Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Salas	Analyst:	Angela Raygoza	Bill Number:	AB 1568
Related Bills:	See Legislative History	Telephone:	845-7814	Amended Date:	September 4, & September 10 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/October & November 2008 And May 2009 Los Angeles, Orange, Riverside, San Bernardino, Ventura, And Santa Barbara County Wildfires

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the wildfires that occurred during October and November 2008, and May 2009, in specified counties.

SUMMARY OF AMENDMENTS

The September 4, 2009, amendments would remove language that make changes to the Welfare and Institutions Code and add language that would allow special tax treatment, called disaster loss treatment, for losses sustained as result of the wildfires that occurred during October and November 2008, and May 2009 in specified counties.

The September 10, 2009, amendments would add language that would create the Children's Health and Human Services Special Fund, as specified, and would also remove the provision that makes this bill a tax levy.

This analysis will not address the bill's changes to the Property Tax Law, as they do not impact the department or state income tax revenue.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the language of the bill, the purpose of this bill is to provide immediate tax relief to individuals and businesses affected by the wildfires.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and operative as of that date.

POSITION

Pending.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
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_______ N	_______ OUA	___X___ PENDING		

ANALYSIS

FEDERAL/STATE LAW

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

Existing federal and state laws allow an individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

State tax law[1] identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100 percent of the excess disaster loss may be carried over for up to 15 taxable years. In addition, for disasters that were the subject of a Governor's proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year.

PROGRAM BACKGROUND

On October 13, 2008, Governor Arnold Schwarzenegger proclaimed a state of emergency, declaring the wildfires that occurred in Los Angeles and Ventura Counties to be a state disaster. President Bush did not declare the October, 2008, wildfires in Los Angeles and Ventura Counties a federal disaster.

On November 14, 2008, Governor Arnold Schwarzenegger proclaimed a state of emergency declaring the wildfires that occurred in Santa Barbara County to be a state disaster. On November 15, 2008, Governor Arnold Schwarzenegger proclaimed a state of emergency declaring the wildfires that occurred in Los Angeles, Orange, Riverside, and San Bernardino Counties to be state disasters. On November 18, 2008, President George W. Bush proclaimed a federal disaster for the wildfires that occurred in Los Angeles, Orange, Riverside, and Santa Barbara Counties.

[1] AB 1452 (Stats. 2008, Ch. 763) disallows net operating loss deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with net business income of $500,000 or more.

On May 5, 2009, Governor Arnold Schwarzenegger proclaimed a state of emergency declaring the wildfires that occurred in Santa Barbara County to be a state disaster. As of June 19, 2009, President Barack Obama has not proclaimed a federal disaster for this wildfire.

THIS BILL

As a Governor-proclaimed disaster, this bill would allow taxpayers affected by the Los Angeles and Ventura County wildfires in October 2008, the San Bernardino County wildfires in November 2008, and the Santa Barbara County wildfires in May 2009, to elect to file an amended return for the prior taxable year to deduct the disaster losses and reduce the prior year tax liability, resulting in an expedited refund. This bill would also allow special carry forward treatment for up to fifteen taxable years for losses sustained as a result of the wildfires.

As a Presidentially-declared disaster, existing law allows taxpayers affected by the November, 2008, Los Angeles, Orange, Riverside, and Santa Barbara County wildfires to elect to file an amended return for the prior taxable year to deduct the disaster loss and reduce the prior year tax liability, resulting in an expedited refund.

LEGISLATIVE HISTORY

AB 50 (Nava, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in the Santa Barbara County during November 2008. This bill is currently in the Senate Appropriations Committee.

AB 15 (Fuentes, 2009/2010) would allow taxpayers' disasters loss treatment for losses sustained as a result of the wildfires that occurred in Los Angeles County during November 2008. This bill is currently in the Senate Appropriations Committee.

AB 79 ((Duvall, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in the Orange County during November 2008. This bill is currently in the Senate Appropriations Committee.

AB 62 (Nava, Stats. 2007, Ch. 224) allows taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Ventura county in 2006, and in El Dorado, Santa Barbara, and Ventura counties during 2007.

SB 1064 (Hollingsworth, Stats. 2008, Ch. 386) allows taxpayers disaster loss treatment for losses sustained during calendar year 2007 for wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties and wind damage that occurred in Riverside County during October 2007. In addition, the losses sustained in Butte, Kern, Humboldt, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties during May, June, and July 2008, and the July 2007, wildfire and July 2008, rainstorms that occurred in Inyo County.

SB 38 (Florez, Stats. 2007, Ch. 222) allows taxpayers disaster loss treatment for losses that occurred as a result of the wildfire in Riverside County in October 2006.

