

AMENDED IN SENATE MAY 29, 2014

AMENDED IN SENATE JULY 3, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY MAY 8, 2013

AMENDED IN ASSEMBLY APRIL 24, 2013

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 922**

**Introduced by Assembly Member ~~Patterson~~ *Maienschein***

February 22, 2013

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An act to ~~amend Section 739.1 of the Public Utilities Code, relating to electrical and gas service~~ *add Sections 17207.9, 17207.13, 24347.13, and 24347.14 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 922, as amended, ~~Patterson~~ *Maienschein*. ~~Electrical and gas service: rates: CARE program: eligibility. Income taxes: deductions: disaster relief: County of San Diego.~~

*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.*

*This bill would extend these provisions to losses sustained in the County of San Diego as a result of the wildfires that occurred in May*

2014. 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.

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 provides a carryover period of 20 years and allows net operating losses to be carrybacks to each of the preceding 2 taxable years, as provided.

This bill would authorize a taxpayer to make an election to claim a deduction for any losses sustained in the County of San Diego as a result of the wildfires that occurred in May 2014 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 wildfires that occurred in May 2014 in the County of San Diego.

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.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical and gas corporations, as defined. The Public Utilities Act authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates, and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers. The act requires the commission to establish a program of assistance to low-income electric and gas customers with annual household incomes that are no greater than 200% of the federal poverty guideline levels, referred to as the California Alternate Rates for Energy or CARE program. Existing law requires the commission to examine methods to improve CARE enrollment and participation, including comparing information from CARE and the Universal Lifeline Telephone Service (ULTS) to determine the most effective means of utilizing that information to increase CARE enrollment, automatic enrollment of ULTS customers who are eligible for the CARE program, customer~~

privacy issues, and alternative mechanisms for outreach to potential enrollees:

~~This bill would prohibit the commission from using any means to determine CARE program eligibility that results in eligibility being extended to customers who’s income exceeds 200% of the federal poverty guideline levels and would require that any methods adopted by the commission to improve CARE enrollment and participation not result in eligibility being extended to customers who’s income exceeds 200% of the federal poverty guideline levels.~~

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 17207.9 is added to the Revenue and  
2     Taxation Code, to read:  
3     17207.9. (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 County of  
6     San Diego as a result of the wildfires that occurred in May 2014.  
7     (b) (1) In the case of any loss allowed under Section 165(c) of  
8     the Internal Revenue Code, relating to limitation of losses of  
9     individuals, any excess disaster loss shall be carried forward to  
10    each of the five taxable years following the taxable year for which  
11    the loss is claimed. However, if there is any excess disaster loss  
12    remaining after the five-year period, then the applicable  
13    percentage, as set forth in paragraph (1) of subdivision (b) of  
14    Section 17276.20, of that excess disaster loss shall be carried  
15    forward to each of the next 15 taxable years.  
16    (2) The entire amount of any excess disaster loss as defined in  
17    subdivision (c) shall be carried to the earliest of the taxable years  
18    to which, by reason of subdivision (b), the loss may be carried.  
19    The portion of the loss which shall be carried to each of the other  
20    taxable years shall be the excess, if any, of the amount of excess  
21    disaster loss over the sum of the adjusted taxable income for each  
22    of the prior taxable years to which that excess disaster loss is  
23    carried.  
24    (c) “Excess disaster loss” means a disaster loss computed  
25    pursuant to Section 165 of the Internal Revenue Code which  
26    exceeds the adjusted taxable income of the year of loss or, if the

1 election under Section 165(i) of the Internal Revenue Code is made,  
2 the adjusted taxable income of the year preceding the loss.

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

7 (e) Losses allowable under this section shall not be taken into  
8 account in computing a net operating loss deduction under Section  
9 172 of the Internal Revenue Code.

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

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

17 SEC. 2. Section 17207.13 is added to the Revenue and Taxation  
18 Code, to read:

19 17207.13. (a) Section 165(i) of the Internal Revenue Code  
20 shall be applicable to any losses sustained in the County of San  
21 Diego as a result of the wildfires that occurred in May 2014.

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

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

31 SEC. 3. Section 24347.13 is added to the Revenue and Taxation  
32 Code, to read:

33 24347.13. (a) Section 165(i) of the Internal Revenue Code  
34 shall be applicable to any losses sustained in the County of San  
35 Diego as a result of the wildfires that occurred in May 2014.

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

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

5 SEC. 4. Section 24347.14 is added to the Revenue and Taxation  
6 Code, to read:

7 24347.14. (a) An excess disaster loss, as defined in subdivision  
8 (c), shall be carried to other taxable years as provided in  
9 subdivision (b), with respect to losses sustained in the County of  
10 San Diego as a result of the wildfires that occurred in May 2014.

