

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Hernandez Analyst: Brian Werking Bill Number: SB 1544
Related Bills: See Legislative History Telephone: 845-5103 Introduced Date: February 24, 2012
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Disaster Loss Deduction Election/Excess Loss Carryover/November 2011 Los Angeles County Severe Winds

SUMMARY

This bill would allow disaster loss treatment and allow taxpayers to elect disaster loss treatment for losses sustained as a result of the severe winds that occurred in November 2011 in Los Angeles County.

RECOMMENDATION

No position.

REASON FOR 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 severe winds in November 2011 in Los Angeles County.

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. 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% 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.

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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. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special 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% of the excess disaster loss may be carried over for up to 15 taxable years. However, the disaster loss may not be taken into account in computing a NOL and is not allowed the NOL 20 year carry forward treatment. 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.

THIS BILL

This bill would add the severe winds that occurred in November 2011 in Los Angeles County to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law and would, for the first time, allow taxpayers to elect special disaster carryover treatment for losses sustained as a result of this disaster.

This bill would also allow taxpayers affected by the severe winds that occurred in November 2011 in Los Angeles 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, 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, whether or not the taxpayer has elected special state carryover treatment for disaster losses. For taxpayers electing special state carryover treatment of disaster losses, this bill would also reduce the allowable carry forward period for any excess losses to 15 years under the excess disaster loss rules.

IMPLEMENTATION CONSIDERATIONS

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

LEGISLATIVE HISTORY

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

AB 2332 (Hernandez, 2011/2012) would allow disaster loss treatment for losses as a result of the severe storms that occurred in March 2011 in Santa Cruz County. This bill is currently in the Assembly.

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 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.

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.

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 December 9, 2011, a state of emergency for Los Angeles County that was significantly impacted by the severe winds that occurred began on November 30, 2011.

President Barrack Obama did not declare the severe winds a federal disaster.

FISCAL IMPACT

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

ECONOMIC IMPACT

This bill would have a minor revenue impact on the state. The revenue estimate will be developed as the bill moves through the legislative process.

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 winds 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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