SENATE COMMITTEE ON GOVERNANCE AND FINANCE
Senator Anna M. Caballero, Chair
2023 - 2024 Regular

Bill No:	SB 264	**Hearing Date:**	5/3/23
Author:	Niello	**Tax Levy:**	Yes
Version:	1/31/23	**Fiscal:**	Yes
Consultant:	Deitchman		

INCOME TAXES: DEDUCTION: DISASTER LOSSES

Extends the sunset for taxpayers to deduct disaster losses from 2024 to 2029.

Background

Tax expenditures. California law allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives either to compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving. The Legislature uses tax incentives to encourage taxpayers to do something that but for the tax credit, they would otherwise not do. The Department of Finance is required annually to publish a list of tax expenditures, currently totaling around $87 billion per year.

Conformity. State law does not automatically conform to changes in federal tax law, except for specific retirement provisions. Instead, the Legislature must affirmatively conform to federal changes, which it can do in two different ways. First, the Legislature can pass an individual tax bill that conforms to a specific federal provision, such as the Regulated Investment Company Modernization Act (AB 1423, Perea, 2011). Second, the Legislature can pass one omnibus bill that provides that state law conforms to federal law as of a specified date. Currently state law generally conforms to federal tax law as of January 1, 2015 (AB 154, Ting, 2015).

Disaster Losses. Under federal and state tax law, a taxpayer may elect to claim a loss sustained from a disaster, either in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to file an amended return immediately for the prior taxable year so that they can claim the loss immediately, and receive a tax refund. A disaster loss that is not reimbursed by insurance or another sources, can be deducted to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income. Business and income-producing property are not subject to these limitations.

Under current state law, for taxable years beginning on or after January 1, 2014, and before January 1, 2024, a taxpayer may elect the same disaster loss treatment for state law available under federal for any loss sustained from a disaster in any city, county, or city and county in California that the Governor has proclaimed to be in a state of emergency (SB 35, Wolk, 2015,).

The author wants to extend the current sunset date on disaster loss treatment subject to Governor-proclaimed disasters to allow taxpayers to be able to claim a disaster loss beyond 2024.

Proposed Law

Senate Bill 264 extends for five years, the disaster loss tax deduction allowed for Governor-proclaimed disasters to taxable years beginning before January 1, 2029.

The bill makes a technical change by updating a cross reference, relating to the net operating loss (NOL) deduction.

The measure states that it is the intent of the Legislature to comply with the requirements of Section 41 of the Revenue and Taxation Code.

SB 264 repeals the deduction on December 1, 2029.

State Revenue Impact

According to the Franchise Tax Board, "The revenue impact associated with this bill is primarily attributed to timing differences and therefore, the net revenue loss is minimal."

Comments

1. Purpose of the bill. According to the author, "California has seen numerous types of disasters in recent years ranging from wildfires, winter flooding and earthquakes. Current law has helped provide tax relief automatically when the Governor or President proclaims a state of emergency but will expire next year. SB 264 extends the sunset date for the Disaster Loss Tax Deduction for 5 years, allowing individuals impacted by disasters to continue receiving tax relief."

2. Recent Disasters. There have been many Governor-proclaimed disasters in recent years. Over the past few months, the Governor has proclaimed the following disasters:

- April 2023 – severe winter storms in the counties of Contra Costa, Riverside, San Diego, and Yolo
- February/March 2023 – severe winter storms in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Sacramento, San Benito, San Bernardino, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Sonoma, Stanislaus, Trinity, Tulare, Tuolumne, and Yuba
- December 2022/January 2022 – severe winter storms in all counties
- December 2022 – earthquake in Humboldt county
- September 2022 – tropical storm in the counties of Imperial, Inyo, Los Angeles, Riverside, and San Bernardino

3. Missing Section 41. Section 41 of the Revenue and Taxation Code, requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax expenditure will achieve, and detailed performance indicators, along with data collection and reporting requirements (SB 1335, Leno, 2014). SB 264 does not include the reporting metrics needed to comply with Section 41, however it does include language that states

that it plans to comply with the provisions. The Committee may wish to consider amending the bill to add the Section 41 reporting requirements.

Support and Opposition (4/28/23)

Support: California Farm Bureau Federation

Opposition: None submitted.

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