

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Monning Analyst: Brian Werking Bill Number: AB 2332

Related Bills: See Legislative History Telephone: 845-5103 Introduced Date: February 24, 2012
Amended Date: April 12, 2012

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Disaster Loss Deduction/NOL Carryover/March 2011 Santa Cruz County Severe Storms

SUMMARY

This bill would allow disaster loss treatment for losses sustained as a result of the severe storms that occurred in March 2011 in Santa Cruz County.

RECOMMENDATION

No position.

Summary of Amendments

The bill as introduced February 24, 2012 would allow disaster loss treatment, for losses sustained as a result of the severe storms that occurred in March 2011 in Santa Cruz County, and any unused disaster loss would be allowed a 15 year "excess disaster loss" carryover period.

The bill, as amended April 12, 2012, replaced the 15 year carryover "excess disaster loss" treatment for unused disaster losses with 20 year carryover "net operating loss" treatment.

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

REASON FOR THE BILL

According to the language of the bill, the purpose is to provide necessary tax relief to the taxpayers affected by the severe storms and to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

EFFECTIVE/OPERATIVE DATE

As a tax levy, 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.

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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 law allows 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. To the extent that a casualty/disaster loss contributes to a net operating loss (NOL), that loss is allowed 20 year carry forward treatment. That is, 100 percent of the NOL may be carried over for up to twenty taxable years.

Additionally for disaster losses, a taxpayer can elect to file an amended return to deduct the loss in the taxable year prior to the taxable year in which the disaster loss occurred and reduce the prior year tax liability, resulting in an expedited refund.¹ This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing this 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.

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.

Governor Jerry Brown proclaimed on April 15, 2011, a state of emergency for the 19 counties, including Santa Cruz, that were significantly impacted by the severe storms that occurred between March 15 and 27, 2011.

President Barrack Obama did not declare these storms a federal disaster.

THIS BILL

This bill would allow taxpayers who suffered disaster losses as the result of the severe storms that occurred in March 2011 in Santa Cruz County to elect to file an amended return for the prior taxable year to deduct the disaster losses and reduce the prior year tax liability. Taxpayers would be able to claim the disaster losses earlier than otherwise resulting in an expedited refund. A taxpayer would have until the extended due date of the 2011 taxable year's return to elect to file an amended return for the prior taxable year to deduct the disaster losses in the prior year. This bill would also provide limited protection from future net operating loss suspension legislation for the disaster losses sustained from the March 2011 severe storms in Santa Cruz.

IMPLEMENTATION CONSIDERATIONS

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

¹ A taxpayer must file an original or amended taxable return for the prior year by the original due date of the return for the taxable year in which the disaster loss occurred, in order to claim the disaster loss in the prior taxable year.

LEGISLATIVE HISTORY

AB 1428 (Chesbro, Ch. 283, Stats. 2011) allows disaster loss treatment and excess disaster loss treatment for losses sustained as a result of the Tsunami wave surge in Mendocino County.

SB 1544 (Hernandez, 2011/2012) would allow disaster loss treatment for losses as a result of the November 2011 Los Angeles County severe winds and would allow taxpayers to elect to follow excess disaster loss or net operating loss treatment, as it relates to the unused portions of the disaster losses. This bill is set for hearing in the Senate Governance and Finance Committee on May 9, 2012.

AB 1662 (Portantino, et al., Ch. 447, Stats. 2010) allows disaster loss treatment and excess 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 1690 (Chesbro, Ch. 449, Stats. 2010) allows disaster loss treatment and excess 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 disaster loss treatment and excess 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.

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

ABX6 11 (Hill, Ch. 2, Stats. 2010) allows disaster loss treatment and excess 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.

ECONOMIC IMPACT

This bill would result in the following revenue impact:

Estimated Revenue Impact of AB 2332 as Introduced 02/24/2012 For Losses Sustained Beginning On or After March 11, 2011 Effective Immediately Upon Enactment		
2011-12	2012-13	2013-14
-\$2,000	+\$1,000	+\$1,000

This analysis is based on preliminary estimates of the damage/loss sustained by individuals and business entities as result of the March 2011 severe storms in Santa Cruz County.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some taxpayers may say that this bill would provide needed tax assistance to victims of the severe storms by allowing them to claim the disaster loss on their prior year's return.

Opponents: 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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