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

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

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

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

35 (e) Any corporation subject to Section 25101 or 25101.15 that  
36 has disaster losses pursuant to this section shall determine the  
37 excess disaster loss to be carried to other taxable years under the  
38 principles specified in Section 25108 relating to net operating  
39 losses.

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

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

9 SEC. 5. The Legislature finds and declares that this act fulfills  
10 a statewide public purpose because all of the following:

11 (a) On May 14, 2014, the Governor of California made a finding  
12 that conditions of extreme peril to public health and safety to  
13 persons and property exist due to the wildfires occurring in May  
14 2014 in the County of San Diego and proclaimed a state of  
15 emergency to exist within that county, thus qualifying affected  
16 persons for various forms of governmental assistance and relief.

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

22 SEC. 6. This act provides for a tax levy within the meaning of  
23 Article IV of the Constitution and shall go into immediate effect.

24 SECTION 1. ~~Section 739.1 of the Public Utilities Code is~~  
25 ~~amended to read:~~

26 ~~739.1. (a) As used in this section, the following terms have~~  
27 ~~the following meanings:~~

28 (1) ~~“Baseline quantity” has the same meaning as defined in~~  
29 ~~Section 739.~~

30 (2) ~~“California Solar Initiative” means the program providing~~  
31 ~~ratepayer funded incentives for eligible solar energy systems~~  
32 ~~adopted by the commission in Decision 05-12-044 and Decision~~  
33 ~~06-01-024, as modified by Article 1 (commencing with Section~~  
34 ~~2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with~~  
35 ~~Section 25780) of Division 15 of the Public Resources Code.~~

36 (3) ~~“CalWORKs program” means the program established~~  
37 ~~pursuant to the California Work Opportunity and Responsibility~~  
38 ~~to Kids Act (Chapter 2 (commencing with Section 11200) of Part~~  
39 ~~3 of Division 9 of the Welfare and Institutions Code).~~

1 ~~(4) “Public goods charge” means the nonbypassable separate~~  
2 ~~rate component imposed pursuant to Article 7 (commencing with~~  
3 ~~Section 381) of Chapter 2.3 and the nonbypassable system benefits~~  
4 ~~charge imposed pursuant to the Reliable Electric Service~~  
5 ~~Investments Act (Article 15 (commencing with Section 399) of~~  
6 ~~Chapter 2.3).~~

7 ~~(b) (1) The commission shall establish a program of assistance~~  
8 ~~to low-income electric and gas customers with annual household~~  
9 ~~incomes that are no greater than 200 percent of the federal poverty~~  
10 ~~guideline levels, the cost of which shall not be borne solely by any~~  
11 ~~single class of customer. The commission shall not utilize any~~  
12 ~~means to determine CARE program eligibility that results in~~  
13 ~~eligibility being extended to customers who’s income exceeds 200~~  
14 ~~percent of the federal poverty guideline levels. The program shall~~  
15 ~~be referred to as the California Alternate Rates for Energy or CARE~~  
16 ~~program. The commission shall ensure that the level of discount~~  
17 ~~for low-income electric and gas customers correctly reflects the~~  
18 ~~level of need.~~

19 ~~(2) The commission may, subject to the limitation in paragraph~~  
20 ~~(4), increase the rates in effect for CARE program participants for~~  
21 ~~electricity usage up to 130 percent of baseline quantities by the~~  
22 ~~annual percentage increase in benefits under the CalWORKs~~  
23 ~~program as authorized by the Legislature for the fiscal year in~~  
24 ~~which the rate increase would take effect, but not to exceed 3~~  
25 ~~percent per year.~~

26 ~~(3) Beginning January 1, 2019, the commission may, subject~~  
27 ~~to the limitation in paragraph (4), establish rates for CARE program~~  
28 ~~participants pursuant to this section and Sections 739 and 739.9,~~  
29 ~~subject to both of the following:~~

30 ~~(A) The requirements of subdivision (b) of Section 382 that the~~  
31 ~~commission ensure that low-income ratepayers are not jeopardized~~  
32 ~~or overburdened by monthly energy expenditures.~~

33 ~~(B) The requirement that the level of the discount for~~  
34 ~~low-income electricity and gas ratepayers correctly reflects the~~  
35 ~~level of need as determined by the needs assessment conducted~~  
36 ~~pursuant to subdivision (d) of Section 382.~~

37 ~~(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80~~  
38 ~~percent of the corresponding tier 1, tier 2, and tier 3 rates charged~~  
39 ~~to residential customers not participating in the CARE program,~~  
40 ~~excluding any Department of Water Resources bond charge~~

1 imposed pursuant to Division 27 (commencing with Section 80000)  
2 of the Water Code, the CARE surcharge portion of the public  
3 goods charge, any charge imposed pursuant to the California Solar  
4 Initiative, and any charge imposed to fund any other program that  
5 exempts CARE participants from paying the charge.