SB 114 (Florez, Stats. 2007, Ch. 223) allows taxpayers disaster loss treatment for losses that occurred as a result of the freezing conditions that occurred in California in January 2007. The counties affected by that disaster are El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

The revenue impact for this bill would be as follows:

Estimated Revenue Impact of AB 1568 Assumed Enacted After June 30, 2009 Effective After January 1, 2010				
	2008-09	2009-10	2010-11	Total
Los Angeles	-$6,000	+$4,000	+$2,000	$0
Orange	-$3,000	+$2,000	+$1,000	$0
Riverside	$0	$0	$0	$0
San Bernardino	$0	$0	$0	$0
Ventura	$0	$0	$0	$0
Santa Barbara	-$17,000	+$8,000	+$5,000	-$4,000
TOTAL	-$26,000	+$14,000	+$8,000	-$4,000

Any possible changes in employment, personal income, or gross state product that could result from this provision are not taken into account.

Revenue Discussion

Los Angeles Impacts

Sayre Fire: November 14, 2008

The revenue impact of this provision would depend on the extent to which affected taxpayers file amended 2007 income tax returns and report a disaster loss deduction as a result of wildfires that occurred during November 2008 in Los Angeles County.

Total residential property damages attributable to the November 2008 Sayre Fire are estimated at approximately $181 million (487 residences destroyed at an average home value of $340,000 plus 1 commercial building valued at three times residential plus 146 outbuilding valued at $100,000 each). It is estimated that 90 percent of residential losses are insured. Therefore, uninsured losses are approximately $18 million ($181 million X 10%). Assuming an average marginal tax rate of 6 percent, this would yield a disaster loss deduction of approximately $1.1 million ($18 million X 6%).

Losses may be used in the year prior to the disaster, the year of the disaster, or carried forward to future years. This bill extends the period of filing an amended 2007 return from April 15, 2009, to October 15, 2009. Approximately 1 percent of filers would take advantage of this extension, for a revenue loss of $11,000 (-$1.1 million X 1%). Of this loss, approximately half would be applied to reduce tax liabilities (-$11,000 X 50% ≈ -$5,000) for the 2008-09 fiscal year.

Because these losses would be used on amended 2007 income tax returns, they would not be available to offset income in later years. Future years would show offsetting revenue gain. Department data suggest that offsetting revenue gains would be approximately 50 percent in 2009-10, or approximately $3,000 ($5,000 X 50%), and 30 percent occur in 2010-11, or approximately $2,000 ($5,000 X 30%). The overall revenue impact for the 3-year period is a zero (-$5,000 + $3,000 + $2,000).

<u>Sesnon and Marek Fires, October 12 and 13, 2008</u>

Total residential property damages attributable to the October 2008 Sesnon and Marek Fires are estimated at approximately $40 million (75 residences destroyed at an average home value of $485,000 plus 3 commercial buildings valued at a total of $1 million, plus 63 outbuildings valued at $100,000 each). It is estimated that 90 percent of residential losses are insured. Therefore, uninsured losses are $4 million ($40 million X 10%). Assuming an average marginal tax rate of 6.25 percent, this would yield a disaster loss deduction of $250,000 ($4 million X 6.25%).

Losses may be used in the year prior to the disaster, the year of the disaster, or carried forward to future years. This bill extends the period of filing an amended 2007 personal income return from April 15, 2009, to October 15, 2009. Approximately 1 percent of filers would take advantage of this extension, for a revenue loss of $2,500 (-$250,000 X 1%). Of this loss, approximately half would be applied to reduce tax liabilities (-$2,500 X 50% = -$1,250) for the 2008-09 fiscal year.

Future years would show offsetting revenue gain. Department data suggest that offsetting revenue gains would be approximately 50 percent in 2009-10, or approximately $600 ($1,250 X 50%), and 30 percent occur in 2010-11, or approximately $375 ($1,250 X 30%). Amounts less than $1,000 are rounded. The overall revenue impact for the 3-year period is zero ($-1,000 + $1,000 + $0).

The total revenue impact for the Los Angeles County Sayre, Sesnon, and Marek wildfires that occurred in Los Angeles are $6,000 (-$5,000 - $1,000 + $0) losses in 2008-09, a revenue gain of $4,000 (+$3,000 + $1,000 + $0) in 2009-10, and a revenue gain of $2,000 (+$2,000 + $0 + $0) for fiscal year 2010-11.

Orange County Impact
<u>Freeway Complex Fire, November 15, 2008</u>

The revenue impact of this provision would depend on the extent to which affected taxpayers file amended 2007 income tax returns and report a disaster loss deduction as a result of wildfires that occurred during November 2008 in Orange County.

Total residential property damages attributable to the November 2008 Freeway Complex Fire are estimated at approximately $90 million (202 residences destroyed at an average home value of

$446,000). It is estimated that 90 percent of residential losses are insured. Therefore, uninsured losses are $9 million ($90 million X 10%). Assuming an average marginal tax rate of 7 percent, this would result in a disaster loss deduction of $630,000 ($9 million X 7%).

