

# ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Fuentes Analyst: Angela Raygoza Bill Number: AB 15  
Related Bills: See Legislative History Telephone: 845-7814 Introduced Date: December 1, 2008  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Disaster Loss Deduction/Excess Loss Carryover/November 2008 Los Angeles County Wildfires

## SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the November 2008 Los Angeles County wildfires.

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.

## 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

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

## POSITION

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.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA      \_\_\_\_\_ NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
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Department Director

Date

Selvi Stanislaus

01/05/09

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% 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<sup>1</sup> identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to fifteen 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**

Governor Arnold Schwarzenegger proclaimed on November 15, 2008, a state of emergency declaring the wildfires that occurred in Los Angeles County to be a state disaster. 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.

## **THIS BILL**

As a Presidentially-declared disaster, this bill would allow taxpayers to deduct the disaster losses in the year the loss occurs or in the preceding year by filing an amended return.

This bill would also allow special carry forward treatment for up to fifteen taxable years for losses sustained as a result of the wildfires that occurred in Los Angeles County during November 2008.

## **IMPLEMENTATION CONSIDERATIONS**

Implementing this bill would not significantly impact the department's programs or operations.

## **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 Assembly Revenue and Taxation Committee.

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<sup>1</sup> 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.

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 Assembly Revenue and Taxation 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 loss from this bill would be as follows:

Estimated Revenue Impact of AB 15 Effective Immediately Upon Enactment Enactment Assumed After June 30, 2009			
2008-09	2009-10	2010-11	Cumulative Impact
-\$5,000	+\$3,000	+\$2,000	\$0

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

## Revenue Discussion

The revenue impact of this bill is dependent on the extent affected taxpayers file amended 2007 tax returns and report a disaster loss deduction as a result of wildfires that occurred during November 2008 in Los Angeles County.

Total property damages attributable to the November 2008 Los Angeles County wildfire are estimated at \$181 million (487 residences destroyed at an average home value of \$340,000 + 1 commercial building valued at 3 times residential + 146 outbuildings valued at \$100,000 each). It is estimated that 90 percent of 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 to report the disaster loss deduction on an amended 2007 return from April 15, 2009, to October 15, 2009. Approximately 1 percent of taxpayers would take advantage of this extension, for a revenue loss of \$11,000 (\$1.1 million X 1%). Of this loss, approximately one-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 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 \$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 zero (-\$5,000 + \$3,000 + \$2,000).

## **LEGISLATIVE STAFF CONTACT**

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