

Date of Hearing: March 17, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 97 (Lackey) – As Introduced January 7, 2025

2/3 vote. Urgency measure. Fiscal committee.

SUBJECT: Personal Income Tax Law: Corporation Tax Law: Bobcat Fire: exclusions

SUMMARY: Excludes from gross income amounts received in settlement arising out of the 2020 Bobcat Fire, as provided. Specifically, **this bill:**

- 1) Excludes, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law, any "qualified amount" received by a "qualified taxpayer," for taxable years beginning on or after January 1, 2024, and before January 1, 2029.
- 2) Defines a "qualified amount" as any amount received in settlement by a "qualified taxpayer" from a "settlement entity" in connection with the 2020 Bobcat Fire.
- 3) Defines a "qualified taxpayer" as:
 - a) Any taxpayer that owned real property located in the County of Los Angeles during the 2020 Bobcat Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2020 Bobcat Fire; or,
 - b) Any taxpayer that had a place of business within the County of Los Angeles during the 2020 Bobcat Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2020 Bobcat Fire.
- 4) Provides that, for this bill's exclusion under the PIT Law, a "qualified taxpayer" includes any taxpayer that resided within the County of Los Angeles during the 2020 Bobcat Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2020 Bobcat Fire.
- 5) Defines a "settlement entity" as Southern California Edison (SCE) or its subsidiary.
- 6) Finds and declares, for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41, that the goal, purpose, and objective of this bill is to provide essential relief to individuals who have suffered injury, loss, inconvenience, and expenses resulting from the devastating 2020 Bobcat Fire. The performance indicators that the Legislature may use to measure whether this bill meets the stated goal, purpose, and objective are the number of qualified taxpayers that excluded qualified amounts from gross income, and the aggregate amount of settlement payments arising out of the 2020 Bobcat Fire. The Franchise Tax Board (FTB) must report this information to the Legislature on December 1, 2029, which is treated as an exception to the general prohibition against disclosure of confidential taxpayer information.

- 7) Provides that this bill remains in effect only until December 1, 2029, and is repealed as of that date.
- 8) Finds and declares that this bill is necessary for the public purpose of preventing undue hardship to taxpayers who reside, or used to reside, in a part of California devastated by the 2020 Bobcat Fire, and does not constitute a gift of public funds, as defined.
- 9) Takes immediate effect as an urgency measure necessary to provide essential relief to those persons who have suffered injury, loss, inconvenience, and expenses resulting from the devastating 2020 Bobcat Fire.

EXISTING FEDERAL LAW:

- 1) Provides that gross income includes all income from whatever source derived, unless specifically excluded. (Internal Revenue Code (IRC) Section 61.)
- 2) Excludes from gross income amounts received as a qualified disaster relief payment, as defined, in presidentially declared disaster areas. (IRC Section 139.)
- 3) Authorizes a deduction equal to the amount of loss attributable to a federally declared disaster, to the extent those amounts are not reimbursed from other sources. (IRC Section 165.)
- 4) Excludes from gross income amounts of damages, other than punitive damages, received in a settlement on account of personal physical injuries or physical sickness. (IRC Section 104.)
- 5) Excludes from gross income a "qualified wildfire relief payment" received by an individual during taxable years beginning on or after December 31, 2019, and before January 1, 2026. A "qualified wildfire relief payment" is defined as any amount received by or on behalf of an individual as compensation for unreimbursed losses, expenses, or damages incurred, as provided, as a result of a forest or range fire declared as a disaster by the President after December 31, 2014. (Public Law 118-148.)

EXISTING STATE LAW:

- 1) Conforms, with certain modifications, to the definition of gross income. (R&TC Section 17071 and 24721.)
- 2) Conforms, with certain modifications, to the federal treatment of qualified disaster payments. (R&TC Section 17201 and 24329.)
- 3) Provides a corresponding state disaster loss deduction, mirrored on the federal disaster loss deduction, for disasters in areas of the state for which the Governor has proclaimed a state of emergency. (R&TC Section 17207.14 and 24347.)
- 4) Excludes from gross income settlement amounts received by qualifying taxpayers resulting from specified wildfires. (R&TC Sections 17138.5, 17138.6, 17139.2, 17139.3, 24309.1, 24309.3, 24309.6 and 24309.7.)

