Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Donnelly & Grove	Analyst:	Diane Deatherage	Bill Number:	AB 1651
Related Bills:	See Prior Analysis	Telephone:	845-4783	Amended Date:	April 2, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Tangible Personal Property Fair Market Value Loss Deduction

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a deduction for the loss of the fair market value (FMV) in tangible personal property attributable to the enactment of a statute, administrative rule, or regulation.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 2, 2014, amendments:

- specify that the property must be located in California;
- define FMV and tangible personal property;
- clarify the FMV would be determined by the taxpayer;
- specify the effective date of the provision; and
- clarify that the deduction would be in lieu of any other deduction.

The April 2, 2014, amendments resolved several, but not all, of the implementation concerns as discussed in the department's analysis of the bill as introduced February 11, 2014, and raised additional implementation concerns and a legal concern. As a result of the April 2, 2014, amendments, the "Effective/Operative Date," "This Bill," "Implementation Considerations," and "Legal Impact" sections have been revised, the remainder of the department's analysis of the bill as introduced February 11, 2014, still applies. The "Fiscal Impact," "Economic Impact," and "Policy Concerns" sections have been restated for convenience.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative with respect to statutes enacted and administrative rules or regulations promulgated after the effective date of the bill that take effect in taxable years beginning on or after January 1, 2014.

Board Position:			Legislative Director	Date
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ANALYSIS

THIS BILL

This bill would allow a deduction under the PITL and the CTL for the loss in the FMV, as determined by the taxpayer, of tangible personal property located in California attributable to a rule or regulation promulgated by a California state agency or statute enacted by the California Legislature on or after the effective date of this bill that goes into effect in the taxable year in which the deduction is claimed.

“Fair market value” would mean “full cash value” or “fair market value” as defined in Section 110.

“Tangible personal property would mean privately owned property that has physical substance and can be touched.

The deduction would be allowed in lieu of any other deduction otherwise available with respect to the depreciation of tangible personal property.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to implement the bill and determine its impacts to the department’s systems, forms, and processes. The bill is silent on the following issues:

- What would happen if the FMV increased after the taxpayer deducted the loss in FMV in a previous year? Should there be a recapture provision?
- Would the asset's basis be reduced by the loss deducted? Could the loss deducted exceed the asset’s basis?
- What if a rule or regulation promulgated by a California state agency or statute enacted by the California Legislature resulted in an increase in the FMV of tangible personal property?
- Would tangible personal property that had been relocated by a taxpayer to California from outside the state be eligible for the deduction in full or would a proration based on the period of use within the state apply?
- Would the taxpayer’s calculation of the loss in the FMV be subject to review by the FTB?

FISCAL IMPACT

The department's costs to administer this bill are unable to be determined until implementation concerns have been resolved. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

To determine the potential impact of this proposal to the General Fund would require predicting the frequency, number and nature of future statutes, rules, or regulations. It would also require knowledge of the tangible personal property impacted, including the value before and after the loss, as well as the income characteristics of qualified taxpayers using the deduction. Because it is impractical to predict these future events, the revenue impact to the General Fund is undeterminable.

LEGAL IMPACT

This bill would restrict the tax deduction to the loss in FMV of tangible personal property located within California. This bill could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to improperly favor in-state activity over out-of-state activity. On August 28, 2012, (*Cutler* v. Franchise Tax Board), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Stock statutes were unconstitutional. Specifically, the Court of Appeal held that the statutory scheme's requirement of a large California presence in order to qualify for an investment incentive discriminated against interstate commerce, and therefore violated the federal dormant commerce clause. While no court decision has yet invalidated, as a general matter, state income tax benefits that provide an incentive for in-state activity, i.e., property placed in service in the state, employees employed in the state, etc., targeted tax benefits such as the deduction for the loss in FMV in tangible personal property located in California that is attributable to the enactment of a statute, administrative rule or regulation may be subject to constitutional challenge.

POLICY CONCERNS

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

LEGISLATIVE STAFF CONTACT

Diane Deatherage	Mandy Hayes	Jahna Carlson
Legislative Analyst, FTB	Revenue Manager, FTB	Asst. Legislative Director, FTB
(916) 845-4783	(916) 845-5125	(916) 845-5683
diane.deatherage@ftb.ca.gov	mandy.hayes@ftb.ca.gov	jahna.carlson@ftb.ca.gov