



Bill Analysis

Author: McGuire

Sponsor:

Bill Number: SB 946

Related Bills: See Legislative
History

Amended: April 29, 2024

SUBJECT

Gross Income Exclusion for Wildfire Mitigation Program Payments

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would provide an exclusion from gross income for payments received from the California Wildfire Mitigation Financial Assistance Program.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 29, 2024, amendments clarified that the mitigation payment must be received by a qualified taxpayer, added a definition of a qualified taxpayer, and removed the Franchise Tax Board (FTB) from the Section 41 reporting responsibilities.

The April 29, 2024, amendments resolved the implementation consideration discussed in the FTB's analysis of this bill as amended on March 14, 2024, and created a new implementation and technical consideration.

REASON FOR THE BILL

The reason for this bill is to provide financial relief to taxpayers in high fire areas who receive payments from the California Wildfire Mitigation Financial Assistance Program for an activity that reduces wildfire risk.

ANALYSIS

This bill, under the PITL and CTL, would provide an exclusion from gross income for any amount received by a qualified taxpayer as a California qualified wildfire loss mitigation payment.

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This bill, for purposes of the PITL and CTL, would provide the following definitions:

- “California qualified wildfire loss mitigation payment” means any amount which is received through the California Wildfire Mitigation Financial Assistance Program (commencing with Section 8654.2 of the Government Code(GOV)) for the benefit of a residential property owner or occupant with expenses paid, or obligations incurred, for wildfire loss mitigation.
- “Qualified taxpayer” means a taxpayer that owns a structure on real property located in a designated wildfire hazard area, as defined in GOV section 8654.6, if the California Wildfire Mitigation Financial Assistance Program performs wildfire loss mitigation on that property.
- “Wildfire loss mitigation” means an activity that reduces wildfire risks to a residential structure or its contents, or both.

This bill would include Revenue and Taxation Code section 41 requirements that the Office of Emergency Services and the Department of Forestry and Fire Protection as joint powers created under GOV section 8654.4 provide a report to the Legislature by December 1, 2029, to the extent data is available, on the number of qualified taxpayers that excluded amounts from gross income, and the aggregate amount of funds distributed from the California Wildfire Mitigation Financial Assistance Program.

This bill provides that 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.

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

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

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- 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.

Existing federal law, IRC section 139(g), provides a gross income exclusion for any amount received as a qualified disaster mitigation payment. A qualified disaster mitigation payment is any payment received pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act or the National Flood Insurance Act made to the owner of property for hazard mitigation of that property. No adjustment to basis is allowed for amounts excluded.

State Law

California generally conforms to IRC section 139. 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 considerations and is available to work with the author's office to resolve these and other considerations that may be identified.

The definition of qualified taxpayer states that "if the California Wildfire Mitigation Financial Assistance Program performs wildfire loss mitigation" while the bill states that "gross income shall not include any amount received by a qualified taxpayer as a California qualified wildfire loss mitigation payment" and California qualified wildfire loss mitigation payment means "any amount received through the California Wildfire Mitigation Financial Assistance Program from the benefit of a residential property owner or occupant with expenses paid, or obligation incurred, for wildfire loss mitigation." This inconsistency may cause confusion for the taxpayer and the FTB to determine what amount is excluded from gross income. The author may want to amend the bill to clarify what is excluded from gross income.

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Technical Considerations

The Section 41 reporting requirements include “the number of qualified taxpayers that excluded amounts from gross income.” If the responsible reporting parties want to request this information from the FTB, the author may want to replace 17138.7(c)(2)(B) with the following language:

“Notwithstanding Section 19542 of the Revenue and Taxation Code, the Franchise Tax Board may provide data related to amounts excluded from gross income pursuant to this section and section 24308.10, requested by the joint power authority, to the extent that data is available. Taxpayer information received by the joint power authority pursuant to this section is subject to Section 19542 of the Revenue and Taxation Code.”

Policy Considerations

This bill would allow an exclusion for payments received for wildfire loss mitigation expenditures that may increase the basis of the property. Providing both an exclusion and allowing the expenditure amount to be added to the basis of the property would have the effect of providing a double benefit for the same item. If this is contrary to the author’s intent, the author may wish to amend the bill.

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.

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 Assembly Appropriations Committee.

SB 542 (Dahle, 2023/2024) would provide a qualified taxpayer an exclusion from gross income for amounts received from a settlement entity to replace property damaged or destroyed in connection with the 2021 Dixie Fire or the 2022 Mill Fire. This bill is currently in the Assembly Appropriations Committee.

SB 952 (Dahle, et al. 2023/2024) would allow two home fire safety tax credits for qualified home hardening and qualified vegetation management, collectively known as the Fire Safe Home Tax Credits Act. This bill is currently in the Senate Revenue and Taxation Committee.

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SB 927 (Dahle, 2023/2024) 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. This bill is currently in the Senate Appropriations Committee's Suspense file.

SB 1004 (Wilk, 2023/2024) would provide a qualified taxpayer an exclusion from gross income for amounts received from a settlement entity for a wildfire. This bill is currently in the Senate Appropriations Committee's suspense file.

SB 131 (Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2023), among other things, provides 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

The California Wildfire Mitigation Financial Assistance Program as part of the California Wildfire Mitigation Program was established in 2019 with the goal of both the California Governor's Office of Emergency Services and the California Department of Forestry and Fire Protection to protect homes in high-risk wildfire areas through preventative measures.

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 exclude from gross income any payment received by a qualifying residential property owner through the California Wildfire Mitigation Financial Assistance Program for expenses paid or incurred for wildfire loss mitigation.

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To determine the magnitude of the potential impact to the General Fund, both the number of qualifying residential property owners as well as the amount of funds distributed from the California Wildfire Mitigation Financial Assistance Program would need to be known. Because it is difficult to determine the number of qualifying residential property owners who would be impacted by this proposal and the amount of funds distributed, the revenue impact to the General Fund is unknown.

However, it is assumed that for every \$100 million of payments received by qualified taxpayers, and applying an average tax rate of 3 percent, the estimated revenue loss would be approximately \$3,000,000.

This estimate assumes the California Wildfire Mitigation Financial Assistance Program would receive funding on an annual basis.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Per the Assembly Revenue and Taxation Committee analysis of SB 946 (McGuire, 2023/2024), dated May 6, 2024, the following organizations support this bill:

Support

- Cal Fire Local 2881
- California Professional Firefighters
- County of San Diego
- Rural County Representatives of California (RCRC)

Opposition

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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