STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Choi, et al.

Sponsor:

Bill Number: SB 268

Related Bills: See Legislative History

Introduced: February 3, 2025

SUBJECT

Natural Disaster Settlements Gross Income Exclusion

SUMMARY

The bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), for taxable years beginning on or after January 1, 2025, would provide a qualified taxpayer an exclusion from gross income for amounts received from a settlement entity to replace property damaged or destroyed by a natural disaster that was declared a state of emergency by the Governor.

RECOMMENDATION

No position—The three-member Franchise Tax Board has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the 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, 2025, would provide an exclusion from gross income for any qualified amount received by a qualified 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 the Governor.

A "qualified taxpayer" would mean any of the following:

- 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.
- 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.
- 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.

Upon request from the Franchise Tax Board (FTB) or the qualified taxpayer, the settlement entity would be required to provide documentation of the settlement payments in the form and manner prescribed by the FTB or the qualified taxpayer, who may provide the documentation to the FTB if requested.

This bill would include Revenue and Taxation Code (RTC) section 41 requirements that would provide that the measurement of effectiveness of the exclusion would be the number of taxpayers that excluded qualified amounts from gross income. On December 1, 2030, and every five years thereafter, the FTB would be required to provide a written report to the legislature, to the extent feasible, that includes the number of taxpayers that excluded qualified amounts from gross income as a result of this exclusion.

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, 2025.

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 relief payment. A qualified disaster relief 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.
- Payments received from the California Wildfire Mitigation Financial Assistance Program.

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 bill would allow the FTB or the taxpayer to determine the form and manner of the needed documentation from the settlement entity. If this is not the author's intent, in both Section 17139.4 (c) and Section 24309.8 (c), the author may consider replacing, "The settlement entity shall provide, upon request by the Franchise Tax Board or the qualified taxpayer, documentation of the settlement payments in the form and manner requested by the Franchise Tax Board or the qualified taxpayer, who may provide the documentation to the Franchise Tax Board upon request." with, "The settlement entity shall provide, upon request by the qualified taxpayer, documentation of the settlement payments in the form and manner as determined by the Franchise Tax Board. Upon request, the settlement entity or the qualified taxpayer shall provide the documentation to the Franchise Tax Board."

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 24309.8(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 24309.8(b)(2)(C) would then need to be renumbered to Section 24309.8(b)(2)(B).

Policy Considerations

This bill does not provide a sunset date, which would generally allow periodic review of the effectiveness of the tax law change. If this is contrary to the author’s intent, the author may wish to amend the bill.

LEGISLATIVE HISTORY

AB 27 (Schiavo, et al., 2025/2026) would, under the PITL and CTL, create an exclusion from gross income for any amounts received from the Chiquita Canyon elevated temperature event for taxable years beginning on or after January 1, 2024, and before January 1, 2029. AB 27 has been referred to the Assembly Revenue and Taxation Committee suspense file.

AB 429 (Hadwick, 2025/2026) would, under the PITL and the CTL, provide for taxable years beginning on or after January 1, 2022, and before January 1, 2027, an exclusion from gross income for amounts received by a qualified taxpayer in settlement for costs associated with the 2021 Dixie Fire, 2022 Mill Fire, or 2024 Park Fire. AB 429 has been referred to the Assembly Revenue and Taxation Committee suspense file.

SB 131 (Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2023), under the PITL and the CTL, 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.

SB 264 (Niello, Chapter 285, Statutes of 2023), under the PITL and CTL, for taxable years beginning on or after January 1, 2014, and before January 1, 2029, extended the sunset date for the deduction for disaster losses sustained in Governor-declared disaster areas.

AB 1249 (Gallagher, Chapter 749, Statutes of 2022), under the PITL and the CTL, 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, Chapter 841, Statutes of 2022), under the PITL and the CTL, provided 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.

AB 294 (Petrie-Norris, 2023/2024), under the PITL and the CTL, 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), under the PITL and the CTL, would have provided a qualified taxpayer an exclusion from gross income for any amount received from a settlement entity in connection with the 2020 Bobcat Fire. SB 542 (Brian and Megan Dahle, 2023/2024), under the PITL and the CTL, would have provided 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. Both AB 1973 and SB 542 was vetoed by Governor Newsom because he, "…signed legislation that provided similar tax exclusions for settlement claims resulting from catastrophic wildfires that occurred in the preceding five years. In signing those bills, I stated future measures, like these bills, should be included as part of the annual budget process given the General Fund implications. The following year, the Legislature enacted an income tax exclusion for an additional wildfire in the 2023-24 Budget Act. As such, I strongly encourage the Legislature to include these proposals in next year's budget framework."

SB 927 (Dahle, et al., 2023/2024), similar to this bill, would have under the PITL and the CTL, provided 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. SB 927 did not pass out of the Senate by the constitutional deadline.

SB 1004 (Wilk and Dahle, 2023/2024), under the PITL and the CTL, would have provided a qualified taxpayer an exclusion from gross income for amounts received from a settlement entity for a wildfire. SB 1004 did not pass out of the Assembly by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

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 proposal would allow a taxpayer a gross income exclusion for any amount received by a qualified taxpayer to replace property damaged or destroyed by a natural disaster that was declared a state of emergency by the Governor. To determine the magnitude of the potential impact to the General Fund, both, the frequency of natural disasters and the dollar amounts arising from settlement payouts must be known. Because it is difficult to predict the frequency of natural disasters as well as the amount and timing of settlement payouts, the revenue impact to the General Fund is unknown.

However, it is assumed that for every $100 million in qualified amounts received, and applying an average tax rate of 6.2 percent, the estimated revenue loss would be approximately $6.2 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

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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