BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Battin**	**SB 38**

SUBJECT

Disaster Loss Deduction And Excess Loss Carryover For The October 2006, Riverside County Wildfires.

SUMMARY

This bill would allow taxpayers special tax treatment, called disaster loss treatment, for losses sustained as a result of the Riverside County wildfires that occurred in October, 2006.

PURPOSE OF BILL

According to the author's staff, the purpose of the bill is to provide immediate tax relief to individuals and businesses affected by the wildfires.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

ANALYSIS

FEDERAL/STATE LAW

Under federal and state law, a disaster loss occurs when business and personal property is destroyed as a result of a fire, storm, flood, or other natural event in an area proclaimed to be a disaster by the President of the United States.

Under federal and state tax law, individual and business taxpayers may elect to claim the loss either in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to file an amended return immediately for the prior year.

Under federal and state law, individual taxpayers with non-business disaster losses that are not reimbursed by insurance or otherwise, are deductible to the extent each loss exceeds $100 or 10% of adjusted gross income.
State tax law identifies specific events as disasters that are then allowed additional special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to five taxable years, and if any excess loss remains after the five-year period, the remaining excess loss may be carried over at a specified percentage for up to 10 additional years. In addition, for disasters that were not the subject of a Presidential disaster declaration, state law authorizes the deduction of a disaster loss on the return for the prior year if the disaster was the subject of a Governor's proclamation.

THIS BILL

This bill would add wildfires that occurred in Riverside County in October, 2006, to the current list of specified disasters under the Personal Income Tax and Corporation Tax Laws.

This bill would allow special disaster treatment of losses sustained as a result of those wildfires. Specifically, since the President has not proclaimed a disaster for any of these fires, this bill would allow a taxpayer to elect to claim the loss either in the year the loss occurred or in the year preceding the loss. If a taxpayer elects to take the loss in the preceding year, this bill would allow the taxpayer to file an amended return immediately for the prior year.

This bill also contains triple jointing language that would incorporate provisions from SB 114 (Florez) and AB 62 (Nava) that would allow taxpayers affected by the freeze of 2007, and those affected by the fires that occurred in Ventura County in 2006 and El Doardo County, Santa Barbara and Ventura Counties in 2007, disaster loss treatment for their losses.

LEGISLATIVE HISTORY

AB 62 (Nava, 2007/2008) would allow taxpayers disaster loss treatment for losses sustained in Ventura county as a result of the wildfire that occurred in September, 2006. This bill is currently in the Senate Committee on Appropriatons.

SB 114 (Florez, 2007/2008) would allow taxpayers disaster loss treatment for losses as a result of the January, 2007, freezing conditions. This bill is currently in Assembly Committee on Appropriations.

AB 18 (La Malfa, Stats. 2005, Ch. 624) allowed taxpayers disaster loss treatment for losses sustained as a result of the following disasters: Shasta County wildfires, and the flooding and slides of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura counties.

AB 1510 (Kehoe, Stats. 2004, Ch. 772) allowed taxpayers disaster loss treatment for losses sustained as a result of the following disasters: Middle River levee break in San Joaquin County, Southern California wildfires, floods, mudflows, and debris flows directly related to the Southern California wildfires, and San Simeon earthquake.

AB 44 (Wiggins, Stats. 2001, Ch. 618) allowed taxpayers disaster loss tax treatment for losses sustained as a result of the earthquake that occurred in September, 2000, in Napa, California.

OTHER STATES INFORMATION

Michigan, Minnesota, Massachusetts, and *New York* conform to the federal provisions that allow taxpayers to claim a disaster loss deduction on their state tax returns either in the preceding year or in the year of the loss. It appears that legislation, executive order, or proclamation by the President or the Governor is required to identify the area impacted by a disaster that is eligible for federal or state assistance.

Florida does not have a personal income tax; however, monetary relief is provided to citizens and corporations through the Emergency Management, Preparedness, and Assistance Trust Fund. *Florida* also requires legislation, executive order, or proclamation to identify the area impacted by a disaster.

PROGRAM BACKGROUND

On October 26, 2006, the Riverside County wildfires were proclaimed by Governor Schwarzenegger to be a disaster; President Bush did not declare these fires to be a federal disaster.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the revenue loss from this bill would be as follows:

Revenue Analysis for SB 38 Enactment assumed before June 30, 2007 Effective and operative January 1, 2005			
Fiscal Year	2005-06	2006-07	2007-08
Disaster Relief	a/	b/	None

a/ Insignificant revenue loss of under $150,000
b/ Insignificant revenue gain of under $150,000

This estimate does not consider any possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

This bill would generate a revenue impact to the extent excess losses remain after computing the casualty loss deduction otherwise allowed against current year taxes only. Furthermore, to the extent remaining losses apply to the preceding tax year (2005), acceleration in revenue loss would occur.

The combined estimated loss in value of affected property is $2 million. Assuming 20% of such damages would NOT be reimbursed by insurance but would exceed the 10% of AGI limitation, the fire casualty caused an estimated $400,000 of potential deductions. It is assumed only one-half of these losses could be claimed in the current tax year. Thus, an estimated $200,000 ($400,000 x 0.5) of possible tax deductions is at issue under this bill.

If all excess losses were deducted on an amended 2005 tax return, roughly $12,000 ($200,000 x 6% tax rate) in lost revenues would result.

The insignificant revenue gains in the later years are a matter of timing. Taxpayers that choose to file an amended return to report the casualty loss immediately will have a higher tax liability in the subsequent income years.

VOTES

Assembly Floor – Ayes: 73, Noes: 0
Senate Floor – Ayes: 40, Noes: 0
Concurrence – Ayes: 38, Noes: 0

LEGISLATIVE STAFF CONTACT

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