

BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Chesbro	AB 1428

SUBJECT

Disaster Loss Deduction/Excess Loss Carryover/March 2011 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 Mendocino County.

PURPOSE OF 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.

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.

Anne Maitland, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 8/23/11
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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 15 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 Mendocino County in March 2011 to the current disasters specified 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.

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.

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.

FISCAL IMPACT

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

¹ AB 1452 (Assembly Committee on Budget, 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.

ECONOMIC IMPACT

Estimated Revenue Impact of AB 1428 For Losses Sustained Beginning On or After March 11, 2011 Effective Immediately Upon Enactment (In Dollars)		
2010-11	2011-12	2012-13
-\$500	+\$250	+\$250

This estimate is based on estimates of the losses sustained by individuals and business entities in Mendocino County only.

APPOINTMENTS

None.

SUPPORT/OPPOSITION²

Support: Del Norte County Board of Supervisors (sponsor); Mendocino County Board of Supervisors.

Opposition: None provided.

VOTES

Assembly Floor 06/01/11 Y: 76 N: 0
Senate Floor 08/22/11 Y: 34 N: 0

LEGISLATIVE STAFF CONTACT

Contact	Work
Anna Caballero, Agency Secretary, SCSA	916-653-3358
Christine J. Lally, Deputy Secretary, Legislative Affairs, SCSA	916-653-2656
Selvi Stanislaus, Executive Officer	916-845-4543
Patrice Gau-Johnson, Assistant Legislative. Director	916-845-5521

²Senate Rules Committee Analysis dated August 17, 2011.