STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Niello	Sponsor:	Bill Number: SB 264
	Related Bills: See Legislative History	Introduced: January 31, 2023

SUBJECT

Deduction for Disaster Losses/Extend Automatic Disaster Relief for Areas Proclaimed by Governor to be in State of Emergency

SUMMARY

Under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), this bill would extend the sunset date for the deduction for disaster losses sustained in Governor-declared disaster areas.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to extend the sunset date for the disaster loss deduction, automatically allowing disaster loss relief for losses sustained in Governor-declared states of emergency.

ANALYSIS

This bill would, under the PITL and CTL, extend for five years the disaster loss tax deduction to taxable years beginning before January 1, 2029. In addition, the bill would make a technical change by updating a cross reference, relating to the net operating loss (NOL) deduction.

The bill states that the Legislature intends to comply with the requirements of Section 41 of the Revenue and Taxation Code (RTC).

This deduction would be repealed on December 1, 2029.

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, 2024, and before January 1, 2029.

Federal/State Law

Under federal law, prior to 2018, and state law, a disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area proclaimed to be a disaster by the President of the United States or, for state law purposes, by the Governor. For tax years 2018 and before 2026, the federal personal casualty and theft loss deduction is suspended, except for such losses incurred in a federally declared disaster area. However, federal law allows non-disaster casualty losses for those tax years (2018 through 2025) to be offset against casualty gains. California law does not conform to the suspension.

Under federal and state tax law, the taxpayer may elect to claim the disaster loss either in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to file an amended return immediately for the prior year. Existing federal and state law allows an individual taxpayer with a disaster loss that is not reimbursed by insurance or otherwise, to deduct disaster losses to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income. Business and income-producing property are not subject to these limitations.

Under current state law, for taxable years beginning on or after January 1, 2014, and before January 1, 2024, a taxpayer may elect the same disaster loss treatment available under Internal Revenue Code (IRC) Section 165(i) for any loss sustained as a result of a disaster in any city, county, or city and county in California that has been proclaimed by the Governor to be in a state of emergency. The IRC Section 165(i) election relating to disaster losses could be made on a return or amended return filed on or before the due date of the return (including the extended due date) for the taxable year in which the disaster occurred. Additionally, current state law precludes any law, other than those specific to NOL treatment under the RTC), that suspends, defers, reduces, or otherwise diminishes the deduction of an NOL from applying to an NOL attributable to a loss sustained as a result of a disaster in any city, county, or city and county in California that is proclaimed by the Governor to be in a state of emergency.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 35 (Wolk & Dodd, Chapter 230, Statutes of 2015) allowed, under the PITL and CTL, disaster loss treatment for losses sustained in an area declared by the Governor to be a state of emergency.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact associated with this bill is primarily attributed to timing differences and therefore, the net revenue loss is minimal.

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.

Revenue Discussion

The revenue impact of this bill depends on the extent to which affected taxpayers elect to claim their disaster loss by amending their preceding year return(s) or waiting to claim the loss as a casualty loss when filing their current year return. The revenue impact of this bill is primarily attributable to the timing difference between these two options for claiming the disaster loss. Because it is assumed a taxpayer would choose the disaster loss reporting option that is the most beneficial to their financial situation, it is estimated that there would be a small revenue loss. Based on historical data, the department estimates the revenue impact of disaster losses to be approximately $6,000 per disaster.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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