STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Dahle, et al.

Sponsor:

Bill Number: SB 927

Related Bills: See Legislative History

Amended: March 14, 2024

SUBJECT

Natural Disaster Settlements Gross Income Exclusion

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 qualified amounts received from a settlement entity 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.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 14, 2024, amendments added definitions for a qualified taxpayer, qualified amount, and settlement entity, added that the settlement entity shall provide upon request documentation of the settlement payment to either a qualified taxpayer or the Franchise Tax Board (FTB), added that a taxpayer that has received documentation of the settlement payment may provide that documentation upon request by FTB, added a repeal date, and added coauthors.

REASON FOR THE BILL

The reason for this bill is to provide relief to taxpayers who have suffered property loss resulting from specific natural disasters.

ANALYSIS

This bill, under the PITL and CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2033, would provide an exclusion from gross income for any qualified amount received by a taxpayer.

This bill, for purposes of the PITL and CTL, would define:

- “Qualified amount” as any amount received from a settlement entity by a qualified taxpayer to replace property damaged or destroyed by a natural disaster that was declared a state of emergency by both the Governor and the President of the United States.
- “Qualified taxpayer” as including any of the following:
  - o Any taxpayer that owns real property located in an area damaged by a natural disaster who paid or incurred expenses, and received amounts from a settlement entity, arising out of or pursuant to the natural disaster.
  - o Any taxpayer that resides within an area damaged by a natural disaster who paid or incurred expenses, and received amounts from a settlement entity, arising out of or pursuant to the natural disaster.
  - o Any taxpayer that has a place of business within an area damaged by a natural disaster who paid or incurred expenses, and received amounts from a settlement entity, arising out of or pursuant to the natural disaster.
- “Settlement entity” means the entity, approved by a class action settlement administrator, making the settlement payment to a qualified taxpayer.

This bill would include Revenue and Taxation Code (RTC) section 41 requirements that would provide that the measurement of effectiveness of the credit would be the number of taxpayers that excluded qualified amounts from gross income. On December 1, 2028, and every five years thereafter, the FTB would be required to provide a written report to the legislature that includes the number of taxpayers that excluded qualified amounts from gross income as a result of this exclusion.

This exclusion would be repealed on December 1, 2033.

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, 2023, and before January 1, 2033.

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.

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

This bill allows a specified exclusion, when among other requirements, there is a natural disaster that was declared "a state of emergency" by the President of the United States. Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 100 – 707), the President of the United States may make a major disaster declaration or an emergency declaration. The author may want to clarify whether the specified exclusion would be allowed for a federally declared disaster as defined under the IRC or when the President makes an emergency declaration or major disaster declaration.

This bill was introduced in the 2024 legislative session and would allow an exclusion from gross income for settlement payments received for taxable years beginning on or after January 1, 2023. If this bill were to be enacted this calendar year, the exclusion allowed by this bill would be considered retroactive to the specified operative date of January 1, 2023. The FTB has already developed the forms and instructions for the 2023 taxable year, and taxpayers have already began filing tax returns for the 2023 taxable year. Thus, the FTB may incur additional costs to develop additional tax forms and instructions, and to process amended returns claiming this exclusion. To alleviate these considerations, the author may wish to change the operative date to January 1, 2024.

Technical Considerations

The term "resides" is a PITL term applicable to individuals and not a CTL term applicable to corporations. For consistency of terminology, the following should be deleted:

- Section 24309(b)(2)(B) "Any taxpayer that resides within an area damaged by a natural disaster who paid or incurred expenses, and received amounts from a settlement entity, arising out of or pursuant to the natural disaster."

Additionally, Section 24309(b)(2)(C) will need to be renumbered to 24309(b)(2)(B).

Policy Considerations

None noted.

LEGISLATIVE HISTORY

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

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 number 19-30088, docket number 8053.

SB 1246 (Stern, Chapter 841, Statutes of 2022) provides 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.

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 determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would allow a taxpayer a gross income exclusion for amounts received in settlement to replace property damaged or destroyed by a natural disaster that was declared a state of emergency by both the Governor and the President of the United States. To determine the magnitude of the potential impact to the General Fund, both, the frequency of state and federally declared natural disasters and the dollar amounts arising from settlement payouts must be known. Because it is difficult to predict the frequency of natural disasters and settlement amounts paid, the revenue impact to the General Fund is unknown.

However, using an average tax rate of 7 percent, it is assumed that for every $100 million in qualified settlement income received, the estimated revenue loss would be approximately $7 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.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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