California Disaster Losses

By Vicki Mulak, EA, CFP®

A disaster loss is a type of casualty loss that receives special tax treatment. Disaster loss treatment is allowed for federal purposes after a presidential declaration. Disaster loss treatment is allowed for California purposes after a gubernatorial declaration and subsequent state legislation. If the disaster receives both a federal declaration and a California declaration accompanied by legislation, special tax loss treatment is allowed for both federal and California purposes.

California Disaster Losses

Once a disaster is governor-declared, subsequent state legislation is required in California to activate the disaster provision for California tax purposes.

California personal disaster losses are subsequently reduced by:

- $100; and
- 10 percent of federal adjusted gross income (AGI).

In order to claim a disaster loss, a California taxpayer must itemize deductions. The following rules apply to claiming a disaster loss on a California tax return:

- Personal disaster losses are only claimed as an itemized deduction;
- Each personal casualty and disaster loss is reduced by $100;
- There is a 10 percent of federal AGI reduction for personal disaster and casualty losses;
- If the loss qualifies under IRC §165(i), the taxpayer may elect to deduct the loss from the previous year's income;
- The net operating loss (NOL) deduction is limited to 90 percent of alternative minimum taxable income (AMTI); and
- Disaster losses are allowed a 15 year carryover if designated by statute (Revenue and Taxation Code [R&TC] §§17207 and 24347.5).

California Disaster Loss Treatment

The election to deduct the loss on the previous year's tax return must be made by the later of:

- The due date (including extensions) of the return for the taxable year in which the disaster occurred; or
- The due date (including extensions) of the return for the taxable year preceding the year in which the disaster occurred.

Write the name of the disaster at the top of the original or amended tax return.

Property Tax Changes for Disaster Victims

California disaster victims who acquire a new property in the same county to replace damaged/destroyed property are eligible for base-year value transfers for property tax purposes under R&TC §69 for all property types. The requirements before 2010 law changes were:

- The damaged/destroyed property is located in a governor-declared disaster area;
- The damage to the appraisal unit (land and improvements) is more than 50 percent of its fair market value (FMV) before the disaster (see 2010 law change below);
- The replacement property is located in the same county;
- The replacement property is comparable to the damaged/destroyed property;
- The FMV of the replacement property does not exceed 120 percent of the FMV of the damaged/destroyed property before the disaster; and
- The replacement property is acquired (or built) within five years of the disaster.

When the replacement property exceeds the 120 percent of FMV rule, only the amount that exceeds the threshold is assessed for property tax purposes at FMV.

R&TC §69.3 provides similar disaster base-year value transfer relief to principal residences only, when the replacement property is purchased in a **different** county from the county where the disaster occurred. This provision is also only available if the board of supervisors of that county makes this benefit available by ordinance. Currently, nine California counties allow the base-year value transfers for displaced homeowners from other counties. Additionally, the provisions of R&TC §69.3 limit the amount of base-year transfer to various percents of the FMV of the original property, depending upon the year the replacement property is purchased in relation to the year of the disaster.

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New Law

Beginning January 1, 2010, the 50 percent damage test under R&TC §§69 and 69.3 is applied separately to land and improvements. This change will benefit taxpayers whose land comprises more than 50 percent of a property's total value. If either component suffers a loss in value of more than 50 percent, the property owner will now qualify for a base-year value transfer.

For purposes of comparing values of the original and replacement properties' values, within the 120 percent FMV limitation, land and improvements continue to be considered as one appraisal unit.

To request a base-year value transfer, file *Form BOE-65-P Claim for Intracounty Transfer of Base Year Value for Property Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property* with the county assessor.

Franchise Tax Board Disaster Resources

For additional information for California taxpayers, refer to *FTB Publication 1034 Disaster Loss: How to Claim a State Tax Deduction.*

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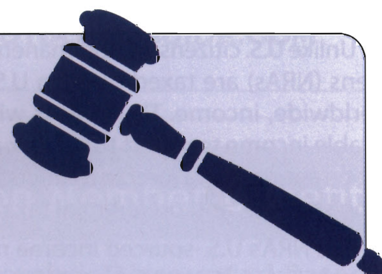
If You were the Judge



High Price to Pay, Just to Generate More Business ...

A tax preparer was convicted of 20 counts of preparing fraudulent income tax returns for nine individuals, which claimed a total of $194,869 in either falsified itemized deductions or fabricated income, to create and/or increase client refunds. She was also convicted of two counts of lying to the IRS regarding the fraudulent returns. According to a local newspaper article, her attorney argued that she had no motive for artificially increasing clients' refunds, as she only charged a flat fee of $75 per return. Prosecutors argued that her motive was to increase her business, which she certainly did. The word of mouth from clients who were happy with their higher refunds generated considerable business for her, increasing her client list from 200 to 534 in two years.

What did this less-than-brilliant marketing plan cost the preparer?

A. **41 months in prison, two years of supervised release, restitution of nearly $2,700 and $2,200 in special assessment fees.**

B. **Permanently banned from preparing returns for others and restitution of nearly $47,000.**

C. **12 months in prison, one year of supervised release and ordered to pay $175,268 in restitution.**

D. **Three months in prison and a fine of $5,000.**

See page 21 for answer