

ANALYSIS OF AMENDED BILL

Author: Bradford Analyst: Jon Feenstra Bill Number: SB 343
Related Bills: See Legislative History Telephone: 845-4870 Amended Date: June 8, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Carousel Housing Tract Cleanup Income Exclusion

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), exclude from gross income qualified amounts received by a taxpayer related to the remediation of the Carousel Housing Tract.

RECOMMENDATION – NO POSITION**Summary of Amendments**

The June 8, 2017, amendments removed provisions of the bill related to legislative intent language regarding prisoner medical parole and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill.

PROGRAM BACKGROUND

According to court documents,¹ Shell Oil Company (Shell) sold land known as the "Kast Property Tank Farm Facility" in October of 1965 to Richard Barclay and his associates, a group of residential developers who intended to convert the property into a residential subdivision. Shell transferred title to the property in October 1966. In preparation for the change in use, the oil storage reservoirs were decommissioned, the reservoir walls were torn down and buried on site, and the land was graded for home construction. The land was rezoned from industrial to residential, and the Carousel housing tract homes were constructed and sold by the early 1970's.

In 2008, after discovering contamination nearby, the Los Angeles Regional Water Quality Control Board (RWQCB) directed Shell to conduct environmental testing at the Carousel housing tract. These investigations revealed the presence of petroleum hydrocarbons in the areas where Shell's former oil reservoirs had been located.

On March 11, 2011, the Los Angeles RWQCB issued Order R4-2011-046 (Order)² requiring Shell to investigate, clean up, and abate waste discharged at its former Kast Property Tank Farm Facility.

¹ [Dole Food Company, et al. v Shell Calif. Court of Appeals.](#)

² [RWQCB Order R4-2011-046.](#)

After Shell's initial Remediation Action Plan (RAP) was rejected, Shell submitted a revised RAP in June 2014, with an addendum in October 2014³. Under the revised RAP, Shell would excavate five to ten feet beneath the homes, install a vapor extraction and venting mechanism and institute comprehensive long-term monitoring. In addition, Shell would provide temporary relocation assistance in connection with implementing the RAP, and compensate Carousel Housing Tract homeowners to ensure they receive fair market value if they elect to sell their home.

Additionally, included in the RAP are costs to relocate the residents on the site during the remediation process.

REASON FOR THE BILL

The reason for the bill is to relieve the tax burden placed on those taxpayers living in the Carousel Housing Tract homes by the amounts received and expenses incurred as a result of the RAP.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective immediately, and would be operative for qualified amounts received on or after January 1, 2017.

FEDERAL/STATE LAW

Gross Income

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.⁴

Tax Benefit Rule

Existing federal and state laws provide that gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed.⁵

THIS BILL

This bill would, under the PITL, exclude from gross income any qualified amounts received by a taxpayer directly or indirectly, during remediation of the Carousel Housing Tract located in Carson, California.

³ [Former Kast Property Feasibility Study Report.](#)

⁴ Revenue and Taxation Code (R&TC) section 17071.

⁵ R&TC section 17131, Internal Revenue Code section 111.

Qualified Amounts would mean:

1. Amounts received by a taxpayer, directly or indirectly, during the remediation for costs associated with temporary accommodations and relocation pursuant to the Order. These costs include, but are not limited to, hotel expenses, including meal reimbursement, mileage reimbursement, parking expenses, pet boarding fees, Internet connectivity and access fees, electric vehicle charging fees, laundry fees, expenses related to staying with friends or family during remediation, expenses related to renting another home for a lease term including the purchase of housewares, appliances, pet fees, furniture rental, utility fees, and moving expenses, a mileage allowance or costs related to alternative transportation for a taxpayer whose child or children attend relocated area schools until the date the taxpayer exited the relocation program, moving expenses, and expenses related to cleaning the interior of an affected home or vehicle.
2. Notwithstanding any other law, amounts equal to any unreimbursed expenses related to the Order.
3. Notwithstanding any other law, the proceeds from a settlement arising out of the investigation, clean up, or abatement of the waste discharged at the former Kast Property Tank Farm, the Order, or any combination thereof.

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.

The bill uses broad phrases to describe what may be included in the exclusion from income including "amounts received directly or indirectly," "during the remediation," and "include, but are not limited to." As a result, all expenses that may be indirectly tied to any settlement or remediation pursuant to the Order (including attorney fees paid to counsel representing the plaintiffs) may be excluded from income. If this is contrary to the author's intent, the bill should be amended to clearly define what is and is not an excludable payment or expense.

This bill provides for an exclusion from gross income for amounts paid by those entities under the Order on behalf of taxpayers for temporary accommodations and relocation due to the remediation. The tax benefit rule, absent this bill, allows reimbursed payments made on behalf of affected taxpayers to be excluded from gross income, but only to the extent of the tax benefit realized (i.e., to the extent the taxpayer had not previously deducted the expenses). The temporary accommodations and relocation payments described as reimbursed or paid on behalf of taxpayers would not be includable in gross income under the tax benefit rule. However, the exclusion as drafted would operate more broadly to ensure that the unreimbursed expenses that were not deductible originally would not then also be taxable upon receipt of the reimbursement.

This bill includes a provision which excludes from gross income the proceeds from a settlement arising out of the investigation, clean up, or abatement of the waste discharged at the former Kast Property Tank Farm, Regional Water Quality Control Board Order R4-2011-046, or any combination thereof. The description of the proceeds from a settlement does not specify what the expenses are or whether the taxpayer must be a property owner or resident of one of the affected properties. It would be helpful for the bill to be amended to provide additional clarification as to the description of the settlement proceeds, such as whether it includes attorney's fees, scientific testing, doctors' fees, etc.

Because the bill would be operative for payments received in taxable years beginning on or after January 1, 2017, and clean up on the site began on May 9, 2016,⁶ payments received prior to January 1, 2017, would be ineligible for exclusion. If this is contrary to the author's intent this bill should be amended.

LEGISLATIVE HISTORY

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

OTHER STATES' INFORMATION

Review of Illinois, Massachusetts, Michigan, Minnesota, and New York laws found no comparable gross income exclusion. These states were selected and reviewed due to their similarities to California's economy, and tax laws.

FISCAL IMPACT

If the implementation considerations addressed in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

A revenue estimate cannot be completed until the implementation considerations discussed above have been addressed.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

⁶ [Carousel Tract Community Update Summer 2016.](#)

ARGUMENTS

Proponents: Some may argue that individuals receiving amounts related to required remediation of their property through no fault of their own, should be relieved of the tax consequences that might otherwise apply.

Opponents: Some may argue that enacting a statute which provides that relocation and temporary accommodation amounts are nontaxable, adds complexity to the tax law.

POLICY CONCERNS

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

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