



STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: McGuire, et al.

Sponsor:

Bill Number: SB 370

Related Bills: See Legislative
History

Introduced February 9, 2023,
and Amended March 28, 2023

SUBJECT

Gross Income Exclusion for Kincade Fire

SUMMARY

This bill would provide, to qualified taxpayers, an exclusion from gross income for amounts received in settlement in connection with the 2019 Kincade Fire.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 28, 2023, amendments, modified the definitions of "qualified amount" and "settlement entity", and made technical and renumbering changes.

This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for this bill is to provide relief to taxpayers in the part of California impacted by the 2019 Kincade Fire.

ANALYSIS

This bill, under Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), would exclude from gross income qualified amounts received by a qualified taxpayer.

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For purposes of the PITL and CTL, the following definitions would apply:

- “Qualified amount” means any amount received in settlement by a qualified taxpayer from a settlement entity in connection with the 2019 Kincade Fire.
- “Qualified taxpayer” means any of the following:
 - Any taxpayer that owned real property located in the County of Sonoma during the 2019 Kincade Fire who paid and incurred expenses and received amounts from a settlement arising out of or pursuant to the 2019 Kincade Fire.
 - Any taxpayer that had a place of business within the County of Sonoma during the 2019 Kincade Fire who paid and incurred expenses and received amounts from a settlement arising out of or pursuant to the Kincade Fire.
- “Settlement entity” means Pacific Gas and Electric Company or its subsidiary that is making the settlement payment to a qualified taxpayer.

The bill provides additional criteria for a taxpayer to be considered a “qualified taxpayer” that is different under the PITL and CTL. Under the PITL, a “qualified taxpayer” would also include any taxpayer that resided within the County of Sonoma during the 2019 Kincade Fire who paid and incurred expenses and received amounts from a settlement arising out of or pursuant to the 2019 Kincade Fire.

This bill would require the settlement entity to provide to the Franchise Tax Board (FTB), upon request, documentation of the settlement payments in the form and manner requested by the FTB.

This bill, for purposes of complying with Revenue and Taxation Code section (RTC) section 41, would require the FTB to deliver a report to the Legislature that complies with Section 9795 of the Government Code on December 31, 2028, that includes the following:

- The number of qualified taxpayers that excluded qualified amounts from gross income, and
- The aggregate amount of those settlement payments arising out of the 2019 Kincade Fire.

The Section 41 reporting would be treated as an exception to the general prohibition against disclosure of taxpayer information.

This exclusion would be repealed on December 1, 2028.

Effective/Operative Date

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

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Federal/State Law

Federal Law

Existing federal law, Internal Revenue Code (IRC) section 139, provides a general exclusion that gross income does not include any amount an individual receives as a qualified disaster payment. A qualified disaster payment means amounts paid to, or for the benefit of, an individual for several purposes, including to:

- Reimburse or pay reasonable and necessary personal, family, living, or funeral expenses the individual incurred because of a qualified disaster; or
- Reimburse or pay reasonable and necessary expenses the individual incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

For any federally declared disaster, an individual may exclude from income a valid disaster relief payment, which includes any amount the individual receives from the settlement award for a purpose listed above.

A qualified disaster includes any federally declared disaster, as defined in IRC section 165(i). A federally declared disaster is any disaster the President of the United States determines assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act is warranted. (The Federal Emergency Management Agency's website, www.fema.gov, provides the listing of federally declared disasters.)

State Law

California generally conforms to IRC section 139, as described above. California also specifically allows an exclusion from gross income for:

- Settlement payments received from the Fire Victims Trust, and
- Settlement payments received from Southern California Edison for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire.

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Implementation Considerations

This bill would require collection of data on the number of qualified taxpayers that excluded qualified amounts and the aggregate amount of those settlement payments. Collecting this data would require the FTB to rely on information received from the settlement entity. The author may wish to amend the reporting requirements in 17139.2(d)(2)(A)(ii) from:

“The aggregate amount of those settlement payments arising out of the 2019 Kincade Fire.” to:

“The aggregate amount of those settlement payments, reported to the FTB, arising out of the 2019 Kincade Fire.”

Since taxpayers are not required to report excluded income on their return, FTB will not be able to report on the number or amount of exclusions taken.

Technical Considerations

The author may want to replace the phrase “paid and incurred” throughout the bill with “paid or incurred” thus providing the same application for both cash-basis and accrual-basis accounting methods.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 294 (Petrie-Norris, 2023/2024) would provide a qualified taxpayer an exclusion from gross income for amounts received in settlement for a wildfire or natural disaster. This bill is currently in the committee process.

SB 542 (Dahle, et al., 2023/2024) would provide a qualified taxpayer an exclusion from gross income for amounts received in settlement to replace property damaged or destroyed by the 2020 Zogg Fire. This bill is currently in the committee process.

AB 1249 (Gallagher, et al., Chapter 749, Statutes of 2022) provided an exclusion from gross income for amounts received in settlement under the order of the United States Bankruptcy Court for the Northern District of California dated June 20, 2020, case number 19-30088, docket number 8053.

SB 1246 (Stern and Valladares, Chapter 841, Statutes of 2022) provided to qualified taxpayers an exclusion from gross income for amounts received from Southern California Edison in settlement for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire and allow refunds of tax previously paid on those amounts.

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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

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 370 as Amended March 28, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

Fiscal Year	Revenue*
2023-2024	-\$17
2024-2025	-\$1.4
2025-2026	-\$0.05

* Payments are based on estimated settlement payments published to date, as a result, the revenue impact could increase if additional payment information is provided.

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.

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SUPPORT/OPPOSITION

As per the April 7, 2023, Senate Committee on Governance and Finance analysis of SB 370, the following organizations are in support of this bill.

Support

California Farm Bureau Federation
Consumer Attorneys of California
County of Sonoma

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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