STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Niello

Sponsor:

Bill Number: SB 264

Related Bills: See Legislative History

Amended: May 4, 2023, and June 19, 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

The May 4, 2023, amendments added Revenue and Taxation Code (RTC) section 41 reporting requirements. The June 19, 2023, removed Section 41 intent language. As a result of these amendments, one implementation consideration was identified.

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 taxable 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) deductions.

This bill would require the Franchise Tax Board (FTB) to report to the Legislature the number of taxpayers allowed the deduction. This report would be due on May 1, 2025, and annually thereafter. The Section 41 reporting requirements would be treated as an exception to the general prohibition against disclosure of confidential taxpayer information.

This deduction would be repealed on December 1, 2029.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.

Under 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.

Implementation Considerations

The FTB has identified the following implementation consideration and is available to work with the author's office to resolve this and other considerations that may be identified.

This bill requires the FTB to prepare a report on the performance of the deduction allowed by this bill by May 1, 2025. If the author's intent is to review a report that contains complete information for the 2024 taxable year, it is recommended that the reporting due date be extended to April of 2027. This date allows time for the FTB to complete processing of both personal income tax return and corporation returns that file on a fiscal year basis. Corporate fiscal filers that file on extension, may file as late as October 15, 2026. The FTB needs approximately six months to complete return processing and to compile the needed data to prepare a report. As a result, it is recommended that the reporting due date be no earlier than April of 2027 to provide complete information for the 2024 taxable year.

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 FTB'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 FTB estimates the revenue impact of disaster losses to be approximately $6,000 per disaster.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The June 9, 2023, Assembly Committee on Revenue and Taxation analysis included the following support and opposition.

Support

California Farm Bureau Federation

Opposition

None noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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