BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Maienschein	**AB 922**

SUBJECT

Disaster Loss Deduction/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.

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.

FEDERAL/STATE LAW

Disaster Losses

Under federal and state law, 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.

Federal law, Internal Revenue Code (IRC) Section 165(i), allows a taxpayer that suffers a disaster loss to elect to deduct the loss in the year immediately preceding the year the disaster occurred if it is a Presidentially-declared disaster loss.

Similar for state, a taxpayer can elect to file an amended return to deduct a disaster loss in the taxable year prior to the loss year, for any Presidentially-declared disaster before the passage of any state legislation allowing special treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

Existing federal and state law allows an individual taxpayer with a disaster loss that is not reimbursed, by insurance or otherwise, to deduct disaster losses to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income. Business and income-producing property are not subject to these limitations.

To the extent that a disaster loss contributes to a net operating loss, that loss is allowed a 20-year carry forward treatment.

Gail Hall, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 09/02/14

Net Operating Loss (NOL) Carryback Rules

Beginning on or after January 1, 2013, NOLs must be carried back to each of the preceding two tax years, unless an election to waive the carryback is made. Any excess loss may be carried over for 20 years starting with the tax year that generated the loss. The NOL carryback may not be carried back to a tax year beginning before January 1, 2011. The allowable NOL carryback percentage increases during a phase-in period, which varies by the loss year, as shown in the table below:

NOL Incurred in Tax Year	NOL Carryback Percentage
2015 and after	100%
2014	75%
2013	50%

THIS BILL

This bill would make IRC Section 165(i) applicable to losses sustained in the County of San Diego as a result of the wildfires that occurred in May 2014.

The election under IRC Section 165(i) could be made on a return or amended return filed on or before the due date of the return (including the extended due date) for the taxable year in which the disaster occurred.

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

LEGISLATIVE HISTORY

AB 2332 (Hernandez, Chapter 203, Statutes of 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 1428 (Chesbro, Chapter 283, Statutes of 2011) allows disaster loss treatment for losses sustained as a result of the Tsunami wave surge in Mendocino County.

AB 1662 (Portantino, et al., Chapter 447, Statutes of 2010) 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., Chapter 461, Statutes of 2010) 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 as a result of the wildfires that began May 13, 2014.

There was no corresponding federal disaster declaration.

OTHER STATES' INFORMATION

The states surveyed include *Florida*, *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois, *Massachusetts*, *Michigan*, *Minnesota*, and *New York* conform to the federal provisions that allow taxpayers to claim a disaster loss deduction on their state tax returns either in the preceding year or in the year of the loss. It appears that legislation, executive order, or proclamation by the President or the Governor is required to identify the area impacted by a disaster that is eligible for federal or state assistance.

Florida does not have a personal income tax; however, monetary relief is provided to citizens and corporations through the Emergency Management, Preparedness, and Assistance Trust Fund. *Florida* also requires legislation, executive order, or proclamation to identify the area impacted by a disaster.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 922 Assumed Enactment After June 30, 2014		
2013-14	2014-15	2015-16
- $7,000	+ $3,000	+ $3,000

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

Revenue Discussion

The revenue impact of this provision would depend on the extent to which affected taxpayers file amended income tax returns and the corresponding amount of the disaster loss deduction reported on the amended returns.

San Diego County estimates property losses for destruction and damages from the May 2014 wildfires of $30 million. Based on prior disaster bill estimates, it was assumed that 35 percent of losses would not be covered by insurance and result in out-of-pocket expenses. Because of the timing of the disaster, taxpayers have the ability to claim the losses under NOL carryback rules. It was assumed that two percent of taxpayers would elect to file an amended return using the disaster loss treatment made available in this bill. A marginal tax rate of approximately six percent was applied to arrive at the revenue loss.

APPOINTMENTS

None.

SUPPORT/OPPOSITION[1]

Support: San Diego County Board of Supervisors and San Diego Regional Chamber of Commerce.

Opposition: None provided.

VOTES

	Date	Yes	No
Assembly Floor	05/29/13[2]	70	0
Senate Floor	08/11/14	36	0
Concurrence	08/28/14	79	0

LEGISLATIVE STAFF CONTACT

Contact	Work
Marybel Batjer, Agency Secretary, CalGovOps	916-651-9024
Nancy Farias, Deputy Secretary for Legislation, CalGovOps	916-651-9373
Selvi Stanislaus, Executive Officer, FTB	916-845-4543
Gail Hall, Legislative Director, FTB	916-845-6333

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[1] As noted in the Senate Floor Analyses [sic] dated August 6, 2014.
[2] The version of the bill on May 29, 2013, dealt with electrical and gas service.