STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Brian and Megan Dahle	Sponsor:	Bill Number: SB 542
	Related Bills: See Legislative History	Amended: July 12, 2023, and February 5, 2024

SUBJECT

Gross Income Exclusion for Dixie and Mill Fire Victims

SUMMARY

The bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would provide a qualified taxpayer an exclusion from gross income for amounts received from a settlement entity in connection with the 2021 Dixie Fire or the 2022 Mill Fire.

RECOMMENDATION

No position—The Franchise Tax Board (FTB) has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The July 12, 2023, amendments resolved the technical consideration discussed in the FTB's analysis of the bill as amended March 30, 2023, and created an additional technical consideration. This amendment also made other wording changes to the definition of "qualified amount" and the Section 41 reporting requirements.

The February 5, 2024, amendments removed the reference to the 2020 Zogg Fire and replaced it with the 2021 Dixie and 2022 Mill fires and the corresponding counties, changed the code section numbers, and changed the operative dates.

REASON FOR THE BILL

The reason for this bill is to provide relief to taxpayers in the parts of California devastated by the 2021 Dixie and the 2022 Mill Fires.

ANALYSIS

This bill under the PITL and CTL, for taxable years beginning on or after January 1, 2022, and before January 1, 2029, would provide an exclusion from gross income for any qualified amount received by a qualified taxpayer.

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 2021 Dixie or the 2022 Mill Fires.
- "Qualified taxpayer" means any of the following:
  - Any taxpayer that owned real property located in the County of Butte, Plumas, Lassen, Shasta, or Tehama during the 2021 Dixie Fire or the County of Siskiyou during the 2022 Mill Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2021 Dixie Fire or 2022 Mill Fire.
  - Any taxpayer that had a place of business within the County of Butte, Plumas, Lassen, Shasta, or Tehama during the 2021 Dixie Fire or the County of Siskiyou during the 2022 Mill Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2021 Dixie Fire or 2022 Mill Fire.
- "Settlement entity" means the following:
  - In relation to the 2021 Dixie Fire, Pacific Gas and Electric Company or its subsidiary making the settlement payment to a qualified taxpayer.
  - In relation to the 2022 Mill Fire, Roseburg Forest Products or its subsidiary or agent 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 Butte, Plumas, Lassen, Shasta, or Tehama during the 2021 Dixie Fire or the County of Siskiyou during the 2022 Mill Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2021 Dixie Fire or 2022 Mill Fire, respectively.

The settlement entity would be required to provide, upon request by the FTB, 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 (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 1, 2028, that includes the following:

- To the extent feasible, the number of qualified taxpayers that excluded qualified amounts from gross income, and
- The aggregate amount of those settlement payments arising out of the 2021 Dixie Fire or the 2022 Mill Fire.

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

This exclusion would be repealed on December 1, 2029.

The Legislature declares that this act is necessary for the public purpose of preventing undue hardship to taxpayers who reside, or used to reside, in a part of California devastated by wildfires and does not constitute a prohibited gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

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, 2022, and before January 1, 2029.

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.
- Settlement payments received from Southern California Edison for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire.
- Settlement payments received from Pacific Gas and Electric Company or its subsidiary for claims in connection with the 2019 Kincade Fire or the 2020 Zogg Fire.

Implementation Considerations

The Section 41 performance metrics outlined in this bill would not be included in any forms or expense schedules that are required to be filed with the tax return. To collect the requested metrics, the FTB would need taxpayers to submit the reporting information on Form 4197 - Information on Tax Expenditure Items. This form captures additional metrics and is used to report on specified exemptions that are not currently reported on the return.

Because taxpayers are not required to include this form, the data collected may be limited. Taxpayer reporting is more robust when the performance metrics are tied to items clearly reported on filed tax returns. Where items, such as income exclusions, do not appear on a tax return, it may be more effective to have the Legislative Analyst Office and/or industry experts help the Legislature understand whether the specified goals are being achieved.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 294 (Petrie-Norris, 2023/2024) would have provided a qualified taxpayer an exclusion from gross income for amounts received in settlement for a wildfire or natural disaster. This bill did not pass out of the Assembly Appropriations Committee by the constitutional deadline.

AB 1973 (Lackey, 2023/2024) would provide a qualified taxpayer an exclusion from gross income for any amount received from a settlement entity in connection with the 2020 Bobcat Fire. This bill is currently in the committee process.

SB 927 (Dahle, 2023/2024) would provide a taxpayer an exclusion from gross income for qualified amounts received in settlement to replace property damaged or destroyed in a natural disaster declared a state of emergency by the Governor and the President of the United States. This bill is currently in the committee process.

SB 131 (Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2023) among other things provided an exclusion from gross income for amounts received for settlement payments as a result of the 2019 Kincade Fire and 2020 Zogg fire.

AB 1249 (Gallagher, et al., Chapter 749, Statutes of 2022) provides 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 number19-30088, docket number 8053.

SB 1246 (Stern and Valladares, Chapter 841, Statutes of 2022) provides, 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 allows refunds of tax previously paid on those amounts.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

This provision would not significantly impact the FTB's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would allow a qualified taxpayer a gross income exclusion of any amount received in settlement by a qualified taxpayer from a settlement entity in connection with the 2021 Dixie Fire or 2022 Mill Fire. To determine the magnitude and the potential impact to the General Fund, both the dollar amounts arising from settlement payouts and the timing of those payments must be known. Because it is difficult to predict the frequency of wildfires as well as the amount and timing of settlement payments, the revenue impact to the General Fund is unknown.

However, it is assumed that for every $100 million in qualified settlement amounts received, and applying an average tax rate of 5 percent, the estimated revenue loss would be approximately $5 million.

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.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support: None on file

Opposition: None on file

ARGUMENTS

Proponents: None on file

Opponents: None on file

LEGISLATIVE CONTACT

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