Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Anderson	Analyst:	Diane Deatherage	Bill Number:	SB 560
Related Bills:	None	Telephone:	845-4783	Amended Date:	January 15, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Exclusion/Amount Received from Disaster- or Emergency-Related Work Performed During Disaster Period

SUMMARY

Under the Personal Income Tax Law (PITL) and Corporate Tax Law (CTL), this bill would exclude income received by certain entities for performing disaster- or emergency-related work in California during the specified disaster period.

This analysis will not address the bill's changes to the Sales and Use Tax Law, as they do not impact the department or state income tax revenue.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The January 15, 2014, amendments resolved several, but not all, of the implementation concerns as discussed in the department's analysis of the bill as amended April 1, 2013. As a result of the January 15, 2014 amendments, the "This Bill," and "Implementation Considerations" sections have been revised. Additionally the department has identified a new implementation consideration, as well as a new technical consideration, and updated the "Support/Opposition" section. For convenience, all new and existing concerns are provided below.

The remainder of the department's analysis of the bill as amended April 1, 2013, still applies. The "Fiscal Impact" and "Economic Impact" sections are restated for convenience.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2015.

Board Position:			Legislative Director	Date
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ANALYSIS

THIS BILL

This bill would for taxable years beginning on or after January 1, 2015, exclude from income, amounts received by a qualified taxpayer (as defined) for performing disaster- or emergency-related work in California during the disaster period.

This bill would define the following terms and phrases:

- “Disaster- or emergency-related work” means repairing, renovating, installing, building, or rendering services or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed as a result of a declared state disaster- or emergency.
- “Declared state disaster or emergency” means a disaster or emergency event for which the Governor has proclaimed a state of emergency or major disaster or emergency for which the President of the United States has declared to exist in California.
- “Disaster Period” means the period of time that begins no later than 10 days following the Governor’s proclamation of a state of emergency or the President’s declaration of a major disaster or emergency in California, whichever occurs first, and that extends for a period of 60 calendar days or for any period determined by the Governor or his or her designee.
- “Infrastructure” means property and equipment owned or used by communication networks, gas and electric distribution systems, water pipelines, and public roads and bridges, and related support facilities that service multiple customers or citizens, including, but not limited to, real and personal property, including buildings, offices, power lines, poles, pipes, structures, and equipment.
- “Qualified Taxpayer” means, under the PITL, a limited partnership (LP), limited liability partnership (LLP), or LLC, or corporation under the CTL that meets both of the following:

    1. Was not "doing business" in California prior to the commencement date of the declared state disaster- or emergency, and

    2. Is "doing business" in California after the commencement date of the declared state disaster or emergency.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

LPs, LLPs, and LLCs (not treated as corporations) are included in the definition of “qualified taxpayer”; however the bill fails to address whether the exclusion would apply to these entities' owners. For ease of administration, it is recommended that the bill be amended to clarify how the exclusion would affect the owners of LPs, LLPs, and LLCs (not treated as corporations). Sole proprietorships and S Corporations are not included within the definition of "qualified taxpayer" and therefore any amount received by a sole proprietorship, S Corporation and its shareholder(s) during the disaster period would in included in gross income. If this is contrary to the author's intent, the bill should be amended.

A "qualified taxpayer" would mean a specified business entity that (1) was not "doing business" in California prior to the commencement date of the declared state disaster or emergency, and (2) is "doing business" in California after the commencement date of the declared state disaster or emergency. Some of this language is ambiguous and leads to the following questions:

- Is the "commencement date" different than the date of declaration?
- How long is "prior to commencement date"? For example, if a business entity was "doing business" in California ten years prior to the disaster or emergency period, but then had not been "doing business" for the previous seven years, would the business entity be eligible for the exclusion of income for a currently declared disaster or emergency?
- How long is "after the commencement date"? As written, if a business entity comes in to help with the disaster, it appears that it could then continue to do business here for non-disaster related projects and the income would remain excluded.

The author may wish to clarify the language under the "qualified taxpayer" definition to reduce confusion.

The "disaster period" begins at a time after the Governor's proclamation of a state of emergency or the President's declaration of a major disaster or emergency in this state and extends for a period of time or for any period determined by the Governor or his or her designee.

- Beginning Date - Qualified taxpayers may begin disaster or emergency-related work between the commencement date and the proclamation or declaration of a major disaster or emergency. If the author intends that the amounts received by qualified taxpayers during this time period should be excluded from income, this bill should be amended.
- Ending Date - It seems likely that some work may be initiated and completed after the disaster period has ended and therefore the amount would not be excluded. If this is contrary to the author's intent, the bill should be amended.

Because the bill fails to specify otherwise, the individual workers would still be taxable by California on wages earned while working here, and the employer would be subject to the Employment Development Department requirements as an employer. If this is contrary to the author’s intent, the bill should be amended.

TECHNICAL CONSIDERATIONS

Paragraph (5) of subdivision (b) of Revenue and Taxation Code sections 17137 and 24311 are unnecessary as a result of the elimination of the defined phrase “local agency.” These two paragraphs should be amended out and the subsequent paragraph renumbered.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill continues to move through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

The revenue impact of this bill depends on the number, type and magnitude of declared state disasters or emergencies that occur in California, the amounts received by a qualified taxpayer for performing disaster or emergency-related work during the specified disaster period that is excluded from income, and the associated deductions.

Developing estimates of this sort is highly speculative due to inherent uncertainties, (e.g. predicting the type, magnitude, and frequency of future natural and man-made disasters) as well as the income characteristics of qualified taxpayers using this exclusion.

It is estimated that for every $100 million in qualifying payments made to qualified taxpayers not doing business in the state prior to the disaster, there would be a revenue loss of approximately $1.2 million.

SUPPORT/OPPOSITION[1]

Support: Brian Dempsey, Fire Chief, Seaside, CA, Frank Parra, Director of Emergency Services, National City Fire Department, Big Bear Valley Community Response Team, Julian Cuyamaca Resource Center, Kern River Valley Community Response Team

Opposition: Unknown

[1] As reported in the Senate Governance and Finance Committee Analysis dated January 6, 2014.

POLICY CONCERNS

While this bill would provide for an exclusion of income for certain LLCs, LPs, LLPs, and corporations if they meet the specified activity criteria, other business entities such as sole proprietorships that meet the same activity criteria would still have to include the income in their taxable base. Thus, this bill would provide differing tax treatment to taxpayers based solely on their classification or form of organization. If this is not the author's intent, the author may want to consider revising the exclusion to apply to any amount received under the PITL and the CTL, regardless of the type of business entity.

LEGISLATIVE STAFF CONTACT

Diane Deatherage	Mandy Hayes	Gail Hall
Legislative Analyst, FTB	Revenue Manager, FTB	Legislative Director, FTB
(916) 845-4783	(916) 845-5125	(916) 845-6333
diane.deatherage@ftb.ca.gov	mandy.hayes@ftb.ca.gov	gail.hall@ftb.ca.gov