

LEGISLATION PRESENTED FOR BOARD POSITION
February 25, 2004

Item No.	Bill Number	Author	Comments
1	AB 79	Dutra	Public Agencies/Reports to the Legislature, Governor, Or Any State Legislative Or Executive Body
2	AB 214	Horton	Veterans Quality of Life Fund
3	AB 658	Nakano	California Prostate Cancer Research Fund
4	AB 1283	Kehoe	California Arts Council Fund
5	AB 1338	Chavez	Withholding on California Real Estate to 9.3%
6	SB 438	Soto, et al.	Disaster Loss Deduction/Excess Loss Carryover Los Angeles, San Bernardino, Riverside, San Diego, & Ventura Counties Fires
7	SB 1147	Hollingsworth, et al.	Disaster Loss Deduction/Excess Loss Carryover Los Angeles, San Bernardino, Riverside, San Diego, & Ventura Counties Fires

AB 79 (Dutra) As Amended August 26, 2003
Public Agencies/Reports To The Legislature, Governor, Or Any State Legislative Or Executive Body

This bill would limit the number of reports made by a state or local agency to the Legislature, Governor, or any state legislative or executive body. This bill would specify a list of reports that would continue to be required, and a list of actions that if occur would require a report to be completed. These actions include: 1) a court order, federal law, or federal regulations; 2) budget act, or supplemental budget report; 3) expressly requested by the Legislature; 4) and certain governing statutes under the Business and Professions Code.

Under current law, the Franchise Tax Board (FTB) is legislatively mandated to complete the following annual reports:

- Summary of Federal Income Tax Changes,
- Annual Taxpayers' Bill of Rights Report,
- Audit and Collections Activities,
- Audit Protest Cases, and
- Enterprise Zones.

Under this bill, each of these mandated reports would continue to be made. As a result, this bill would not impact FTB.

If enacted in 2004, this bill would be effective and operative January 1, 2005. This bill would be repealed as of January 1, 2008.

Revenue Impact: This bill would not impact the state's income tax revenue.

Staff Recommendation: Neutral

Status: Senate Committee on Governmental Organization

AB 214 (Horton) As Amended June 26, 2003
Veterans Quality of Life Fund

Under the Administration Franchise and Income Tax Law (AFITL), this bill would create the Veterans Quality of Life Fund and would allow taxpayers to designate contributions to this fund on their personal income tax return. This bill would create an additional source of funding for the support of veterans' homes. The moneys allocated to operational veterans' homes would be used for nonrecurring events or items related to the maintenance or operation of the facilities.

The Veterans Quality of Life Fund would not appear on the tax return until another voluntary contribution fund is removed from the personal income tax return. The fund would remain in effect only until January 1 of the fifth taxable year following its first appearance on the tax return.

This bill would become effective January 1, 2005.

Revenue Impact: The net revenue impact of this bill would be negligible.

Staff Recommendation: Neutral

Status: Senate Appropriations Committee

**AB 658 (Nakano)
California Prostate Cancer Research Fund**

As Amended August 27, 2003

Under the AFITL, this bill would create the California Prostate Cancer Research Fund and would allow taxpayers to designate contributions to this fund on their personal income tax return. This bill would create an additional source of funding for the research of prostate cancer in California. The monies would be allocated to unnamed entities for the purpose of prostate cancer research.

The California Prostate Cancer Research Fund would not appear on the tax return until another voluntary contribution fund is removed from the personal income tax return. The fund would remain in effect only until January 1 of the fifth taxable year following its first appearance on the tax return.

This bill would become effective January 1, 2005.

Revenue Impact: The net revenue impact of this bill would be negligible.

Staff Recommendation: Neutral

Status: Senate Revenue and Taxation Committee

**AB 1283 (Kehoe)
California Arts Council Fund**

As Amended April 29, 2003

Under the AFITL, this bill would create the California Arts Council Fund, and would allow taxpayers to designate contributions to this fund on their personal income tax return. This bill would create an additional funding source for arts and multicultural programs. The monies would be allocated to the California Arts Council for the purpose of arts and multicultural program grants in local communities.

The California Arts Council Fund would not appear on the tax return until another voluntary contribution fund is removed from the personal income tax return. The fund would remain in effect only until January 1 of the fifth taxable year following its first appearance on the tax return.

This bill would become effective January 1, 2005.

Revenue Impact: The net revenue impact of this bill would be negligible.

