Date of Hearing: April 28, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 376 (Tangipa) – As Amended April 21, 2025

Majority vote. Fiscal committee.

SUBJECT: Personal Income Tax Law: Corporation Tax Law: wildfires: exclusions

SUMMARY: Excludes, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, from gross income, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law, amounts received in settlement by a "qualified taxpayer" to replace property damaged or destroyed by a wildfire occurring in California. Specifically, **this bill**:

1) Excludes from gross income, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, any "qualified amount" received by a "qualified taxpayer," under the PIT Law and the CT Law.

2) Defines a "qualified amount" as any amount received in settlement by a "qualified taxpayer" to replace property damaged or destroyed by wildfire if the property damaged or destroyed is located in an area of California damaged by wildfire.

3) Defines a "qualified taxpayer" as any taxpayer that owns real property located in, or has a business located within, an area damaged a by wildfire who paid or incurred expenses, and received amounts from a settlement, arising out of or pursuant to the wildfire.

4) Includes within the definition of a "qualified taxpayer," under the PIT Law provisions, any taxpayer who resides within an area damaged by a wildfire who paid or incurred expenses, and received amounts from a settlement, arising out of or pursuant to the wildfire.

5) Requires a "settlement entity" to provide, upon request by the Franchise Tax Board (FTB), or qualified taxpayer, documentation of the settlement payments in the form and manner requested by the FTB or the qualified taxpayer who may provide the documentation to the FTB upon request.

6) Defines a "settlement entity" as the entity approved by a class action settlement administrator that is making the settlement payment to a qualified taxpayer.

7) Finds and declares, for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41, that the purpose of this exclusion is to provide essential relief to individuals who have suffered injury, loss, inconvenience, and expenses resulting from devastating wildfires and other natural disasters.

8) Requires the FTB to submit a report to the Legislature by November 1, 2028, that includes the number of qualified taxpayers that excluded qualified amounts from gross income,

pursuant to this bill's exclusion, and the aggregate amount of settlement payments arising out of the wildfires and natural disasters.

9) Treats the disclosure provisions of this bill's report as an exception to the existing prohibition on the unauthorized disclosure of taxpayer information.

10) Finds and declares that this bill's exclusion serves the public purpose of preventing undue hardship to taxpayers who reside, or used to reside, in parts of California devastated by recent wildfires, and does not constitute a gift of public funds, as defined in Section 6 of Article XVI of the California Constitution.

11) Repeals this bill's provisions on December 1, 2028.

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.)

EXISTING STATE LAW:

1) Conforms, with certain modifications, to the federal treatment of qualified disaster payments, and settlement amounts related to personal physical injuries or sickness.

2) 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 declared a state of emergency. (R&TC Section 17207.14.)

3) Excludes from gross income settlement amounts received by qualifying taxpayers resulting from specified wildfires. (R&TC Sections 17138.5, 17138.6, 24309.3, and 24309.1.)

FISCAL EFFECT: The FTB notes that:

> Because it is difficult to predict the frequency of wildfires and the amount of settlements paid, the revenue impact to the General Fund is unknown. However, it is assumed that for every $100 million in qualified amounts received, after applying a 6% tax rate, the revenue loss would be approximately $6 million.

COMMENTS:

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

After losing everything in a wildfire, survivors shouldn't be taxed on the money they receive to rebuild. AB 376 ensures that settlement payments from third parties aren't taxed by the state. These funds are meant to help victims recover, not create a new financial burden. This bill provides much-needed relief and respects the reality disaster survivors face.

2) 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 noted 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 January 2025 fires in Los Angeles County are estimated to be some of the most destructive and expensive disasters in California history, and these figures may increase further as cleanup and rebuilding efforts continue.

   b) *Treatment of settlement awards*: Generally, federal and state law allows for the exclusion from gross income of amounts received in a settlement, other than for punitive damages, which result from personal physical injuries or physical sickness. However, amounts resulting from emotional distress 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 all amounts received in settlements resulting from a wildfire when calculating a taxpayer's gross income.

   c) *Tax treatment of federal disaster areas*: Federal and state law allow a deduction of losses sustained in federally declared disaster areas. The January 2025 fires in Los Angeles were declared major disasters by the federal government, and unreimbursed losses sustained in those areas as a result of those fires 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 a wildfire.

   d) *This all seems familiar*: During 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. AB 1249 was prompted by a previous bill, AB 50 (Hill), Chapter 18, Statutes of 2011, which excluded from gross income amounts of disaster relief payments issued to victims of the San Bruno pipeline explosion. That explosion was not declared a federal disaster, and disaster relief payments received by victims could not be excluded from gross income. To the extent any wildfire qualifying for this bill's exclusion is declared a federal disaster area, disaster relief payments to taxpayers impacted by that wildfire would generally be excluded from gross income.

Upon signing AB 1249 and SB 1246, Governor Newsom included a message related to these bills, stating that, in part, "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."

During the 2023-24 Legislative Session, this Committee heard and approved AB 294 (Petrie-Norris), which was substantially similar to this bill. The author of AB 294 argued that the Legislature should not have to authorize one-off income exclusions since there was broad agreement that these disaster settlement payments should not be subject to state income tax. AB 294 was not signed into law, which has prompted additional legislation proposing one-off income exclusions for specific disasters.

e) *Governor's proposed budget*: 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.

f) *Conformity and 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. For payments received on or after January 1, 2026, this bill would provide a gross income exclusion for state tax purposes that does not have an analogue in federal law. Thus, this bill would provide partial conformity with federal tax law for a limited time period.

g) *Implementation considerations*: This bill would allow a gross income exclusion for payments made on or after January 1, 2023. Thus, this bill would provide a retroactive gross income exclusion. The FTB has previously noted that the forms and instructions for personal income tax filers must be developed months prior to the beginning of filing season. The FTB may incur additional costs to develop additional tax forms and process amended returns.

h) *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 wildfires disasters.

i) *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.

j) *Related legislation*:

   i) AB 97 (Lackey) excludes from gross income settlement amounts received by a qualified taxpayer related to the Bobcat Fire. AB 97 is currently pending on this Committee's Suspense File.

   ii) AB 429 (Hadwick) excludes from gross income settlement amounts received by a qualified taxpayer related to the 2021 Dixie Fire, 2022 Mill Fire, and 2024 Park Fire. AB 429 is currently pending on this Committee's Suspense File.

k) *Prior legislation*: AB 294 (Petrie-Norris), of the 2023-24 Legislative Session, was substantially similar to this bill. AB 294 was held on the Assembly Appropriations Committee's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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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.