Date of Hearing: June 12, 2023

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Jacqui Irwin, Chair

SB 264 (Niello) – As Amended May 4, 2023

Majority vote. Tax levy. Fiscal committee.

SENATE VOTE: 38-0

SUBJECT: Income taxes: deduction: disaster losses

SUMMARY: Extends by five years the existing deduction for disaster losses. Specifically, **this bill**:

1) Extends, from taxable years beginning before January 1, 2024, to taxable years beginning before January 1, 2029, the sunset on the existing deduction for disaster losses under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law.

2) Finds and declares, for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41, that the goal of this deduction is to support taxpayers whose business or personal property is completely or partially destroyed due to a disaster, which may be determined by the Legislature based on the number of taxpayers allowed this bill's deduction.

3) Requires the Franchise Tax Board (FTB) to annually submit the number of taxpayers allowed this bill's deduction beginning on May 1, 2025.

4) Provides that this bill shall remain in effect only until December 1, 2029, and is repealed as of that date.

5) Takes immediate effect as a tax levy.

EXISTING FEDERAL LAW:

1) Provides that all income from whatever source derived is taxable, unless specifically excluded. (Internal Revenue Code (IRC) Section 61.)

2) Authorizes a deduction on unreimbursed amounts of loss resulting from a disaster in an area declared to be under a state of emergency by the President. A taxpayer may take the loss in the year preceding the taxable year in which the disaster occurred. (IRC Section 165(i).) A deduction is allowed only on amounts of loss that exceed $100 and if the aggregate losses are more than 10% of the taxpayer's adjusted gross income for that taxable year. (IRC Section 165(h).)

EXISTING STATE LAW:

1) Conforms, for taxable years beginning on or after January 1, 2014, and before January 1, 2024, to IRC Section 165(i) for any loss resulting from a disaster that occurs in an area

declared to be under a state of emergency by the Governor. This type of loss is commonly referred to as a disaster loss and is authorized under the PIT Law and the CT Law. (R&TC Sections 17207.14 and 24347.14.)

2) Provides that any law that suspends, defers, reduces, or otherwise diminishes the deduction of a net operating loss (NOL) that is a disaster loss shall not apply, except those provisions that provide for modified conformity to federal law regarding the general treatment of a NOL. (R&TC Sections 17207.14(c) and 24347.14 (c).)

FISCAL EFFECT: The FTB, using historical data, estimates a revenue loss of $6,000 per disaster.

COMMENTS:

1) The author has provided the following statement in support of this bill:

> 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 five years, allowing individuals impacted by disasters to continue receiving tax relief.

2) The California Farm Bureau Federation, writing in support of a previous, but substantively similar, version of this bill, states, in part:

> This past winter brought historic amounts of precipitation to California, inundating the state with more water than the land and infrastructure could handle. The result from relentless atmospheric river events has been devastating flooding across farms and ranches. Even more flooding is possible, as the state's historic snowpack begins to melt. Farmers and ranchers have taken dramatic actions to try to save their crops and livestock during these disasters, and the ability to recover some losses through the Disaster Loss Tax Deduction is an important tool to sustain the impact from disasters.

3) Committee Staff Comments:

   a) *Automatic disaster loss relief*: Prior to 2015, California taxpayers residing in disaster areas could not automatically deduct the losses resulting from a Governor-proclaimed state of emergency. Rather, California taxpayers could only deduct those losses resulting from a state of emergency proclaimed by the President without action by the state Legislature, and any Governor-proclaimed disaster would benefit from a loss deduction only if the Legislature chose to authorize the deduction for specific areas. Subsequently, the Legislature enacted SB 35 (Wolk), Chapter 230, Statutes of 2015, which provided modified conformity to federal law by allowing a loss deduction for disaster areas under a state of emergency as proclaimed by the Governor, thereby automatically authorizing California taxpayers a disaster loss deduction for Governor-proclaimed disasters.

   b) *Governor-proclaimed disasters*: In the past six months, the following states of emergency have been proclaimed:

i) February and March 2023: Severe winter storms in the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, 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, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Sonoma, Stanislaus, Trinity, Tulare, Tuolumne, Yolo, and Yuba;

ii) December 2022 and January, 2023: Severe winter storms in all counties;

iii) December 2022: Earthquake in Humboldt County; and,

iv) November 2022: Route Fire of August 2022 in Los Angeles County.

c) *What is a "tax expenditure"*? Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, United States Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each of them (in the form of forgone revenues). This bill extends the existing disaster loss deduction, thereby qualifying as a tax expenditure under this Committee's rules.

d) *Committee's tax expenditure policy*: SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. AB 263 (Burke), Chapter 743, Statutes of 2019, extended the requirements in R&TC Section 41 to all tax expenditure measures under the PIT Law, the CT Law, and the Sales and Use Tax Law introduced on or after January 1, 2020. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote[1]. Sunsets are required because eliminating a tax expenditure generally requires a 2/3rd vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill contains a five-year sunset and complies with the requirements of R&TC Section 41.

e) *Technical amendment*: As currently drafted, this bill states its intent to comply with R&TC Section 41, and includes provisions to comply with R&TC Section 41. The author and Committee may wish to consider striking Section 3 of this bill.

REGISTERED SUPPORT / OPPOSITION:

Support

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[1] An "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years.

California Farm Bureau Federation

Opposition

None on file

Analysis Prepared by: Harrison Bowlby / REV. & TAX. / (916) 319-2098