STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Sponsor:

Related Bills: See Legislative History

Bill Number: AB 952

Introduced: February 17, 2021

SUBJECT

Income taxes: Passive Activities, Forest Management Costs

SUMMARY

This bill, under Personal Income Tax Law (PITL), would modify conformity to the federal passive activity rules and allow qualified taxpayers to treat up to $25,000 of forest management costs paid or incurred during the taxable year, as not being subject to the general passive activity limitation rule.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to encourage private landowners to introduce forest management projects that will reduce fire hazards, protect vulnerable communities, and improve California's unique forest habitat.

ANALYSIS

This bill would provide, under PITL and for taxable years beginning on or after January 1, 2021, that the limitations imposed by passive activity limitation rules would not apply for up to $25,000 forest management costs incurred or paid during the taxable year.

The $25,000 amount is reduced by 50 percent of the excess adjusted gross income over $200,000, but not below zero.

This bill would define the following terms:

A. "Qualified taxpayer" means a taxpayer that owns 5,000 acres or less of nonindustrial forest land.
B. "Forest management costs" means costs paid or incurred by a qualified taxpayer during the taxable year for the preparation of a forest management plan in conjunction with a qualified forest management project.
C. "Qualified forest management project" means a forest management project that satisfies all of the following:
   1. Is approved by CAL FIRE.
   2. Is at least five acres in size, except within a wildland-urban interface area.
   3. The project is any of the following:
      a. Site preparation, reforestation, and follow up treatment of competing vegetation for up to 36 months following tree planting.
      b. Treatment of competing vegetation, including, but not limited to, hardwoods and brush, to reduce fire hazard in areas classified as high-hazard zones on CAL FIRE maps.
      c. Thinning of hardwoods and conifer trees to increase forest stand carbon sequestration or to reduce fire hazard, or both.
      d. Follow up vegetation treatment within 10 years of an initial project to maintain previously completed qualified projects.
      e. Improvements to enhance wildlife habitat or to repair adverse legacy road conditions subject to approval and concurrence by CAL FIRE, the Department of Fish and Wildlife, or a regional water quality control board, depending upon the nature of the project.
      f. Costs associated with wildlife or botanical surveys, or both, for a timber harvesting plan, nonindustrial timber management plan, or a working forest management plan required to protect candidate or listed species.

This bill states an intent to comply with the reporting requirements of Section 41.

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, 2021.

Federal/State Law

Under federal law, the passive loss rules limit deductions and credits from passive trade or business activities. Passive activities are defined as any trade or business activity in which the taxpayer does not materially participate and any rental activity regardless of the level of taxpayer's participation, unless material participation was as a real estate professional. A taxpayer is treated as materially participating in an activity only if the taxpayer is involved in the operation of the activity on a basis that is regular, continuous, and substantial. The passive loss rules apply to individuals, estates and trusts, closely held C corporations, and personal service corporations.

Under these rules, deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. A similar rule applies to certain credits. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next taxable year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of their entire interest in the passive activity to an unrelated person in a fully taxable transaction.

California conforms to the federal passive activity rules with certain exceptions.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

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

Under Revenue and Taxation Code (RTC) section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit. This bill should be amended to specify the RTC section 41 requirements.

LEGISLATIVE HISTORY

None noted.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 952 as Introduced February 17th, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	Revenue
2021-2022	-$27
2022-2023	-$18
2023-2024	-$18

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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