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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### AB 1249 (Gallagher) - Income taxes: gross income exclusions: wildfires

**Version:** May 18, 2022

**Urgency:** Yes

**Hearing Date:** June 13, 2022

**Policy Vote:** GOV. & F. 5 - 0

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** AB 1249 would exclude settlement payments made in connection with the fires associated with the Pacific Gas and Electric (PG&E) Trust Fund from taxable income.

**Fiscal Impact:** The Franchise Tax Board (FTB) estimates that this bill would result in General Fund revenue losses of \$55 million in 2021-22, \$90 million in 2022-23, \$48 million in 2023-24, and \$32 million in 2024-25. FTB's costs to implement the bill would be minor and absorbable.

**Background:** Tax expenditure programs (TEPs) are special tax provisions that reduce the amount of revenues the "basic" tax system would otherwise generate in order to provide (1) benefits to certain groups of taxpayers, and/or (2) incentives to encourage certain types of behavior and activities, such as charitable giving. Specifically, current law provides for, among other things, various income and corporation tax credits and deductions, as well as exemptions from the sales and use tax. The Department of Finance is required to publish a list of TEPs (currently totaling several hundred), which currently exceed \$81 billion annually.

Current federal and state laws provide that gross income includes all income from any source, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded. Current federal and state laws do not specifically exclude amounts received from a specified fire settlement from gross income.

Generally, federal and state law allows 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. Additionally, payments received as a reimbursement of costs, for example paid to rebuild a destroyed home, are excluded from gross income. However, amounts resulting from emotional distress are included when calculating gross income, unless the emotional distress is the result of physical injury or sickness. In some cases, federal and state law require inclusion of attorney's fees resulting from a settlement in the calculation of gross income. To the extent that any settlement payment exceeds costs incurred or paid in connection with the event that caused the settlement, that income may be taxable.

In November 2018, multiple victims of the Camp Fire sued Pacific Gas and Electric (PG&E). PG&E subsequently declared bankruptcy resulting from investigative findings that the company's equipment sparked a number of wildfires, including the Camp Fire. As part of PG&E's bankruptcy plan, a trust was established to pay fire victims and

authorized \$13.5 billion in compensation to victims of the 2015 Butte Fire, the 2017 North Bay Fires, and the 2018 Camp Fire.

**Proposed Law:** Among other things, this bill would, through taxable year 2027, do the following:

- Exclude from gross income for state tax purposes any amount received in settlement claims including payments made from the PG&E trust to fire victims by a qualified taxpayer from PG&E related to the 2015 Butte, 2017 North Bay, and 2018 Camp fires. This income would be excluded for both Personal Income and Corporation taxpayers.
- Define a “qualified taxpayer” as a taxpayer that owned real property or resided in either the counties of Amador, Calaveras, Napa, Sonoma, Lake, Butte, Mendocino or Solano and received qualified amounts in connection with either the 2015 Butte fire, the 2017 North Bay fire, or the 2018 Camp fire, and paid or incurred expense related to those fires.
- Define “qualified amount” to mean the amount received in settlement by a qualified taxpayer from the fire victims’ trust.
- Require FTB to deliver to the Legislature a written report that includes the number of qualified taxpayers who received a settlement payment from the fire victims’ trust and the aggregate amount of those payments.

**Related Legislation:** SB 1246 (Stern) would exclude from taxable income settlement payments made in connection with the 2017 Thomas and 2018 Woolsey fires. The bill is currently pending in the Assembly Revenue and Taxation Committee.

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