Losses may be used in the year prior to the disaster, the year of the disaster, or carried forward to future years. This bill extends the period of filing an amended 2007 income tax return from April 15, 2009, to October 15, 2009. It is estimated that approximately 1 percent of filers would take advantage of this extension, for a revenue loss of approximately $6,000 (-$630,000 X 1%). Of this loss, approximately one-half of the taxpayers would be applied to reduce tax liabilities (-$6,000 X 50% = -$3,000). This accelerated loss of $3,000 is accrued back to the 2008-09 fiscal year because it is attributable to a prior tax year.

Because these losses would be used on amended 2007 income tax returns, they would not be available to offset income in later years. Future years would show offsetting revenue gains. Departmental data suggest that offsetting revenue gains would be approximately 50 percent of losses claimed in prior years in 2009-10, or approximately $2,000 ($3,000 X 50%), and 30 percent in 2010-11, or approximately $1,000 ($3,000 X 30%). The overall revenue impact for the 3-year period is a zero (-$3,000 + $2,000 + $1,000).

Riverside County Impact
<u>Freeway Complex Fire: November 15, 2008</u>

The inclusion of Riverside County did not materially affect the revenue impact.

San Bernardino County Impact
<u>Freeway Complex Fire: November 15, 2008</u>

According to officials from Chino Valley Fire in San Bernardino County, no structures were destroyed in San Bernardino County.

Ventura County Impact
<u>Sesnon Fire: October 13, 2008</u>

According to officials from Ventura Valley County Fire Protection District, no structures were damaged in Ventura County.

Santa Barbara Impacts
<u>Tea Fire: November 13, 2008</u>

The revenue impact of this provision would depend on the extent to which affected taxpayers file amended 2007 income tax returns between April 16, 2009, and October 15, 2009, and report a disaster loss deduction as the result of wildfires that occurred during November 2008 in Santa Barbara County.

Total residential property damages attributable to the November 2008 Tea Fire are estimated at approximately $290 million (211 residences destroyed at an average home value of

$1.368 million). It is estimated that 90 percent of residential losses are insured. Therefore, uninsured losses are $29 million ($290 million X 10%). Assuming an average marginal tax rate of 9 percent, this would yield a disaster loss deduction of approximately $2.6 million ($29 million X 9%) for the 2008 taxable year.

The losses may be used in the year prior to the disaster, the year of the disaster, or carried forward to future years. This bill would extend the period of filing an amended 2007 income tax return from April 15, 2009, to October 15, 2009. Approximately 1 percent of filers would take advantage of this extension, for a revenue loss of $26,000 ($2.6 million X 1%). Of this loss, approximately one-half would be applied to reduce tax liabilities ($26,000 X 50% ≈ $13,000) for the 2008-09 fiscal year.

Because these losses would be used on amended 2007 income tax returns, they would not be available to offset income in later years. Future years would show offsetting revenue gains. Department data suggest that offsetting revenue gains would be approximately 50 percent in 2009-10, or approximately $6,000 ($13,000 X 50%), and 30 percent in 2010-11, or approximately $4,000 ($13,000 X 30%). The overall revenue impact for the 3-year period is a loss of $3,000 (-$13,000 + $6,000 + $4,000).

Jesusita Fire: May 2009

The revenue impact of this provision would depend on the extent to which affected taxpayers file amended 2008 income tax returns between April 16, 2010, and October 15, 2010, and report a disaster loss deduction as the result of wildfires that occurred during May 2009 in Santa Barbara County and have a deduction benefit.

Total residential property damages attributable to the May 2009 Jesusita Fire are estimated at approximately $84 million (82 residences destroyed at an average home value of $1.03 million). It is estimated that 90 percent of residential losses are insured. Therefore, uninsured losses are $8.4 million ($84 million estimated property damage X 10%). Assuming an average marginal tax rate of 9 percent, this would yield a disaster loss deduction of approximately $755,000 ($8.4 million X 9%).

The losses may be used in the year prior to the disaster, the year of the disaster, or carried forward to future years. This bill would extend the period of filing an amended 2008 income tax return from April 15, 2010, to October 15, 2010. Assuming 1 percent of filers would take advantage of this extension, a revenue loss of approximately $7,600 would result ($755,000 X 1%). Of this loss, it is assumed that approximately one-half of the taxpayers derives a tax benefit from the deduction ($7,600 X 50% ≈ $4,000) for the 2009-10 fiscal year.

Because these losses would be used on amended 2008 income tax returns, they would not be available to offset income in later years. Future years would show offsetting revenue gains. Department data suggest that offsetting revenue gains would be approximately 50 percent in 2010-11, or $2,000 ($4,000 X 50%), and 30 percent in 2011-12, or approximately $1,000 ($4,000 X 30%). The overall revenue impact for the 3-year period is a loss of $1,000 (-$4,000 + $2,000 + $1,000). Estimates are accrued back one fiscal year, starting in 2008-09.
The total revenue impact for the Tea and Jesusita wildfires that occurred in Santa Barbara County are losses of $17,000 (-$13,000 - $4,000) in 2008-09, a revenue gain of $8,000

(+$6,000 + $2,000) in 2009-10, and a revenue gain of $5,000 (+$4,000 + $1,000) in 2010-11.

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