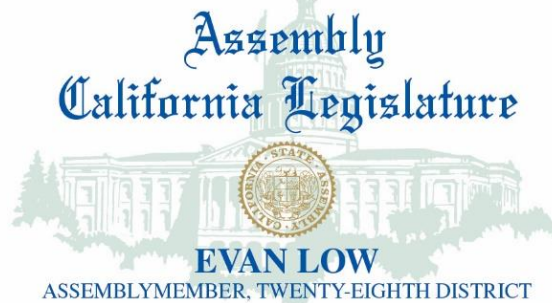**STATE CAPITOL**
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Assembly
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ASSEMBLYMEMBER, TWENTY-EIGHTH DISTRICT

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February 19, 2021

The Honorable Phil Ting
Chair, Assembly Committee on Budget
State Capitol, Room 6026
Sacramento, CA 95814

The Honorable Vice Fong
Vice Chair, Assembly Committee on Budget
State Capitol, Room 2002
Sacramento, CA 95814

RE: RESTORING NET OPERATING LOSS DEDUCTIONS AND BUSINESS INCENTIVE TAX CREDITS

Dear Assemblymembers Ting and Fong:

We, the undersigned Members of the Legislature, are writing to respectfully request that this year's budget restore the net operating loss (NOL) deduction and business incentive tax credits that were suspended and capped in the 2020 budget via AB 85 (Chapter 8, Statutes of 2020). We approved this action last year in order to close an estimated $54.3 billion budget deficit, which thankfully never came to fruition. Sunsetting the suspension and cap would assist employers in their economic recovery and incentivize them to remain in California. The sunset provision is also timely considering California's General Fund is experiencing a windfall.

In July, we approved the Governor's proposal to suspend the use of personal and business NOLs and limit the use of existing business tax credits to offset their tax liability for years 2020-2022. This proposal was advanced to raise approximately $9.2 billion in revenue to help address the budget shortfall expected as a result of COVID-19. While the tax increases were painful for employers, they were willing to pitch in to support the state's pandemic response.

In 2021, however, California is not even close to experiencing a budget shortfall. In fact, California's budget contains a record $22 billion in reserves with $15.6 billion in the state's Rainy-Day Reserve (Proposition 2). California's revenues have actually triggered the State Appropriations Limit (Proposition 4), which could require the state to return revenue in excess of the limit to taxpayers. Accordingly, the tax increases adopted last year as emergency measures are no longer needed. Businesses should be allowed to immediately utilize NOLs and earned tax credits to offset any harm they have suffered as a result of this pandemic, and to encourage employers who are considering leaving to stay.

The business incentive tax credit cap was particularly troubling considering many of California's employers are actively engaged in researching and developing COVID-19 vaccines and anti-viral therapies – activity the state should encourage. Additionally, the NOL suspension is causing even greater financial strain for employers who have suffered staggering losses over the past year and have no way to offset their revenue declines. **Struggling businesses need help now – not in several years when the 2020 budget's carryback provisions take effect.**

California ranks 49th on the Tax Foundation's 2021 State Business Tax Climate Index. Some of California's most storied companies are either leaving the state, choosing to expand elsewhere, or encouraging employees to relocate to lower-cost states. Sunsetting the NOL suspension and cap on business incentive tax credits would send a strong, positive message that our state's employers are important to our government.

For these reasons, we urge the Budget Committee to end to the NOL suspension and cap on business incentive tax credits this year.

Sincerely,

EVAN LOW
Assemblymember, 28th District

cc: Angie Wei, Legislative Affairs Secretary, Office of the Governor
        Members, Assembly Committee on Budget
        Christian Griffith, Chief Consultant, Assembly Committee on Budget
        Kristin Kolpitcke, Assembly Republican Caucus

EL:cm/py