ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Gaines	Analyst:	Matthew Cooling	Bill Number:	AB 1766
Related Bills:	See Legislative History	Telephone:	845-5983	Amended Dates:	April 6, 2010 & April15, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/August 2009 Placer County Wildfires

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Placer 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.

SUMMARY OF AMENDMENTS

The April 6, 2010, amendments removed changes to the Government Code related to disaster assistance and would add language to the Revenue and Taxation Code to allow disaster loss treatment for losses sustained in the August 2009 Placer County Wildfires.

The April 15, 2010, amendments added an urgency provision to the bill and would make this bill an urgency statute, to take effect immediately upon enactment.

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 wildfires.

EFFECTIVE/OPERATIVE DATE

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

POSITION

Pending.

ANALYSIS

Board Position:			Department Director	Date
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_______ N	_______ OUA	___X___ PENDING		

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

Governor Arnold Schwarzenegger proclaimed on August 30, 2009, a state of emergency declaring the wildfires that occurred in Placer County to be a state disaster. President Obama did not declare these fires to be a federal disaster.

THIS BILL

This bill would add the wildfires that commenced in Placer County in August 2009 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 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. This bill would also allow carry forward treatment for up to 15 taxable years for excess losses sustained as a result of the wildfires.

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.

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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.

IMPLEMENTATION CONSIDERATIONS

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

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) would have allowed taxpayers special tax treatment, called disaster loss treatment for losses sustained as a result of the wildfires that occurred in Santa Barbara County during November 2008. The provisions of this bill were incorporated into AB 1568 (Salas, Stats, 2009, Ch. 299). This bill failed passage out of the Senate.

AB 79 (Duvall, 2009/2010) would allow taxpayers special tax treatment, called disaster loss treatment for losses sustained as a result of the wildfires that occurred in 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 (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 is set to be heard in the Assembly Appropriations Committee on April 28, 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 Revenue and Taxation Committee on May 10, 2010.

ABX8 31 (Portantino/Jeffries, 2009/2010) would have allowed special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Los Angeles County wildfires. ABX8 31 died at the Assembly desk.

SB 1064 (Hollingsworth, Stats. 2008, Ch. 386) allowed 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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