6 (5) Rates charged to CARE program participants shall not have  
7 more than three tiers. An electrical corporation that does not have  
8 a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order  
9 to moderate the impact on program participants whose usage  
10 exceeds 130 percent of baseline quantities, shall be phased in to  
11 80 percent of the corresponding rates charged to residential  
12 customers not participating in the CARE program, excluding any  
13 Department of Water Resources bond charge imposed pursuant to  
14 Division 27 (commencing with Section 80000) of the Water Code,  
15 the CARE surcharge portion of the public goods charge, any charge  
16 imposed pursuant to the California Solar Initiative, and any other  
17 charge imposed to fund a program that exempts CARE participants  
18 from paying the charge. For an electrical corporation that does not  
19 have a tier 3 CARE rate that introduces a tier 3 CARE rate, the  
20 initial rate shall be no more than 150 percent of the CARE baseline  
21 rate. Any additional revenues collected by an electrical corporation  
22 resulting from the adoption of a tier 3 CARE rate shall, until the  
23 utility's next periodic general rate case review of cost allocation  
24 and rate design, be credited to reduce rates of residential ratepayers  
25 not participating in the CARE program with usage above 130  
26 percent of baseline quantities.

27 (e) The commission shall work with electrical and gas  
28 corporations to establish penetration goals. The commission shall  
29 authorize recovery of all administrative costs associated with the  
30 implementation of the CARE program that the commission  
31 determines to be reasonable, through a balancing account  
32 mechanism. Administrative costs shall include, but are not limited  
33 to, outreach, marketing, regulatory compliance, certification and  
34 verification, billing, measurement and evaluation, and capital  
35 improvements and upgrades to communications and processing  
36 equipment.

37 (d) The commission shall examine methods to improve CARE  
38 enrollment and participation, and any methods adopted by the  
39 commission shall not result in eligibility being extended to  
40 customers who's income exceeds 200 percent of the federal poverty

1 guideline levels. This examination shall include, but need not be  
2 limited to, comparing information from CARE and the Universal  
3 Lifeline Telephone Service (ULTS) to determine the most effective  
4 means of utilizing that information to increase CARE enrollment,  
5 automatic enrollment of ULTS customers who are eligible for the  
6 CARE program, customer privacy issues, and alternative  
7 mechanisms for outreach to potential enrollees. The commission  
8 shall ensure that a customer consents prior to enrollment. The  
9 commission shall consult with interested parties, including ULTS  
10 providers, to develop the best methods of informing ULTS  
11 customers about other available low-income programs, as well as  
12 the best mechanism for telephone providers to recover reasonable  
13 costs incurred pursuant to this section.

14 (e) (1) The commission shall improve the CARE application  
15 process by cooperating with other entities and representatives of  
16 California government, including the California Health and Human  
17 Services Agency and the Secretary of California Health and Human  
18 Services, to ensure that all gas and electric customers eligible for  
19 public assistance programs in California that reside within the  
20 service territory of an electrical corporation or gas corporation,  
21 are enrolled in the CARE program. To the extent practicable, the  
22 commission shall develop a CARE application process using the  
23 existing ULTS application process as a model. The commission  
24 shall work with public utility electrical and gas corporations and  
25 the Low-Income Oversight Board established in Section 382.1 to  
26 meet the low-income objectives in this section.

27 (2) The commission shall ensure that an electrical corporation  
28 or gas corporation with a commission-approved program to provide  
29 discounts based upon economic need in addition to the CARE  
30 program, including a Family Electric Rate Assistance program,  
31 utilize a single application form, to enable an applicant to  
32 alternatively apply for any assistance program for which the  
33 applicant may be eligible. It is the intent of the Legislature to allow  
34 applicants under one program, that may not be eligible under that  
35 program, but that may be eligible under an alternative assistance  
36 program based upon economic need, to complete a single  
37 application for any commission-approved assistance program  
38 offered by the public utility.

39 (f) The commission's program of assistance to low-income  
40 electric and gas customers shall, as soon as practicable, include

1 nonprofit group living facilities specified by the commission, if  
2 the commission finds that the residents in these facilities  
3 substantially meet the commission's low-income eligibility  
4 requirements and there is a feasible process for certifying that the  
5 assistance shall be used for the direct benefit, such as improved  
6 quality of care or improved food service, of the low-income  
7 residents in the facilities. The commission shall authorize utilities  
8 to offer discounts to eligible facilities licensed or permitted by  
9 appropriate state or local agencies, and to facilities, including  
10 women's shelters, hospices, and homeless shelters, that may not  
11 have a license or permit but provide other proof satisfactory to the  
12 utility that they are eligible to participate in the program.

