

Author: Bigelow & Berryhill Analyst: Davi Milam Bill Number: AB 524
Related Bills: See Legislative History Telephone: 845-2551 Introduced Date: February 13, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Dead or Dying Tree Removal Expense Deduction

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), allow a miscellaneous itemized deduction for qualified tree removal expenses.

RECOMMENDATION - NO POSITION.

REASON FOR THE BILL

The reason for the bill is to provide tax relief to taxpayers who incur tree removal expenses.

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, 2018.

FEDERAL/STATE LAW

Under federal law, an individual may elect to claim his or her itemized deductions for a taxable year in lieu of the standard deduction. Itemized deductions generally are those deductions that are not allowed in computing adjusted gross income (AGI). Itemized deductions include unreimbursed medical expenses, investment interest, casualty and theft losses, wagering losses, charitable contributions, qualified residence interest, state and local income taxes (or in lieu of income, sales taxes), property taxes, unreimbursed employee business expenses, and certain other miscellaneous expenses that are only deductible to the extent that they exceed 2 percent of AGI. Additional limitations apply to high-income taxpayers.

Federal law, subject to limitations, generally allows a deduction for casualty losses from damage, destruction, or loss of property from any sudden, unexpected, or unusual event such as a flood, hurricane, tornado, fire, earthquake, or volcanic eruption. Federal law generally prohibits a casualty loss deduction for property loss due to progressive deterioration. For example, the damage or destruction of trees, shrubs, or other plants by a fungus, disease, insects, worms, or similar pests is generally considered progressive deterioration. However, a sudden destruction due to an unexpected or unusual infestation of beetles or other insects may result in a casualty loss.¹

¹ IRS Publication 547 <https://www.irs.gov/pub/irs-pdf/p547.pdf>

California generally conforms to the federal rules that apply to itemized deductions.

Current state and federal law lack a deduction similar to the one this bill would provide.

THIS BILL

For each taxable year beginning on or after January 1, 2018, this bill would, under the PITL, allow a miscellaneous itemized deduction in an amount equal to the amount paid or incurred for qualified tree removal expenses by a taxpayer during the taxable year.

For purposes of this deduction, “qualified tree removal expenses” means expenses paid or incurred in connection with the removal of a dead or dying tree on real property owned by the taxpayer or by a person hired by the taxpayer.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to administer the bill’s provisions. For example, the bill lacks a maximum deductible amount and fails to specify who may claim the deduction. If multiple taxpayers own the same real property could each owner claim a miscellaneous itemized deduction for the entire expense? If the taxpayer receives insurance reimbursement for the tree removal expenses must the amount deducted be reduced by the amount of any reimbursement? For clarity and ease of administration, it is recommended that the bill be amended.

The bill uses undefined phrases that could be broadly interpreted. For example:

- What does “in connection with the removal of a dead or dying tree” mean? Would the costs to remove and replace a fence and re-landscape after the tree removal be considered expenses “in connection with”?
 - What does “dead or dying” mean? Since this bill lacks language clarifying what is meant by “dead or dying,” it could be argued that the removal of any tree would qualify for the deduction rather than only those trees that are “dead or dying” as diagnosed by an arborist or other expert.
 - What does “on real property owned by the taxpayer or by a person hired by the taxpayer” mean? It could be argued that deductible expenses could include tree removal from any property owned by the person hired by the taxpayer, in addition to tree removal costs for trees removed from property owned by the taxpayer.
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The use of undefined phrases could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

The deduction would be limited to taxpayers who itemize their deductions and whose total miscellaneous deductions for the taxable year exceeds 2 percent of their adjusted gross income. If this is contrary to the author's intent, the bill should be amended.

LEGISLATIVE HISTORY

Research of California legislation found no enacted or proposed legislation similar to the provisions of this bill.

OTHER STATES' INFORMATION

Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a deduction comparable to the deduction that would be allowed by this bill. The laws of these states were selected due to their similarities to California's economy, and tax laws.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

A revenue estimate cannot be completed until the implementation concerns discussed above have been resolved.

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

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some may say that this bill would provide financial relief for taxpayers who incur costly tree removal expenses.

Opponents: Some may argue that the financial incentive this bill would allow would be overly broad and could be an expensive and inefficient way to address tree removal expenses.

POLICY CONCERNS

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation. Recasting this deduction as a credit would eliminate this concern.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a tax benefit by the Legislature.

The deduction would be allowed for tree removal expenses paid or incurred either inside or outside California.

This bill fails to limit the amount of the deduction that may be taken. Tax benefits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis.

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