FISCAL EFFECT: The FTB, in its analysis of this bill, notes that a definitive revenue impact is difficult to determine, but estimates that for every \$50 million in qualified settlement amounts,

the associated loss would be approximately \$3 million, assuming an average tax rate of 6%. Committee staff notes that the settlement resulting from the Bobcat Fire is \$80 million, and revenue losses associated with this bill would almost certainly be in excess of this Committee's Suspense File threshold.

COMMENTS:

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

By passing AB 97, we cannot only provide much-needed financial relief to those who have lost their homes and businesses in the Bobcat Fire, but also reaffirm our commitment to standing with communities in their darkest hours. We must help alleviate the burdens on those already grappling with the aftermath of a natural disaster.

- 2) The California Forestry Association, writing in support of this bill, states, in part:

Requiring victims to pay state income tax on these settlements is fundamentally unfair, which is why the Legislature has routinely passed legislation to exempt such settlements from state income tax on a case-by-case basis. In recent years, the Legislature approved exemptions for the victims of the 2019 Kincade Fire in Sonoma County and the 2020 Zogg Fire in Tehama and Shasta Counties (SB 131: Committee on Budget); the 2017 Thomas Fire and 2018 Woolsey Fire (SB 1246: Stern, 2022); and the 2017 North Bay and 2018 Camp fires (AB 1249: Gallagher, 2022). Assembly Bill 97 is consistent with these past efforts and will ensure that victims of the Dixie and Mill fires are treated fairly.

- 3) Committee Staff Comments:

- a) *California wildfires*: California has seen a sharp increase in the severity and frequency of wildfires in the last two decades. As of December 2024, the California Department of Forestry and Fire Protection notes that 15 of the 20 most destructive wildfires in California's history have occurred in the last decade. Additionally, eight of those 20 most destructive wildfires have been attributed to faulty power lines or electrical equipment.

The Bobcat Fire ignited in early September 2020, and was fully contained by late November. The fire burned 115,997 acres before containment and the projected loss from the fire is equivalent to approximately \$123 million in 2025. In December 2023, the Los Angeles County Office of the County Counsel released a statement confirming that the County had agreed to settle a lawsuit filed against SCE for \$80 million, despite SCE denying any liability or responsibility for the fire or any resulting damages.

- b) *Treatment of settlement awards*: Generally, federal and state law allow for the exclusion from gross income of amounts received in a settlement, other than punitive damages, which result from personal physical injuries or physical sickness. Amounts resulting from emotional distress, however, are included when calculating gross income unless the emotional distress is the result of physical injury or sickness. Additionally, federal and state law generally require inclusion of attorney's fees resulting from a settlement in the calculation of gross income. Payments received as a reimbursement of costs are excluded from gross income; however, to the extent that any settlement payment exceeds costs paid or incurred in connection with the event that caused the settlement, those amounts may be taxable income. Therefore, some portions of the disbursements issued from

qualifying settlements may be included in gross income. This bill excludes from gross income all amounts received in settlements resulting from the 2020 Bobcat Fire.

- c) *Tax treatment of federal disaster areas:* Federal and state law allow a deduction of losses sustained in federally declared disaster areas. The Bobcat Fire was declared a major disaster by the federal government, and unreimbursed losses sustained as a result of that fire are eligible to be deducted by taxpayers. Generally, higher income taxpayers derive a greater benefit from deductions. In addition to the deduction of qualified losses, taxpayers may exclude from gross income amounts of disaster relief payments issued for areas subject to a federally declared disaster. This bill excludes from gross income any amounts received by a qualified taxpayer as a settlement related to the 2020 Bobcat Fire.
- d) *This all seems familiar:* In the 2021-22 Legislative Session, this Committee heard and approved AB 1249 (Gallagher), Chapter 749, Statutes of 2022, and SB 1246 (Stern), Chapter 841, Statutes of 2022, which authorized a gross income exclusion for amounts received in settlement from specified wildfires.

