**Franchise Tax Board**

# SUMMARY ANALYSIS OF AMENDED BILL

| | | | | | |
|---|---|---|---|---|---|
| Author: | Houston, et al. | Analyst: | Darrine Distefano | Bill Number: | AB 2165 |
| Related Bills: | See Prior Analysis | Telephone: | 845-6458 | Amended Date: | July 7, 2004 |
| | | Attorney: | Patrick Kusiak | Sponsor: | |

**SUBJECT**: Disaster Loss Deduction/Excess Loss Carryover/ Middle River Levee Break In San Joaquin County

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ____________________.

_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

__X__ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 21, 2004.

__X__ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO ________________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 21, 2004. STILL APPLIES.

__X__ OTHER - See comments below.

## SUMMARY

This bill would allow taxpayers special tax treatment, called disaster loss treatment, for losses sustained as a result of the Middle River levee break in San Joaquin County.

## SUMMARY OF AMENDMENTS

The July 7, 2004, amendments made the following changes:

- Removed the provisions relating to financial assistance to local agencies and water rights fees.
- Added the Southern California wildfires, losses related to the wildfires, and the San Simeon earthquake.
- Added double-jointing language to SB 438 (Soto & Hollingsworth, 2003/04) that includes all of the same wildfire and earthquake disaster loss provisions.

The July 7th amendments do not resolve the department's technical consideration from the June 21, 2004, analysis. That concern and two new technical considerations are provided below. Also, the revenue estimate for the levee is restated below for convenience. The remainder of the department's analysis of the bill as amended June 21, 2004, still applies.

## POSITION

Pending.

| Board Position: | | | Legislative Director | Date |
|---|---|---|---|---|
| _____ S | _____ NA | _____ NP | | |
| _____ SA | _____ O | _____ NAR | Jana Howard | 7/20/04 |
| _____ N | _____ OUA | __X__ PENDING | | |

TECHNICAL CONSIDERATIONS

Since the Governor vetoed SB 438 on July 6, 2004, the double jointing language should be removed from this bill. As a result of the veto, only Sections 1 and 3 of this bill would be operative on or after January 1, 2004. Sections 1 and 3 provide special disaster treatment only to taxpayers affected by the Middle River levee break.

Clarifying amendments have been included under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL). Amendments 1 and 3 clarify the net operating loss (NOL) percentage applicable for excess disaster losses. Beginning in 2004, the NOL percentage has been raised to 100%. Therefore, if a taxpayer affected by the levee break has any excess disaster loss remaining after five years, 100% of any remaining loss can be carried over for an additional 10 years.

Amendments 2 and 4 eliminate unnecessary language and clarify that for state income tax purposes federal treatment for disasters applies to a Governor-only declared disaster.

**ECONOMIC IMPACT**

Revenue Estimate

**Estimated PITL & CTL Revenue Impact**
**AB 2165 – Middle River Levee**
**As amended July 7, 2004**
(In Millions)
**Fiscal Year Impact**

| Fiscal Year | **2003-04** | **2004-05** | **2005-06** | **2006-07** |
|---|---|---|---|---|
| Revenue Loss - PITL | Negligible | Insignificant | Insignificant | Insignificant |
| Revenue Loss - CTL | Negligible | Insignificant | Insignificant | Insignificant |

Negligible = Less than $250,000
Insignificant = Less than $150,000

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

Revenue Discussion

*Middle River Levee*

The impact of this proposal will depend on the amount of disaster losses carried back, instead of carried forward at 100% under current law.

It is estimated that the total cost of fighting the flooding caused by the Middle River levee break will be nearly $53 million. The total amount of damages for Middle River levee break was estimated to be $10 million in crop losses. Since the majority of the damages were crop losses, it is assumed that none of these losses would be reimbursed by insurance coverage and that all would be business related losses. It is assumed that half of these businesses file returns under PITL and another half file returns under the CTL ($10 million/2 = $5 million for each). The revenue impact for PITL is estimated to be a $75,000 revenue loss ($5 million loss x 25% of taxpayers that would have income in the 2003 tax year to offset x 6% average marginal tax rate). The revenue impact for CTL is estimated to be an $110,000 revenue loss ($5 million loss x 25% of taxpayers that would have income in 2003 tax year to offset x 8.84% tax rate).

**LEGISLATIVE STAFF CONTACT**

Darrine Distefano
Franchise Tax Board
845-6458
darrine.distefano2@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov

Analyst Darrine Distefano
Telephone # 845-6458
Attorney Patrick Kusiak

FRANCHISE TAX BOARD’S
PROPOSED AMENDMENTS TO AB 2165
As Amended July 7, 2004

AMENDMENT 1

On page 5, line 25, after “17276” insert:

operative for the year the disaster loss was sustained

AMENDMENT 2

On page 6, strikeout lines 1-4 and insert:

(d) Section 165(i) of the Internal Revenue Code shall be modified to additionally apply to any of the losses listed in subdivision (a) which was proclaimed by the Governor to be in a state of disaster.

AMENDMENT 3

On page 11, line 14, after “24416” insert:

operative for the year the disaster loss was sustained

AMENDMENT 4

On page 11, strikeout lines 28-31, and insert:

(d) Section 165(i) of the Internal Revenue Code shall be modified to additionally apply to any of the losses listed in subdivision (a) which was proclaimed by the Governor to be in a state of disaster.