SCS Agency
Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Sweeney | Analyst: Roger Lackey | Bill Number: AB 2456

Related Bills: See Legislative History | Telephone: 845-3627 | Introduced Date: 02-20-98

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Disaster Loss Deduction/February 1998 Storms Or Flooding

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow special disaster treatment of losses sustained as a result of storms or flooding or any other related casualty that occurred during February 1998 in any county in this state that was declared a disaster.

This special disaster treatment of losses applies to the taxable or income year of the loss, which may be 1997 or 1998, depending on whether the taxpayer is a fiscal or calendar year filer.

This bill also would amend provisions of the Revenue and Taxation Code relating to property taxation. This analysis will not address these provisions, as they do not impact the Franchise Tax Board (FTB).

EFFECTIVE DATE

This special disaster treatment of losses applies to the taxable or income year of the loss, which may be 1997 or 1998, depending on whether the taxpayer is a fiscal or calendar year filer.

LEGISLATIVE HISTORY

AB 26X (Stats. 1992, Ch. X16); AB 29X (Stats. 1992, Ch. X18); AB 31X (Stats. 1992, Ch. X26); AB 39X (Stats. 1992; Ch. X25); AB 57X (Stats. 1992, Ch. X23); SB 1370 (Stats. 1992, Ch. 594); AB 900 (1993); SB 357 (Stats. 1993, Ch. 979); AB 1069 (1994); AB 1983 (Stats. 1994, Ch. 1245); AB 2290 (Stats. 1994, Ch. 17); SB 561 (1994); SB 1234 (Stats. 1994, Ch. 33); SB 1317 (1994); SB 1435 (1994); AB 1X (Stats. 1995, Ch. 3); AB 3X (Stats. 1995, Ch. 4); AB 6X (1995); AB 143 (1995); SB 64 (1995); SB 91 (1995); SB 107 (1995); SB 2X (Stats. 1995, Ch. 5); AB 94 (1997); AB x1 (1997); AB x4 (1997); SB x1 (1997)

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE ____ GOVERNOR'S APPOINTMENT

Board Position:	Agency Secretary Position:	GOVERNOR'S OFFICE USE
____ S ____ O ____ SA ____ OUA ____ N ____ NP ____ NA ____ NAR ____X____ PENDING	____ S ____ O ____ SA ____ OUA ____ N ____ NP ____ NA ____ NAR DEFER TO ____________	Position Approved ____ Position Disapproved ____ Position Noted ____
Department Director Date Gerald H. Goldberg 3/17/98	Agency Secretary Date	By: Date

SPECIFIC FINDINGS

Casualty Losses

Under current **California and federal law**, casualty losses which are not reimbursed by insurance are allowed to be taken as an itemized deduction in the year the casualty occurred. Each nonbusiness loss is deductible only to the extent it exceeds $100, and total nonbusiness losses are deductible only to the extent that the total loss amount for the year exceeds 10% of adjusted gross income. However, casualty losses on business property are not subject to the $100 and 10% of adjusted gross income limitations that apply to nonbusiness property. Generally, business property receives ordinary loss treatment.

Both business and personal casualty losses may be treated as a net operating loss (NOL). **Federal law** allows 100% of the NOL to be carried back for two years and carried forward for 20 years, while in most circumstances, **state law** allows 50% of the loss to be carried forward for five years.

Disaster Losses

Under federal and state tax law, a taxpayer may claim a loss from a disaster in an area determined by the President of the United States to warrant federal assistance. The taxpayer may elect either to claim the disaster loss in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to immediately file an amended return for the prior year. For state purposes, this election may be made prior to passage of any state legislation allowing special carryback treatment because California conforms to the federal election.

As with casualty losses, nonbusiness disaster losses not reimbursed by insurance are deductible under state and federal tax law to the extent each loss exceeds $100, and total nonbusiness disaster losses are deductible only to the extent that the total loss amount for the year exceeds 10% of adjusted gross income.

California income tax law identifies specific disasters and allows additional special carryforward treatment. That is, 100% of the excess disaster loss may be carried over for up to five taxable years, and if any excess loss remains after the five year period, 50% of the remaining excess loss may be carried over for up to 10 additional years.

This bill would add to the current list of specified disasters in the PITL and the B&CTL. Specifically, this bill would allow special disaster treatment of losses sustained as a result of the storm or flooding in February 1998 that occurred in any county in this state subject to a disaster declaration, or any other related casualty. The $100 and 10% of adjusted gross income limitations in existing law would apply to disaster losses on nonbusiness property.

This special disaster treatment of losses applies to the taxable or income year of the loss, which may be 1997 or 1998 depending on whether the taxpayer is a fiscal or calendar year filer.

Implementation Considerations

Implementation of this bill would not significantly impact the department.

Technical Considerations

Laws for the last four disasters have provided that the loss may be claimed by the extended due date of the return for the taxable or income year in which the disaster occurred. Since this bill is silent, the loss would have to be claimed by the original due date. Amendments 1 and 2 are provided if the author wishes the extended due date to apply (October 15, 1999, rather than April 15, 1999, for a calendar year filer).

FISCAL IMPACT

Departmental Costs

This bill is not expected to significantly impact the department's costs.

Tax Revenue Estimate

Based on the discussion below, the revenue loss from this bill is as follows:

Estimated Revenue Impact of AB2456		
Assumed Enactment After 6/30/98		
Fiscal Year Impact		
(In Millions)		
1998-9	**1999-0**	**2000-01**
($2)	($3)	($1)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion

The impact of this proposal would depend on the amount of disaster losses, carried back, carried forward at 100% instead of 50% and the amount of carryover losses deducted in subsequent years.

The estimated losses were determined in several steps. First, the total amount of damages for the storm and floods of February 1998 was based on information received from the Office of Emergency Services (OES). According to OES total damages are currently estimated to be over $500 million. However, these estimates are very preliminary and are expected to be much greater, since many of the counties have yet to finish their final estimates of total damages. For the purpose of this estimate it was assumed that OES's preliminary estimate ($500 million plus) represents approximately 70% (approximately $700 million) of the total damages as a result of the February storm and flooding. It was assumed that 75% of the total damages would be for private property for a total of approximately $535 million in property losses, and approximately 20% of the damage will be reimbursed by insurance coverage. Insurance coverage was based on previous floods in California, adjusted for more recent trends in insurance protection by homeowners. Estimates were derived after taking into account offsets such as insurance coverage, basis adjustment, and adjusted gross income limitations. In total, the revenue loss over three years is estimated to be approximately $6 million, with approximately 80% attributable to the PITL and the balance to B&CTL.

BOARD POSITION

Pending.

Analyst Roger Lackey
Telephone # 845-3627
Attorney Doug Bramhall

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2456
As Introduced February 20, 1998

AMENDMENT 1

On page 7, amend line 2 as follows:

~~and~~ (18), <u>and (19)</u> of subdivision (a), the election under Section

AMENDMENT 2

On page 9, amend line 35 as follows:

~~and~~ (18), <u>and (19)</u> of subdivision (a), the election under Section