

AMENDED IN SENATE MAY 2, 2012

**SENATE BILL**

**No. 1544**

---

---

**Introduced by Senator Hernandez**

February 24, 2012

---

---

An act to add Sections ~~17207.9 and 24347.11~~ *17207.12 and 24347.12* to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1544, as amended, Hernandez. Income taxes: disaster losses: ~~County of Los Angeles~~ *Counties of Los Angeles and San Bernardino.*

*The Personal Income Tax Law and the Corporation Tax Law allow individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law, for net operating losses incurred in taxable years beginning on or after January 1, 2008, provides a carryover period of 20 years and allows net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided. Existing law disallows the deduction for net operating losses and net operating loss carryovers in the 2008 to 2011, inclusive, taxable years for a taxpayer with over a specified amount of business income and extends the carryover period for those net operating losses, thus allowing the taxpayer to have the same number of years to utilize the deduction as the taxpayer would have had if the disallowance for those taxable years had not occurred.*

*Existing law disallows net operating loss carrybacks for any net operating losses attributable to taxable years beginning before January 1, 2013, but would allow net operating losses attributable to taxable*

years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided.

*This bill would conform to a specified section of the Internal Revenue Code regarding disaster losses, which would authorize a taxpayer to make an election to claim a deduction for any losses sustained in the Counties of Los Angeles and San Bernardino as a result of the severe winds that occurred in November 2011 on the tax return for the preceding year, as provided. This bill would provide that any provision of law that suspends, defers, reduces, or otherwise diminishes the deduction of a net operating loss does not apply to a net operating loss attributable to those severe winds that occurred in November 2011 in the Counties of Los Angeles and San Bernardino.*

~~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. Those laws also allow individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities.~~

~~This bill would extend these provisions to losses sustained in the County of Los Angeles as a result of the severe winds that occurred in November 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, in lieu of any other deductions authorized under those laws, including deductions for net operating losses.~~

~~This bill would make a legislative finding and declaration relating to the statewide public purpose served by the bill.~~

~~This bill would take effect immediately as a tax levy.~~

~~Vote: majority. 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 17207.12 is added to the Revenue and
- 2     Taxation Code, to read:
- 3     17207.12. (a) Section 165(i) of the Internal Revenue Code
- 4     shall be applicable to any losses sustained in the Counties of Los

1 Angeles and San Bernardino as a result of the severe winds that  
2 occurred in November 2011.

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

8 (c) Unless specifically provided otherwise, any law that  
9 suspends, defers, reduces, or otherwise diminishes the deduction  
10 of a net operating loss shall not apply to a net operating loss  
11 attributable to the loss described in subdivision (a).

12 SEC. 2. Section 24347.12 is added to the Revenue and Taxation  
13 Code, to read:

14 24347.12. (a) Section 165(i) of the Internal Revenue Code  
15 shall be applicable to any losses sustained in the Counties of Los  
16 Angeles and San Bernardino as a result of the severe winds that  
17 occurred in November 2011.

18 (b) For losses described in subdivision (a), the election under  
19 Section 165(i) of the Internal Revenue Code may be made on a  
20 return or amended return filed on or before the due date of the  
21 return, determined with regard to extension, for the taxable year  
22 in which the disaster occurred.

23 (c) Unless specifically provided otherwise, any law that  
24 suspends, defers, reduces, or otherwise diminishes the deduction  
25 of a net operating loss shall not apply to a net operating loss  
26 attributable to the loss described in subdivision (a).

27 SECTION 1. ~~Section 17207.9 is added to the Revenue and~~  
28 ~~Taxation Code, to read:~~

29 ~~17207.9. (a) Upon the election of a taxpayer, in lieu of any~~  
30 ~~other deduction allowable under this part, an excess disaster loss,~~  
31 ~~as defined in subdivision (c), shall be carried to other taxable years~~  
32 ~~as provided in subdivision (b), with respect to losses sustained in~~  
33 ~~the County of Los Angeles as a result of the severe winds that~~  
34 ~~occurred in November 2011.~~

35 ~~(b) (1) In the case of any loss allowed under Section 165(e) of~~  
36 ~~the Internal Revenue Code, relating to limitation of losses of~~  
37 ~~individuals, any excess disaster loss shall be carried forward to~~  
38 ~~each of the five taxable years following the taxable year for which~~  
39 ~~the loss is claimed. However, if there is any excess disaster loss~~  
40 ~~remaining after the five-year period, then the applicable percentage,~~

1 as set forth in paragraph (1) of subdivision (b) of Section 17276.20,  
2 of that excess disaster loss shall be carried forward to each of the  
3 next 10 taxable years.

