

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Perez, et al. Analyst: Matthew Cooling Bill Number: AB 2136

Related Bills: See Legislative History Telephone: 845-5983 Amended Date: April 27, 2010

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/April 2010 Imperial County Earthquake

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the April 2010 Imperial County earthquake.

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 April 27, 2010, amendments removed changes to the Government Code, the Public Utilities Code, the Streets and Highways Code, and the Vehicle Code related to transportation and general planning and added language to the Revenue and Taxation Code to allow disaster loss treatment for losses sustained in the April 2010 Imperial County Earthquake.

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 provide immediate tax relief to individuals and businesses affected by the earthquake.

EFFECTIVE/OPERATIVE DATE

Assuming enactment on or before September 30, 2010, this bill would be effective on January 1, 2010, and operative with respect to losses resulting from the April 2010 Imperial County earthquake.

POSITION

Pending.

Board Position:

_____ S _____ NA _____ NP
_____ SA _____ O _____ NAR
_____ N _____ OUA X PENDING

Department Director

Date

Selvi Stanislaus

05/05/10

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, to 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 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.¹

PROGRAM BACKGROUND

Governor Arnold Schwarzenegger proclaimed on April 5, 2010, a state of emergency declaring the earthquake that occurred in Imperial County in April of 2010 to be a state disaster. President Obama did not declare this earthquake to be a federal disaster.

THIS BILL

This bill would add the earthquake that occurred in Imperial County in April 2010 to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law. This bill would allow taxpayers affected by the earthquake 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 the earthquake.

Specifically, this bill would allow special disaster treatment of losses sustained as a result of this disaster. The \$100 and 10 percent of adjusted gross income limitations in existing law would apply to disaster losses on non-business property.

¹ Cf. 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.

IMPLEMENTATION CONSIDERATIONS

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

TECHNICAL CONSIDERATION

This bill, AB 50 (Nava, et al., 2009/2010), AB 79 (Duvall, 2009/2010), AB 1662 (Portantino, et al., 2009/2010), and AB 1690 (Chesbro et al., 2009/2010) would amend the same sections to allow disaster loss treatment to the specified disasters in those bills. As a result, this could lead to chaptering conflicts that could chapter out the provisions of the other bills. To prevent chaptering conflicts, it is recommended that the author amend the bill to add quintuple-jointing language.

This bill would provide immediate tax relief for losses resulting from the April 2010 Imperial County earthquake. The bill lacks an urgency provision that would make the bill effective immediately upon enactment. Without this language, the bill would become effective for taxable years beginning on or after January 1, 2011, which would delay the disaster relief proposed by this bill. If it is the author's intent to make this bill effective immediately upon enactment, it is recommended that the bill is amended to include urgency language.

LEGISLATIVE HISTORY

AB 15 (Fuentes, 2009/2010) would allow 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 special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Placer County wildfires. AB 50 has been sent to third reading on the Senate Floor; AB 1766 will be heard in the Assembly Revenue and Taxation Committee on May 10, 2010.

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 1662 (Portantino, et al., 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Los Angeles and Monterey Counties wildfires and the January 2010 Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou Counties winter storms. AB 1662 has been referred to the Assembly Appropriations Committee suspense file.

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 Revenue and Taxation Committee on May 10, 2010.

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

Legislative Analyst

Matthew Cooling

(916) 845-5983

matthew.cooling@ftb.ca.gov

Revenue Manager

Monica Trefz

(916) 845-4002

monica.trefz@ftb.ca.gov

Asst. Legislative Director

Patrice Gau-Johnson

(916) 845-5521

patrice.gau-johnson@ftb.ca.gov