Staff Recommendation: Neutral

Status: Senate Revenue and Taxation Committee

AB 1338 (Chavez)

As Amended June 26, 2003

Withholding On California Real Estate To 9.3%

This bill would modify the real estate withholding provisions in current law to more closely match the actual tax due on the sale of real property. Specifically, this bill would do each of the following:

- Allow the seller to elect to have the maximum tax rate (presently 9.3% for individuals and trusts and 8.84% for corporations) of the gain withheld instead of 3 1/3% of the sales price. The seller must certify under penalty of perjury that gain reported to the buyer or real estate escrow person (REEP) is correct.
- Exempt from withholding the sale of a residence if the residence was last used by the seller as the seller's principal residence, without regard to the amount of time the residence was used by the seller as a principal residence. Present law requires the taxpayer to reside at the residence for two out the last five years to qualify for an exemption from withholding.
- Exempt from withholding the sale of any real property held as inventory by a licensed general contractor operating as a sole proprietor. The seller would be required to certify that he or she is a licensed general contractor and that the property was held for sale in the ordinary course of his or her business (inventory) of constructing and selling real property.
- Revise the withholding requirements on corporations with no permanent place of business in California to match the requirements for individuals. This eliminates the corporation waiver process and replaces it with the same statutory scheme in present law for self-certification by individuals.

This bill would become effective January 1, 2005.

Revenue Impact:

Tax Cash-Flow Estimate:

This bill would result in cash-flow losses as follows:

Estimated Cash-Flow* Impact of AB 1338 As Amended June 26, 2003 Effective for tax years beginning on or after 1/1/2003 Enacted after 6/30/2003 \$ Millions			
	2003-04	2004-05	2005-06
1. 3 1/3% W/H or 9.3% on Gains	-\$30	-\$3	-\$3
2. Exempt Select Residences	-\$1	Minor loss+	Minor loss
3. Exempt Schedule C General Contractors	-\$1	Minor loss	Minor loss
4. Exempt Withholding on Failed Exchanges	-\$2	Minor loss	Minor loss
Total	-\$34	-\$3	-\$3

* Ultimate tax liabilities are not affected, only the timing of payments.

+ Less than \$250,000.

Staff Recommendation: Support If Amended

- The bill requires FTB to develop a computer fillable withholding form that would enable the seller of real property to estimate the amount of taxable gain on the sale of the real property. The fillable form would be required to be posted on FTB's website and to be capable of being filed electronically. The bill only requires the certificate or form to be provided to the FTB upon request. The electronic filing provisions would arguably require FTB to establish a database to retain information that may unnecessarily have been filed. In addition, it would create procedural problems for the department. Neither the department nor the Internal Revenue Service has formally adopted procedures for the acceptance of electronic signatures.
- Require the maximum withholding amount of 3 1/3% of the actual cash received by the seller in a failed like-kind exchange.

- This bill includes numerous technical errors, including an error that would result in a REEP being required to withhold taxes on all sales by individuals. As a result, the REEP would not be allowed to permit a seller to take advantage of exemptions from or reductions in withholding.

Status: Senate Revenue and Taxation Committee

**SB 438 (Soto) As Amended January 12, 2004
Disaster Loss Deduction/Excess Loss Carryover/Los Angeles, San Bernardino,
Riverside, San Diego, & Ventura Counties Fires**

This bill would add the wildfires that occurred in October and November of 2003 in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura to the current list of specified disasters under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL). Specifically, this bill would allow special disaster treatment of losses sustained as a result of those wildfires. The \$100 and 10% of adjusted gross income limitations in existing law would apply to disaster losses on nonbusiness property.

This bill would allow any remaining excess disaster loss after the five-year period to be carried over using the net operating loss (NOL) percentage that was applicable for the year the disaster occurred. The wildfires occurred in 2003 when the applicable percentage for NOLs was 60%. Therefore, if a taxpayer affected by the wildfires has any excess disaster loss remaining after five years, 60% of the remaining loss can be carried over for an additional 10 years.

As an urgency measure, this bill would be effective and operative immediately upon enactment.

Revenue Impact:

Estimated PIT Revenue Impact SB 438 as Amended January 12, 2004 including proposed amendments (In Millions) Fiscal Year Impact			
2003-2004	2004-05	2005-06	2006-07
Minor loss	-\$4	-\$8	-\$3

Staff Recommendation: Neutral

It is expected that the author will amend the bill to expand the list of disasters for which special disaster treatment may be claimed to include floods, mudflows, and debris flows that were a direct result of the Southern California wildfires and to include the San

Simeon earthquake. The revenue impact above includes these anticipated amendments.

Status: Assembly Revenue and Taxation Committee

SB 1147 (Hollingsworth) As Introduced January 26, 2004
Disaster Loss Deduction/Excess Loss Carryover/Los Angeles, San Bernardino, Riverside, San Diego, & Ventura Counties Fires

Except for technical differences, SB 1147 is identical to SB 438 discussed above, including the anticipated amendments.

As a tax levy, this bill would be effective and operative for taxable years beginning on or after January 1, 2004.

Staff Recommendation: Neutral

Status: Senate Desk