

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: De Leon Analyst: Gail Hall Bill Number: AB 1511  
 Related Bills: See Prior Analysis Telephone: 845-6111 Amended Date: August 20, 2010  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** NOL/Disaster Loss/Credit Sharing/Sales Factor

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended July 15, 2010.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- \_\_\_\_\_ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.
- \_\_\_\_\_ FURTHER AMENDMENTS NECESSARY.
- \_\_\_\_\_ DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- \_\_\_\_\_ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED \_\_\_\_\_ STILL APPLIES.
- OTHER – See comments below.

**SUMMARY**

This bill would do the following:

Provision No. 1: Remove the net operating loss (NOL) carryback provisions and suspend NOL deductions for 2 additional years.

Provision No. 2: Make certain federal law sections, relating to the carryback of NOLs attributable to disaster losses, inapplicable for state purposes.

Provision No. 3: Delay the use of assigned tax credits.

Provision No. 4: Remove the election provision from the single factor, 100 percent sales apportionment formula (single sales factor), and make this formula mandatory to determine business income derived from within and without California.

Board Position:

\_\_\_\_\_ S                      \_\_\_\_\_ NA                      \_\_\_\_\_ NP  
 \_\_\_\_\_ SA                      \_\_\_\_\_ O                      \_\_\_\_\_ NAR  
 \_\_\_\_\_ N                      \_\_\_\_\_ OUA                       PENDING

Legislative Director

Date

Brian Putler

08/31/10

## SUMMARY OF AMENDMENTS

The August 20, 2010, amendments made the following changes to the bill:

- Resolved the implementation consideration discussed in the department’s analysis of the bill as amended July 15, 2010, in Provision No. 3 relating to tax credit assignments made prior to the effective date of this bill. (See Appendix A).
- Resolved the technical consideration discussed in the department’s analysis of the bill as amended July 15, 2010, in Provision No. 4 relating to the single factor, 100 percent sales, apportionment formula. (See Appendix A).

In addition, the revenue impact for Provision No. 1 relating to NOL suspensions has been revised to correct the department’s previous revenue impact reported in the analysis of the bill as amended July 15, 2010, that incorrectly omitted the “small business exception.”

Except for the Provision No. 1 “Revenue Impact,” Provision No. 3 “Effective/Operative Date” and “Revenue Impact” discussions, the remainder of the department’s analysis of the bill as amended July 15, 2010, still applies. The “Summary Revenue Table,” Provision No. 2 technical consideration, and the “Legal Concern” discussion have been provided for convenience.

## ECONOMIC IMPACT - SUMMARY REVENUE TABLE

Estimated Revenue Impact of AB 1511 Enactment assumed after 6/30/2010 (\$ In Millions)				
	2010-11	2011-12	2012-13	2013-14
<b>Provision No. 1:</b> Repeal NOL Carrybacks, Suspend NOL Deductions for 2010 and 2011	\$1,040	\$370	-\$186	-\$80
<b>Provision No. 2:</b> Disaster Losses	0	0	0	0
<b>Provision No. 3:</b> Repeal Credit Sharing Provision. Create new provision operative for tax years beginning on or after 1/1/2012	\$315	\$260	\$32	-\$40
<b>Provision No. 4:</b> Repeal Elective Single Sales Factor. Adopt Mandatory Single Sales Factor Apportionment operative for tax years beginning on or after 1/1/2012	\$270	\$850	\$1,000	\$850
Interaction between these provisions	\$67	\$131	\$14	-\$3
<b>Total Revenue Impact</b>	<b>\$1,692</b>	<b>\$1,611</b>	<b>\$860</b>	<b>\$727</b>

**PROVISION NO. 1: REPEAL NOL CARRYBACKS/SUSPEND NOLS/ADD SEPARATE NOL CARRYOVER SECTION**

**ECONOMIC IMPACT**

Estimated Revenue Impact of Provision No. 1 Enactment assumed after 6/30/2010 (\$ In Millions)				
	2010-11	2011-12	2012-13	2013-14
<b>Provision No. 1:</b> Repeal NOL Carrybacks, Suspend NOL Deductions for 2010 and 2011	\$1,040	\$370	-\$186	-\$80

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision.

**PROVISION NO. 2: DISASTER LOSSES**

**TECHNICAL CONSIDERATION**

The provisions added by this bill that would make IRC 172(j) and IRC 172(b)(1)(J)<sup>1</sup> inapplicable for state purposes are unnecessary because these federal sections apply to taxable years beginning before January 1, 2010, and California law already disallows NOL carrybacks for losses attributable to taxable years beginning before January 1, 2011.

**PROVISION NO. 3: DELAY USE OF ASSIGNED TAX CREDITS**

**EFFECTIVE/OPERATIVE DATE**

As a tax levy, this provision would be effective immediately upon enactment and operative as follows:

- Repeal of current law's credit assignment provision: operative for taxable years beginning on or after January 1, 2010.
- New credit assignment provision: Specifically allows the assignment of any credit allowed to a taxpayer in taxable years beginning on or after July 1, 2008. In addition, this provision specifically provides the following provisions:
  - Prevents an assigned credit from being used to reduce the tax for a taxable year beginning before January 1, 2012.
  - Adds that any credit assigned under current law's credit assignment provision that was assigned prior to the effective date of the repeal of current law's credit assignment provision would be treated as if it were made under the new credit assignment provision, including the limitation of the application of an assigned credit to taxable years beginning on or after January 1, 2012.

<sup>1</sup> See the Federal/State Law discussion in the departments analysis of the bill as amended July 15, 2010, for an explanation of IRC 172(j) and IRC 172(b)(1)(J).

## ECONOMIC IMPACT

Estimated Revenue Impact of Provision No. 3 Enactment assumed after 6/30/2010 (\$ In Millions)				
	2010-11	2011-12	2012-13	2013-14
<b>Provision No. 3:</b> Repeal Credit Sharing Provision. Create new provision operative for tax years beginning on or after 1/1/2012	\$315	\$260	\$32	-\$40

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision.

## LEGAL CONCERN

It is unclear what impact, if any, Proposition 24, which qualified for the November 10, 2010, ballot, would have on this bill should both be enacted.

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## APPENDIX A

### RESOLVED IMPLEMENTATION AND TECHNICAL CONSIDERATIONS

**Provision No. 3: Implementation Consideration Discussed In The Department's Analysis of the Bill as Amended July 15, 2010.**

- This bill is silent on whether any tax credit assignments made prior to the effective date of this bill would be subject to the bill's provision that assigned tax credits may only reduce tax for taxable years beginning on or after January 1, 2012. Alternatively, the bill could be read to allow previous tax credit assignments to reduce the tax for taxable years beginning on or after January 1, 2010. It is recommended that the author add legislative intent language clarifying their intent as to this question.

**Provision No. 3: Technical Consideration Discussed In The Department's Analysis of the Bill as Amended July 15, 2010.**

- Section 25128 of the Revenue and Taxation Code (R&TC) references R&TC Section 25128.5, which would be repealed by this bill. The reference should be changed to Section 25128.7.