13 (g) It is the intent of the Legislature that the commission ensure  
14 CARE program participants are afforded the lowest possible  
15 electric and gas rates and, to the extent possible, are exempt from  
16 additional surcharges attributable to the energy crisis of 2000-01.

17 (h) (1) In addition to existing assessments of eligibility, an  
18 electrical corporation may require proof of income eligibility for  
19 those CARE program participants whose electricity usage, in any  
20 monthly or other billing period, exceeds 400 percent of baseline  
21 usage. The authority of an electrical corporation to require proof  
22 of income eligibility is not limited by the means by which the  
23 CARE program participant enrolled in the program, including if  
24 the participant was automatically enrolled in the CARE program  
25 because of participation in a governmental assistance program. If  
26 a CARE program participant's electricity usage exceeds 400  
27 percent of baseline usage, the electrical corporation may require  
28 the CARE program participant to participate in the Energy Savings  
29 Assistance Program (ESAP), which includes a residential energy  
30 assessment, in order to provide the CARE program participant  
31 with information and assistance in reducing his or her energy usage.  
32 Continued participation in the CARE program may be conditioned  
33 upon the CARE program participant agreeing to participate in  
34 ESAP within 45 days of notice being given by the electrical  
35 corporation pursuant to this paragraph. The electrical corporation  
36 may require the CARE program participant to notify the utility of  
37 whether the residence is rented, and if so, a means by which to  
38 contact the landlord, and the electrical corporation may share any  
39 evaluation and recommendation relative to the residential structure  
40 that is made as part of an energy assessment, with the landlord of

1 the CARE program participant. Requirements imposed pursuant  
2 to this paragraph shall be consistent with procedures adopted by  
3 the commission.

4 (2) If a CARE program participant's electricity usage exceeds  
5 600 percent of baseline usage, the electrical corporation shall  
6 require the CARE program participant to participate in ESAP,  
7 which includes a residential energy assessment, in order to provide  
8 the CARE program participant with information and assistance in  
9 reducing his or her energy usage. Continued participation in the  
10 CARE program shall be conditioned upon the CARE program  
11 participant agreeing to participate in ESAP within 45 days of a  
12 notice made by the electrical corporation pursuant to this paragraph.  
13 The electrical corporation may require the CARE program  
14 participant to notify the utility of whether the residence is rented,  
15 and if so, a means by which to contact the landlord, and the  
16 electrical corporation may share any evaluation and  
17 recommendation relative to the residential structure that is made  
18 as part of an energy assessment, with the landlord of the CARE  
19 program participant. Following the completion of the energy  
20 assessment, if the CARE program participant's electricity usage  
21 continues to exceed 600 percent of baseline usage, the electrical  
22 corporation may remove the CARE program participant from the  
23 program if the removal is consistent with procedures adopted by  
24 the commission. Nothing in this paragraph shall prevent a CARE  
25 program participant with electricity usage exceeding 600 percent  
26 of baseline usage from participating in an appeals process with the  
27 electrical corporation to determine whether the participant's usage  
28 levels are legitimate.

29 (3) A CARE program participant in a rental residence shall not  
30 be removed from the program in situations where the landlord is  
31 nonresponsive when contacted by the electrical corporation or  
32 does not provide for ESAP participation.

33 SEC. 2. The Legislature finds and declares all of the following:

34 (a) The California Alternate Rates for Energy or CARE program,  
35 established by the Public Utilities Commission, provides a program  
36 of assistance to low-income electric and gas customers with annual  
37 household incomes that are not greater than 200 percent of the  
38 federal poverty guideline levels.

39 (b) The commission may approve other electrical or gas  
40 corporation rate assistance programs where eligibility is not limited

1 to customers with annual household incomes at or below 200  
2 percent of the federal poverty guideline levels and the commission  
3 has approved Family Electric Rate Assistance or FERA programs  
4 for electrical corporations.

5 (e) The CARE program application approved by the commission  
6 utilizes participation in other low-income assistance programs as  
7 a predetermination for eligibility for the CARE program when  
8 those other programs utilize income levels, definitions of income,  
9 or other income eligibility criteria that differ from the CARE  
10 program requirement that limits program participation to those  
11 low-income electric and gas customers with annual household  
12 incomes that are not greater than 200 percent of the federal poverty  
13 guideline levels.

14 (d) It is the intent of the Legislature that and methods approved  
15 by the commission to improve CARE enrollment and participation  
16 do not result in eligibility being extended to customers who's  
17 income exceeds 200 percent of the federal poverty guideline levels.

18 (e) It is the further intent of the Legislature that the requirements  
19 added by this act are to operate prospectively to new or renewing  
20 CARE program applicants and it is not the intent of the Legislature  
21 to require the commission to remove current enrollees from the  
22 program who's applications were truthful at the time they applied  
23 for program participation.