Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Harkey	Analyst:	Matthew Cooling	Bill Number:	AB 1782
Related Bills:	See Legislative History	Telephone:	845-5983	Amended Date:	May 3, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Disaster Loss/Governor Declared Disasters

SUMMARY

This bill would provide automatic special tax treatment, called disaster loss treatment, for losses sustained as a result of any governor-declared state of emergency.

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.

SUMMARY OF AMENDMENTS

The May 3, 2010, amendments added provisions to the Revenue and Taxation Code to provide automatic disaster loss treatment for all governor-declared states of emergency and made technical non-substantive changes to the bill.

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

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to streamline the disaster tax relief process to reduce the burden of multiple disaster loss bills on the Legislature and to expedite disaster related tax relief for taxpayers that suffer losses related to governor-declared states of emergency.

EFFECTIVE/OPERATIVE DATE

Assuming enactment before October 1, 2010, this bill would become effective on January 1, 2011, 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 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

Generally, the governor has authority to proclaim a state of emergency declaring certain natural disasters, (i.e., wildfires, mudslides, floods, and severe winter storms) to be a state disaster. Upon declaration of a state disaster, the Legislature can propose special tax treatment, called disaster loss treatment, for taxpayers affected by a governor-declared disaster.

THIS BILL

This bill would add a general provision to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law that would provide automatic disaster loss treatment for any loss sustained as a result of a disaster that is the subject of a proclamation of a state of emergency issued by the governor. This bill would allow taxpayers affected by any governor-declared state of emergency 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. This bill would also allow carry forward treatment for up to 15 taxable years for excess losses sustained as a result of any governor-declared state of emergency.

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[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.

The $100 and 10 percent of adjusted gross income limitations in existing law would apply to disaster losses on non-business property.

IMPLEMENTATION CONSIDERATIONS

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

TECHNICAL CONSIDERATION

Amendments 1 through 4 are provided to clarify that disaster loss treatment would be allowed whenever the governor proclaims a state of emergency in any city or county within the state.

LEGISLATIVE HISTORY

AB 15 (Fuentes, 2009/2010) would allow taxpayers special tax treatment, called disaster loss treatment for losses sustained as a result of the wildfires that occurred in Los Angeles County during November 2008. The provisions of this bill were incorporated into AB 1568 (Salas, Stats. 2009, Ch. 299). AB 15 failed passage out of the Senate.

AB 50 (Nava, 2009/2010) and AB 1766 (Gaines, 2009/2010) would allow taxpayers special tax treatment, called disaster loss treatment for losses sustained as a result of the wildfires that occurred in Placer County in August 2009. AB 50 is on the Senate Inactive File; AB 1766 has been moved to the Assembly Inactive File.

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 being held under submission in the Senate Appropriations Committee.

AB 1568 (Salas, Stats. 2009, Ch. 299) allowed 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 Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Santa Barbara Counties.

AB 1662 and ABX8 31 (Portantino/Jeffries, 2009/2010) would both allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Los Angeles County wildfires. AB 1662 has been referred to the Assembly Appropriations Committee suspense file. ABX8 31 failed to pass out of the Eight Extraordinary Session, which adjourned on March 11, 2010.

AB 1690 (Chesbro, 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the January 9, 2010, Humboldt County earthquake. AB 1690 will be heard in the Assembly Appropriations Committee.

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.

FISCAL IMPACT

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

ECONOMIC IMPACT

The revenue impact has not been determined at this time, but will be developed as the bill moves through the legislative process.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1782
AS AMENDED MAY 3, 2010

AMENDMENT 1

On page 17, strikeout lines 8 and 9, inclusive.

AMENDMENT 2

On page 17, strikeout lines 32 through 35, inclusive, and insert:

The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses sustained in any county or city in the state that was proclaimed by the Governor to be in a state of emergency.

AMENDMENT 3

On page 21, strikeout lines 34 and 35, inclusive.

AMENDMENT 4

On page 22, strikeout lines 16 through 19, inclusive, and insert:

The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses sustained in any county or city in the state that was proclaimed by the Governor to be in a state of emergency.