



Bill Analysis

Author: Hill	Sponsor:	Bill Number: SB 1139
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Attorney: Shane Hofeling	Related Bills: See Legislative History	

SUBJECT

Nondeductible Fines and Penalties for Electrical and Gas Corporations

SUMMARY

This bill would, under the Corporation Tax Law (CTL), disallow a deduction for fines or penalties related to safety violations paid by an electrical or gas corporation.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to ensure that specified payments for a fine or penalty imposed for a safety violation to penalize an electrical or a gas corporation is nondeductible.

ANALYSIS

For taxable years beginning on and after January 1, 2020, this bill would provide that no deduction will be allowed for any amount paid or incurred by an electrical corporation or by a gas corporation for expenses or expenditures identified by the Public Utilities Commission (PUC) in a decision to penalize the electrical or gas corporation for a safety violation.

This includes any payment made by the electrical or gas corporation for the following:

- (1) Electric or gas infrastructure improvements related to safety to be paid by its shareholders.
- (2) Credits allowed on customers (ratepayers) bills.
- (3) Implementation of safety remedies and reimbursement of the PUC for its costs incurred in investigating and enforcing violations of law relating to the public safety.

For any taxable year in which these expenses are paid or incurred, the electrical or gas corporation would be required to provide with the return for that taxable year a certification, under penalty of perjury, that none of the expenses were taken into account in determining the net income of the electrical or gas corporation, or any other related taxpayer subject to tax under the CTL.

If an electrical or gas corporation seeks to recover moneys for taxes paid that could have otherwise been deducted, except for the provisions of this bill, then the electrical or gas corporation can recover those moneys from their shareholders, but not from ratepayers.

This bill would define an "electrical corporation" as every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others. (See Public Utilities Code section 218.)

This bill would define a "gas corporation" as every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others. (See Public Utilities Code section 222.)

Effective/Operative Date

As an urgency measure, this bill would be effective immediately upon enactment, and specifically operative for taxable years beginning on and after January 1, 2020.

Federal/State Law

Current federal and state laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business, unless specifically excluded by statute. No deduction is allowed for any fine or similar penalty paid to a government for a violation of law.

Implementation Considerations

This bill uses terms that are undefined, i.e., "indirectly" in the phrase "...were taken into account, directly or indirectly," "other related taxpayer," "electric or gas infrastructure improvements related to safety," "bill credits," and "implementation of safety remedies." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms.

The bill provides that if an electrical or gas corporation seeks to recover moneys for taxes paid that could have otherwise been deducted, except for the provisions of this bill, then the electrical or gas corporation can recover those moneys from their shareholders, but not from ratepayers. The Franchise Tax Board (FTB) would be unable to determine if the electrical or gas corporation recovered moneys from shareholders or ratepayers.

Implementing this bill would not significantly impact the department's programs and operations.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- On page 2, line 13, "...years beginning on and after January 1, 2020," should be replaced with "...years beginning on or after January 1, 2020,".
- On page 2, line 17, and on page 3, line 3, "expenses or expenditures" should be replaced with "expenses".

Policy Concerns

None noted.

LEGISLATIVE HISTORY

AB 877 (Bocanegra & Jones-Sawyer, Chapter 792, Statutes of 2014) disallowed professional sports franchise owners from deducting certain fines and penalties, under the Personal Income Tax Law and CTL.

AB 458 (Wieckowski, 2013/2014) would have disallowed the deduction of punitive damages paid or incurred in connection with any judgment in, or settlement of, any action. AB 458 failed to pass out of the Senate.

AB 1276 (Feuer, 2011/2012), substantially similar to AB 458, would have disallowed the deduction of punitive damages paid or incurred in connection with any judgment in, or settlement of, any action. AB 1276 failed to receive the required two-thirds vote to move out of the Assembly.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

We are unable to provide an estimate because doing so would violate the FTB's taxpayer confidentiality laws.

Revenue Discussion

Disclosure rules apply when the volume of taxpayers or returns falls below the specified thresholds statewide. Under Revenue and Taxation Code section 19542, the FTB is precluded from providing an estimate for this bill under state privacy rules.

LEGAL IMPACT

None noted.

Appointments

None noted.

Support/Opposition

To be determined.

Arguments

To be determined.

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