



## Bill Analysis

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Bill Number: SB 264

### 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.

### REASON FOR THE BILL

The reason for the bill is to extend the sunset date for the disaster loss deduction for disasters occurring in this state that is proclaimed in a Governor declared state of emergency.

### ANALYSIS

This bill would, under the PITL and CTL, extend for five taxable years, the application of disaster loss deduction to taxable years beginning on or after January 1, 2014, and 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.

The section allowing this application of the disaster loss deduction would be repealed on December 1, 2029.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 or as declared by the President. 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*

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**

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

**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**

None included.

**VOTES**

Location	Date	Yes Votes	No Votes
Concurrence	September 14, 2023	40	0
Assembly Floor	September 11, 2023	80	0
Senate Floor	May 18, 2023	38	0

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