Upon signing AB 1249 and SB 1246, Governor Newsom included a message related to these bills, partially stating that, "In signing this bill, I expect that building the associated revenue reduction of over \$200 million into the budget framework is equally supported. In the future, measures such as this should be included as part of the Budget Act." Acknowledging the Governor's request, the Legislature enacted two additional gross income exclusions for settlement amounts related to the 2019 Kincade Fire and the 2020 Zogg Fire by authorizing SB 131 (Committee on Budget and Fiscal Review), Chapter 55, Statutes of 2023. SB 131 incorporated the provisions of two separate bills, SB 370 (McGuire) and SB 542 (Dahle), which would have provided gross income exclusions for settlements arising out of the Kincade and Zogg fires.

Last year, this Committee heard and approved AB 1973 (Lackey), which was essentially identical to this bill. AB 1973 was vetoed by the Governor, who, regarding a package of vetoed bills with similar subject matter, wrote in part:

I wholeheartedly support the intent of these bills. In 2022, I signed legislation that provided similar tax exclusions for settlement claims resulting from catastrophic wildfires that occurred in the preceding five years. In signing those bills, I stated future measures, like these bills, should be included as part of the annual budget process given the General Fund implications. The following year, the Legislature enacted an income tax exclusion for an additional wildfire in the 2023-24 Budget Act. As such, I strongly encourage the Legislature to include these proposals in next year's budget framework.

In this year's proposed budget, the Governor included a provision to exclude settlement amounts received by a taxpayer resulting from a wildfire if the settlement was paid in the 2025 through 2029 taxable years. The gross income exclusion proposed by the Governor, however, would likely not cover all payments related to the 2020 Bobcat Fire, as some settlement amounts may have been distributed in the 2024 taxable year.

- e) *Recent federal legislation addressing wildfire settlement payments:* In December 2024, President Biden signed House Resolution 5863 into law, thereby authorizing a gross

income exclusion for wildfire reimbursement payments received by an individual on or after December 31, 2019, and before January 1, 2026. Thus, this bill would provide partial conformity with federal tax law.

- f) *FTB considerations*: In its analysis of this bill, the FTB notes the following:
- i) *Implementation considerations*: The FTB notes that this bill would allow a gross income exclusion for payments made on or after January 1, 2024. Thus, this bill would provide a retroactive gross income exclusion. The FTB notes that the forms and instructions for the 2024 taxable year have been developed, and many taxpayers may have already filed their 2024 tax return before enactment of this bill. The FTB may incur additional costs to develop additional tax forms and process amended returns. Committee staff notes that the author's intent is to provide relief to taxpayers who received settlement amounts that potentially began disbursement in 2024, and retroactive application of this bill's provisions is appropriate given this intent.
 - ii) *Technical consideration*: The FTB notes that, on Page 3, Lines 33 and 37, the term "who" should be replaced with the term "that" for consistency of terminology in the CT Law.
- g) *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 would authorize taxpayers to exclude amounts received in settlements related to the 2020 Bobcat Fire, thereby qualifying this bill as a tax expenditure.
- h) *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 vote¹. Sunsets are required because eliminating a tax expenditure generally requires a 2/3 vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill complies with the requirements of R&TC Section 41 and contains an appropriate five-year sunset.

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.

- i) *Previous legislation:* AB 294 (Petrie-Norris), of the 2023-24 Legislative Session, would have excluded from gross income any amount received by a qualified taxpayer as settlement payments related to a wildfire. SB 294 was held on the Assembly Appropriations Committee's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Forestry Association

Opposition

None on file

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