

ASSEMBLY BILL

No. 1428

Introduced by Assembly Member Chesbro
(Principal coauthors: Senators Evans and La Malfa)

March 25, 2011

An act to add Sections 17207.7 and 24347.6 to the Revenue and Taxation Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1428, as introduced, Chesbro. Disaster relief: tsunami.

The Personal Income Tax Law and the Corporation Tax Law provide for the carryover to specified taxable years of specified losses sustained as a result of certain disasters occurring in California in an area determined by the President of the United States to warrant specified federal assistance, or proclaimed by the Governor to be in a state of emergency.

This bill would extend these provisions to losses sustained in the Counties of Del Norte and Mendocino as a result of the tsunami that occurred in March 2011. This bill would authorize a taxpayer to make an election to claim a deduction for those losses on the tax return for the preceding year.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17207.7 is added to the Revenue and
2 Taxation Code, to read:

3 17207.7. (a) An excess disaster loss, as defined in subdivision
4 (c), shall be carried to other taxable years as provided in
5 subdivision (b), with respect to losses sustained in the Counties of
6 Del Norte and Mendocino as a result of the tsunami that occurred
7 in March 2011.

8 (b) (1) In the case of any loss allowed under Section 165(c) of
9 the Internal Revenue Code, relating to limitation of losses of
10 individuals, any excess disaster loss shall be carried forward to
11 each of the five taxable years following the taxable year for which
12 the loss is claimed. However, if there is any excess disaster loss
13 remaining after the five-year period, then the applicable percentage,
14 as set forth in paragraph (1) of subdivision (b) of Section 17276.20,
15 of that excess disaster loss shall be carried forward to each of the
16 next 10 taxable years.

17 (2) The entire amount of any excess disaster loss as defined in
18 subdivision (c) shall be carried to the earliest of the taxable years
19 to which, by reason of subdivision (b), the loss may be carried.
20 The portion of the loss which shall be carried to each of the other
21 taxable years shall be the excess, if any, of the amount of excess
22 disaster loss over the sum of the adjusted taxable income for each
23 of the prior taxable years to which that excess disaster loss is
24 carried.

25 (c) “Excess disaster loss” means a disaster loss computed
26 pursuant to Section 165 of the Internal Revenue Code which
27 exceeds the adjusted taxable income of the year of loss or, if the
28 election under Section 165(i) of the Internal Revenue Code is
29 made, the adjusted taxable income of the year preceding the loss.

30 (d) This section and Section 165(i) of the Internal Revenue Code
31 shall be applicable to any of the losses listed in subdivision (a)
32 sustained in any county or city in this state which was proclaimed
33 by the Governor to be in a state of disaster.

34 (e) Losses allowable under this section shall not be taken into
35 account in computing a net operating loss deduction under Section
36 172 of the Internal Revenue Code.

37 (f) For purposes of this section, “adjusted taxable income” shall
38 be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

1 (g) For losses described in subdivision (a), the election under
2 Section 165(i) of the Internal Revenue Code may be made on a
3 return or amended return filed on or before the due date of the
4 return (determined with regard to extension) for the taxable year
5 in which the disaster occurred.

6 SEC. 2. Section 24347.6 is added to the Revenue and Taxation
7 Code, to read:

8 24347.6. (a) An excess disaster loss, as defined in subdivision
9 (c), shall be carried to other taxable years as provided in
10 subdivision (b), with respect to losses sustained in the Counties of
11 Del Norte and Mendocino as a result of the tsunami that occurred
12 in March 2011.

13 (b) (1) In the case of any loss allowed under Section 165 of the
14 Internal Revenue Code, relating to losses, any excess disaster loss
15 shall be carried forward to each of the five taxable years following
16 the taxable year for which the loss is claimed. However, if there
17 is any excess disaster loss remaining after the five-year period,
18 then the applicable percentage, as set forth in paragraph (1) of
19 subdivision (b) of Section 24416.20, of that excess disaster loss
20 shall be carried forward to each of the next 10 taxable years.

21 (2) The entire amount of any excess disaster loss as defined in
22 subdivision (c) shall be carried to the earliest of the taxable years
23 to which, by reason of subdivision (b), the loss may be carried.
24 The portion of the loss which shall be carried to each of the other
25 taxable years shall be the excess, if any, of the amount of excess
26 disaster loss over the sum of the net income for each of the prior
27 taxable years to which that excess disaster loss is carried.

28 (c) "Excess disaster loss" means a disaster loss computed
29 pursuant to Section 165 of the Internal Revenue Code, which
30 exceeds the net income of the year of loss or, if the election under
31 Section 165(i) of the Internal Revenue Code is made, the net
32 income of the year preceding the loss.

33 (d) This section and Section 165(i) of the Internal Revenue Code
34 shall be applicable to any of the losses listed in subdivision (a)
35 sustained in any county or city in this state which was proclaimed
36 by the Governor to be in a state of disaster.

37 (e) Any corporation subject to Section 25101 or 25101.15 that
38 has disaster losses pursuant to this section shall determine the
39 excess disaster loss to be carried to other taxable years under the

1 principles specified in Section 25108 relating to net operating
2 losses.

3 (f) Losses allowable under this section shall not be taken into
4 account in computing a net operating loss deduction under Section
5 172 of the Internal Revenue Code.

6 (g) For losses described in subdivision (a), the election under
7 Section 165(i) of the Internal Revenue Code may be made on a
8 return or amended return filed on or before the due date of the
9 return (determined with regard to extension) for the taxable year
10 in which the disaster occurred.

11 SEC. 3. The Legislature finds and declares that this act fulfills
12 a statewide public purpose because of all of the following:

13 (a) On March 11, 2011, and on March 16, 2011, the Governor
14 of California made a finding that conditions of extreme peril to
15 public health and safety to persons and property exist due to the
16 tsunami and water surge impacting the counties of Del Norte and
17 Mendocino and proclaimed a state of emergency to exist within
18 those counties, thus qualifying affected persons for various forms
19 of governmental assistance and relief.

20 (b) This act is consistent with, and supplements, the proclaimed
21 disaster assistance and relief by providing necessary fiscal
22 assistance and tax relief to affected jurisdictions and persons to
23 allow them to maintain essential basic services and repair damage
24 to, and restore, their homes and businesses.

25 SEC. 4. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety within
27 the meaning of Article IV of the Constitution and shall go into
28 immediate effect. The facts constituting the necessity are:

29 In order to timely provide essential relief to those persons and
30 jurisdictions that have suffered damage or loss as a result of the
31 tsunami that occurred in March 2011, in the Counties of Del Norte
32 and Mendocino that was the subject of the Governor’s proclamation
33 of a state of emergency, it is necessary that this act take effect
34 immediately.