Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Chesbro	Analyst:	Jessica Matus	Bill Number:	AB 1428
Related Bills:	See Legislative History	Telephone:	845-6310	Introduced Date:	March 25, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/March 2011 Del Norte & Mendocino County Tsunami

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the tsunami that occurred in March 2011, in Del Norte and Mendocino counties.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

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 tsunami.

EFFECTIVE/OPERATIVE DATE

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

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 (AGI). In regard to disaster losses, a taxpayer can elect to file an amended return to deduct a disaster loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to disaster losses occurring in a Presidentially-declared disaster area.

Board Position:			Executive Officer	Date
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The election to file an amended return 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]

THIS BILL

This bill would add the tsunami that occurred in Del Norte and Mendocino Counties in March 2011, to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law and would allow special disaster treatment of losses sustained as a result of this disaster.

As a result of the President's declaration (see "Program Background" discussion below), the tsunami is now a disaster for federal purposes. California conforms to federal disaster treatment allowing the filing of an amended prior year return to claim the tax benefit of the loss to obtain a quicker refund, if applicable.

IMPLEMENTATION CONSIDERATIONS

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

LEGISLATIVE HISTORY

AB 1662 (Portantino, et al., Stats. 2010, Ch. 447) allows 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 2136 (Perez, et.al, Stats. 2010, Ch. 461) allows special disaster loss treatment for losses sustained as a result of the April 2010 Imperial County earthquake.

AB 1690 (Chesbro, Stats, 2010 Ch. 449) allows disaster loss treatment for losses sustained as a result of the January 9, 2010, Humboldt County earthquake.

AB 1782 (Harkey, 2009/2010) would have provided automatic special tax treatment, called disaster loss treatment, for losses sustained as a result of any governor-declared state of emergency. AB 1782 failed passage from the Assembly Revenue and Taxation Committee by the constitutional deadline.

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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.

ABX6 11 (Hill, Stats. 2010, 6th Ex. Sess. Ch. 2) allows disaster loss treatment for losses sustained as a result of the explosion and fire that occurred in San Mateo County in September 2010.

PROGRAM BACKGROUND

Governor Jerry Brown proclaimed on March 11, 2011, a state of emergency declaring the tsunami that occurred in Del Norte, San Mateo, Humboldt, and Santa Cruz counties in March 2011 to be a state disaster. On March 16, 2011, he added Mendocino and San Luis Obispo counties to the declaration

On April 18, 2011, President Obama declared this tsunami to be a federal disaster.

As a result of the President's declaration, the tsunami is now a disaster for federal purposes. California conforms to federal disaster treatment.

FISCAL IMPACT

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

ECONOMIC IMPACT

There is no revenue impact because the President has declared a tsunami disaster. Existing state law automatically extends the special tax treatment of losses under Presidentially-declared disasters.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some taxpayers may say that this bill would provide needed tax assistance to victims of the tsunami by allowing them to claim the disaster loss on their prior return.

Con: Some taxpayers may say that individual disaster bills are costly to the state and that these expenditures should be avoided.

LEGISLATIVE STAFF CONTACT

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