ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Maienschein	Analyst:	Jane Raboy	Bill Number:	AB 922
Related Bills:	See Legislative History	Telephone:	845-5718	Amended Date:	May 29, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/May 2014 San Diego County Wildfires

SUMMARY

This bill would, under the Personal Income Tax Law and Corporation Tax Law, allow disaster loss treatment for losses sustained as a result of severe wildfires in San Diego County.

RECOMMENDATION

No position.

Summary of Amendments

The May 29, 2014, amendments removed provisions of the bill related to public utilities, and replaced them with the provisions discussed in this analysis.

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

Summary of Suggested Amendments

Amendments 1 and 4 are suggested to resolve technical concerns and Amendments 2, 3, 5, and 6 are provided to renumber the sections.

REASON FOR THE BILL

The reason for the bill is to provide tax relief to the affected persons 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.

Board Position:			Executive Officer	Date
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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 or, for state law purposes, by the Governor.

Existing federal and state law allows an individual taxpayer with a non-business casualty or 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 or disaster loss contributes to a net operating loss (NOL), that loss is allowed a 20-year carry forward treatment. That is, 100 percent of the NOL may be carried over for up to 20 taxable years.[1]

Additionally, 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. 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 any losses sustained in the County of San Diego that resulted from wildfires in May 2014, pursuant to the Internal Revenue Code (IRC) Section 165(i).[2]

For disaster losses an election under IRC Section 165(i)[3] would be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

Any law that suspends, defers, reduces or otherwise diminishes the deduction of a net operating loss, shall not apply to a net operating loss attributable to the loss sustained in the County of San Diego, as a result of the wildfires that occurred in May 2014.

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[1] Internal Revenue Code Section 172.
[2] IRC Section 165(i) allows a taxpayer to elect to deduct in the prior tax year losses attributable to a federally declared disaster, and requires that the taxpayer report all related losses that qualify for the election on the prior year tax return (original or amended.)
[3] Ibid.

IMPLEMENTATION CONSIDERATIONS

Unless the bill is amended to accept the technical considerations provided in this analysis, it is unclear how that bill would be implemented.

TECHNICAL CONSIDERATIONS

The language of the bill contains incompatible statutory references under the Revenue and Taxation Code. Amendments 1 and 4 delete the incompatible language consistent with the current disaster relief provisions and Amendments 2, 3, 5, and 6 renumber the sections.

LEGISLATIVE HISTORY

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

AB 2332 (Hernandez, Ch. 203, Stats 2012.) allows disaster loss treatment for losses sustained as a result of the severe storms that occurred in March, 2011, in Santa Cruz County.

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.

PROGRAM BACKGROUND

On May 14, 2014, the Governor of California proclaimed a state of emergency for San Diego County that was significantly impacted by wildfires that began May 13, 2014.

President Barrack Obama did not declare the San Diego County wildfires a federal disaster.

FISCAL IMPACT

If amended, this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 922[4] As Amended May 29, 2014 Assumed Enactment After June 30, 2014		
2014-15	2015-16	2016-17
-$7,000	+$3,000	+$3,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

[4] This estimate assumes the department's proposed amendments are adopted.

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 San Diego wildfires 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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PROPOSED AMENDMENTS TO AB 922
AS AMENDED MAY 29, 2014

AMENDMENT 1

On page 3, strikeout lines 1 through 26 inclusive, and on page 4, strikeout lines 1 through 16 inclusive.

AMENDMENT 2

On page 4, line 17, strikeout "SEC. 2." and insert:
SECTION 1.

AMENDMENT 3

On page 4, line 31, strikeout "SEC. 3." And insert:
SEC. 2.

AMENDMENT 4

On page 5, strikeout lines 5 through 39 inclusive, and on page 6, strikeout lines 1 through 8 inclusive.

AMENDMENT 5

On page 6, line 9, strikeout "SEC. 5." And insert:

SEC. 3.

AMENDMENT 6

On page 6, line 22, strikeout "SEC. 6." And insert:
SEC. 4.