4 (2) ~~The entire amount of any excess disaster loss as defined in~~  
5 ~~subdivision (c) shall be carried to the earliest of the taxable years~~  
6 ~~to which, by reason of subdivision (b), the loss may be carried.~~  
7 ~~The portion of the loss which shall be carried to each of the other~~  
8 ~~taxable years shall be the excess, if any, of the amount of excess~~  
9 ~~disaster loss over the sum of the adjusted taxable income for each~~  
10 ~~of the prior taxable years to which that excess disaster loss is~~  
11 ~~carried.~~

12 (e) ~~“Excess disaster loss” means a disaster loss computed~~  
13 ~~pursuant to Section 165 of the Internal Revenue Code which~~  
14 ~~exceeds the adjusted taxable income of the year of loss or, if the~~  
15 ~~election under Section 165(i) of the Internal Revenue Code is~~  
16 ~~made, the adjusted taxable income of the year preceding the loss.~~

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

21 (e) ~~Losses allowable under this section shall not be taken into~~  
22 ~~account in computing a net operating loss deduction under Section~~  
23 ~~172 of the Internal Revenue Code if an election is made to take~~  
24 ~~the deduction allowable under this section.~~

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

27 (g) ~~For losses described in subdivision (a), the election under~~  
28 ~~Section 165(i) of the Internal Revenue Code may be made on a~~  
29 ~~return or amended return filed on or before the due date of the~~  
30 ~~return (determined with regard to extension) for the taxable year~~  
31 ~~in which the disaster occurred.~~

32 ~~SEC. 2. Section 24347.11 is added to the Revenue and Taxation~~  
33 ~~Code, to read:~~

34 24347.11. (a) ~~Upon the election of a taxpayer, in lieu of any~~  
35 ~~other deduction allowable under this part, an excess disaster loss,~~  
36 ~~as defined in subdivision (c), shall be carried to other taxable years~~  
37 ~~as provided in subdivision (b), with respect to losses sustained in~~  
38 ~~the County of Los Angeles as a result of the severe winds that~~  
39 ~~occurred in November 2011.~~

1 ~~(b) (1) In the case of any loss allowed under Section 165 of the~~  
2 ~~Internal Revenue Code, relating to losses, any excess disaster loss~~  
3 ~~shall be carried forward to each of the five taxable years following~~  
4 ~~the taxable year for which the loss is claimed. However, if there~~  
5 ~~is any excess disaster loss remaining after the five-year period,~~  
6 ~~then the applicable percentage, as set forth in paragraph (1) of~~  
7 ~~subdivision (b) of Section 24416.20, of that excess disaster loss~~  
8 ~~shall be carried forward to each of the next 10 taxable years.~~

9 ~~(2) The entire amount of any excess disaster loss as defined in~~  
10 ~~subdivision (c) shall be carried to the earliest of the taxable years~~  
11 ~~to which, by reason of subdivision (b), the loss may be carried.~~  
12 ~~The portion of the loss which shall be carried to each of the other~~  
13 ~~taxable years shall be the excess, if any, of the amount of excess~~  
14 ~~disaster loss over the sum of the net income for each of the prior~~  
15 ~~taxable years to which that excess disaster loss is carried.~~

16 ~~(e) “Excess disaster loss” means a disaster loss computed~~  
17 ~~pursuant to Section 165 of the Internal Revenue Code, which~~  
18 ~~exceeds the net income of the year of loss or, if the election under~~  
19 ~~Section 165(i) of the Internal Revenue Code is made, the net~~  
20 ~~income of the year preceding the loss.~~

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

25 ~~(e) Any corporation subject to Section 25101 or 25101.15 that~~  
26 ~~has disaster losses pursuant to this section shall determine the~~  
27 ~~excess disaster loss to be carried to other taxable years under the~~  
28 ~~principles specified in Section 25108 relating to net operating~~  
29 ~~losses.~~

30 ~~(f) Losses allowable under this section shall not be taken into~~  
31 ~~account in computing a net operating loss deduction under Section~~  
32 ~~172 of the Internal Revenue Code if an election is made to take~~  
33 ~~the deduction allowable under this section.~~

34 ~~(g) For losses described in subdivision (a), the election under~~  
35 ~~Section 165(i) of the Internal Revenue Code may be made on a~~  
36 ~~return or amended return filed on or before the due date of the~~  
37 ~~return (determined with regard to extension) for the taxable year~~  
38 ~~in which the disaster occurred.~~

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

1 (a) On December 9, 2011, the Governor of California made a  
2 finding that conditions of extreme peril to public health and safety  
3 to persons and property existed due to the severe ~~storms~~ winds  
4 occurring in November 2011 in the ~~County~~ Counties of Los  
5 Angeles and San Bernardino and proclaimed a state of emergency  
6 to exist within ~~that county~~ those counties, thus qualifying affected  
7 persons for various forms of governmental assistance and relief.

8 (b) This act is consistent with, and supplements, the proclaimed  
9 disaster assistance and relief by providing necessary tax relief to  
10 the affected jurisdiction and persons to allow them to maintain  
11 essential basic services and repair damage to, and restore, their  
12 homes and businesses.

13 SEC. 4. This act provides for a tax levy within the meaning of  
14 Article IV of the Constitution and shall go into immediate effect.