a “qualified business,” Section 172(b)(1)(A)(ii) of the  
7 Internal Revenue Code is modified to substitute “25 taxable years”  
8 in lieu of “20 taxable years.”

9 (B) For purposes of this paragraph, “qualified business” means  
10 a qualified business, as that term is used in Section 51043.3 of the  
11 Government Code, that has primarily done business within a HOPE  
12 Incentive Zone, as established by Section 51043.1 of the  
13 Government Code, during the taxable year.

14 (f) For purposes of this section:

15 (1) “Eligible small business” means any trade or business that  
16 has gross receipts, less returns and allowances, of less than one  
17 million dollars (\$1,000,000) during the income year.

18 (2) Except as provided in subdivision (g), “new business” means  
19 any trade or business activity that is first commenced in this state  
20 on or after January 1, 1994.

21 (3) “Title 11 or similar case” shall have the same meaning as  
22 in Section 368(a)(3) of the Internal Revenue Code.

23 (4) In the case of any trade or business activity conducted by a  
24 partnership or an “S” corporation, paragraphs (1) and (2) shall be  
25 applied to the partnership or “S” corporation.

26 (g) For purposes of this section, in determining whether a trade  
27 or business activity qualifies as a new business under paragraph  
28 (2) of subdivision (e), the following rules shall apply:

29 (1) In any case where a taxpayer purchases or otherwise acquires  
30 all or any portion of the assets of an existing trade or business  
31 (irrespective of the form of entity) that is doing business in this  
32 state (within the meaning of Section 23101), the trade or business  
33 thereafter conducted by the taxpayer (or any related person) shall  
34 not be treated as a new business if the aggregate fair market value  
35 of the acquired assets (including real, personal, tangible, and  
36 intangible property) used by the taxpayer (or any related person)  
37 in the conduct of its trade or business exceeds 20 percent of the  
38 aggregate fair market value of the total assets of the trade or  
39 business being conducted by the taxpayer (or any related person).  
40 For purposes of this paragraph only, the following rules shall apply:

1 (A) The determination of the relative fair market values of the  
2 acquired assets and the total assets shall be made as of the last day  
3 of the first taxable year in which the taxpayer (or any related  
4 person) first uses any of the acquired trade or business assets in  
5 its business activity.

6 (B) Any acquired assets that constituted property described in  
7 Section 1221(1) of the Internal Revenue Code in the hands of the  
8 transferor shall not be treated as assets acquired from an existing  
9 trade or business, unless those assets also constitute property  
10 described in Section 1221(1) of the Internal Revenue Code in the  
11 hands of the acquiring taxpayer (or related person).

12 (2) In any case where a taxpayer (or any related person) is  
13 engaged in one or more trade or business activities in this state, or  
14 has been engaged in one or more trade or business activities in this  
15 state within the preceding 36 months (“prior trade or business  
16 activity”), and thereafter commences an additional trade or business  
17 activity in this state, the additional trade or business activity shall  
18 only be treated as a new business if the additional trade or business  
19 activity is classified under a different division of the Standard  
20 Industrial Classification (SIC) Manual published by the United  
21 States Office of Management and Budget, 1987 edition, than are  
22 any of the taxpayer’s (or any related person’s) current or prior  
23 trade or business activities.

24 (3) In any case where a taxpayer, including all related persons,  
25 is engaged in trade or business activities wholly outside of this  
26 state and the taxpayer first commences doing business in this state  
27 (within the meaning of Section 23101) after December 31, 1993  
28 (other than by purchase or other acquisition described in paragraph  
29 (1)), the trade or business activity shall be treated as a new business  
30 under paragraph (2) of subdivision (e).

31 (4) In any case where the legal form under which a trade or  
32 business activity is being conducted is changed, the change in form  
33 shall be disregarded and the determination of whether the trade or  
34 business activity is a new business shall be made by treating the  
35 taxpayer as having purchased or otherwise acquired all or any  
36 portion of the assets of an existing trade or business under the rules  
37 of paragraph (1).

38 (5) “Related person” shall mean any person that is related to  
39 the taxpayer under either Section 267 or 318 of the Internal  
40 Revenue Code.

1 (6) “Acquire” shall include any transfer, whether or not for  
2 consideration.

3 (7) (A) For taxable years beginning on or after January 1, 1997,  
4 the term “new business” shall include any taxpayer that is engaged  
5 in biopharmaceutical activities or other biotechnology activities  
6 that are described in Codes 2833 to 2836, inclusive, of the Standard  
7 Industrial Classification (SIC) Manual published by the United  
8 States Office of Management and Budget, 1987 edition, and as  
9 further amended, and that has not received regulatory approval for  
10 any product from the Food and Drug Administration.

11 (B) For purposes of this paragraph:

12 (i) “Biopharmaceutical activities” means those activities that  
13 use organisms or materials derived from organisms, and their  
14 cellular, subcellular, or molecular components, in order to provide  
15 pharmaceutical products for human or animal therapeutics and  
16 diagnostics. Biopharmaceutical activities make use of living  
17 organisms to make commercial products, as opposed to  
18 pharmaceutical activities that make use of chemical compounds  
19 to produce commercial products.

20 (ii) “Other biotechnology activities” means activities consisting  
21 of the application of recombinant DNA technology to produce  
22 commercial products, as well as activities regarding pharmaceutical  
23 delivery systems designed to provide a measure of control over  
24 the rate, duration, and site of pharmaceutical delivery.

25 (h) For purposes of corporations whose net income is determined  
26 under Chapter 17 (commencing with Section 25101), Section  
27 25108 shall apply to each of the following:

28 (1) The amount of net operating loss incurred in any taxable  
29 year that may be carried forward to another taxable year.

30 (2) The amount of any loss carry forward that may be deducted  
31 in any taxable year.

32 (i) The provisions of Section 172(b)(1)(D) of the Internal  
33 Revenue Code, relating to bad debt losses of commercial banks,  
34 shall not be applicable.

35 (j) The Franchise Tax Board may prescribe appropriate  
36 regulations to carry out the purposes of this section, including any  
37 regulations necessary to prevent the avoidance of the purposes of  
38 this section through splitups, shell corporations, partnerships, tiered  
39 ownership structures, or otherwise.

1 (k) The Franchise Tax Board may reclassify any net operating  
2 loss carryover determined under either paragraph (2) or (3) of  
3 subdivision (b) as a net operating loss carryover under paragraph  
4 (1) of subdivision (b) upon a showing that the reclassification is  
5 necessary to prevent evasion of the purposes of this section.

6 (l) Except as otherwise provided, the amendments made by  
7 Chapter 107 of the Statutes of 2000 shall apply to net operating  
8 losses for taxable years beginning on or after January 1, 2000.

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