

BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number/Version Date
Franchise Tax Board	Hernandez	SB 1544 (E-08/16/12)

SUBJECT

Disaster Loss Deduction/NOL Carryover/ November 2011 Los Angeles & San Bernardino County Severe Winds

SUMMARY

This bill would allow disaster loss treatment for losses sustained as a result of the severe winds that occurred in November of 2011 in the counties of Los Angeles and San Bernardino.

REASON FOR THE BILL

The purpose of this bill is to provide immediate tax relief to individuals and businesses affected by the severe winds in November 2011 in the counties of Los Angeles and San Bernardino.

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 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, NOLs attributable to taxable years beginning on or after January 1, 2013, will be allowed to be carried back two years¹.

¹ For an NOL attributable to taxable years beginning on or after January 1, 2013, and before January 1, 2014, the amount of the carryback to any taxable year shall not exceed 50 percent of the NOL. For an NOL attributable to taxable years beginning on or after January 1, 2014, and before January 1, 2015, the amount of the carryback to any taxable year shall not exceed 75 percent of the NOL. For an NOL attributable to taxable years beginning on or after January 1, 2015, the amount of the carryback to any taxable year shall not exceed 100 percent of the NOL.

Gail Hall, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 8/17/12
--	---------------------------------------	-----------------

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 percent 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 allow taxpayers who suffered disaster losses as the result of the severe winds that occurred in November of 2011 in the counties of Los Angeles and San Bernardino 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 allowed, 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 or similar legislation for net operating losses attributable to the disaster losses sustained from the November 2011 severe winds in the counties of Los Angeles and San Bernardino.

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 was ordered to engrossing and enrolling.

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 the County of Los Angeles and the City of Rancho Cucamonga in San Bernardino County as a result of the severe winds that occurred beginning on November 30, 2011.

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

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of SB1544 as Amended on 5/2/2012 For Taxable Years Beginning On or After January 1, 2011 Assumed Enactment After June 30, 2012		
2011-12	2012-13	2013-14
-\$8,000	+\$4,000	+\$4,000

This analysis is based on preliminary estimates of the damage/loss sustained by individuals and business entities as result of the November 2011 severe wind in Los Angeles County and San Bernardino County.

APPOINTMENTS

None.

SUPPORT/OPPOSITION²

Support: None provided.

Opposition: None provided.

VOTES

Assembly Floor	08/16/12	Y: 79	N: 0
Senate Floor	05/25/12	Y: 33	N: 0

LEGISLATIVE STAFF CONTACT

Contact	Work
Anna M. Caballero, Agency Secretary, SCSA	916-653-4090
Richard Woonacott, Deputy Secretary, Legislation	916-653-2656
Selvi Stanislaus, Department Director	916-845-4543
Gail Hall, Legislative Director	916-845-6333

² As provided in the Assembly Committee on Revenue and Taxation Committee's analysis of the bill as amended May 2, 2012, at <http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1501-1550/sb_1544_cfa_20120629_140151_asm_comm.html> [as of July 12, 2012].