



School Business Law Update

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NON-DEDUCTIBILITY OF MELLO-ROOS COMMUNITY FACILITY DISTRICT (CFD) TAXES AND OTHER NON-AD VALOREM CHARGES

Effective for tax year 2012, California personal income tax deductions for real estate will change. No longer will Mello-Roos or other taxes or charges on county property tax bills that are not based on the property's value qualify as deductible expenses for state income tax purposes. (They currently do not qualify for federal income tax deductibility under long standing IRS rulings.)

Deductible taxes will generally be shown on the tax bill as the property's assessed value multiplied by an associated tax rate percentage. These amounts are commonly referred to as *ad valorem* (based on the property's value).

Nondeductible taxes will be those *non-ad valorem* special assessments and fixed fees such as: Mello-Roos or Community Facility District (CFD) taxes, 1915 Assessment District Bonds, lighting and landscape assessments, parcel taxes, school or college measures and bonds, water, sewer, flood, police, fire, garbage collection and library fees. Generally, if the charge is a unit fee, a periodic charge or a flat fee it will not be deductible. Some limited exceptions exist for charges for maintenance, repair or interest repayment related to local benefits.

In response to the FTB position, Assemblyman Jim Silva introduced AB 1552 on January 26, 2012. A copy of the bill, as introduced, is attached for your information. AB 1552 would amend the Revenue and Taxation Code to provide for the deductibility of the amount paid by a taxpayer pursuant to the Mello-Roos Community Facilities Act of 1982 for taxable years beginning on or after January 1, 2012.

To the extent your district's parents would, now or in the future, look more favorably on a parcel tax, Mello-Roos tax or other fixed fee funding mechanism for schools if it was deductible on their state personal income tax return, support for AB 1552 may be in your district's best interest. If you are interested in sending a letter of support for AB 1552, you can send it to:

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Jim Silva, California State Assemblyman
Attn: Anthony Tannehill, Legislative Director
State Capitol, Room 2170
Sacramento, CA 95814

The IRS's interpretation of deductibility of real estate taxes would not be affected by the passage of AB 1552, therefore, *non-ad valorem* charges would continue to be non-deductible on an individual's federal tax return.

If you have any questions concerning this update or related issues, do not hesitate to contact our office.

~ Christopher P. Burger

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.



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ASSEMBLY BILL

No. 1552

Introduced by Assembly Member Silva

January 26, 2012

An act to add Sections 17239 and 24356.9 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1552, as introduced, Silva. Income taxes: deductions: Mello-Roos. The Personal Income Tax Law and the Corporation Tax Law authorize various deductions in computing income that is subject to tax under those laws.

This bill would allow a deduction, under both of those laws, of amounts paid under the Mello-Roos Community Facilities Act of 1982.

This bill would take effect immediately as a tax levy.

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 17239 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17239. For each taxable year beginning on or after January 1,
- 4 2012, there shall be allowed as a deduction the amount paid by
- 5 the taxpayer pursuant to the Mello-Roos Community Facilities
- 6 Act of 1982 (Chapter 2.5 (commencing with Section 53311) of
- 7 Part 1 of Division 2 of Title 5 of the Government Code).
- 8 SEC. 2. Section 24356.9 is added to the Revenue and Taxation
- 9 Code, to read:

1 24356.9. For each taxable year beginning on or after January
2 1, 2012, there shall be allowed as a deduction the amount paid by
3 the taxpayer pursuant to the Mello-Roos Community Facilities
4 Act of 1982 (Chapter 2.5 (commencing with Section 53311) of
5 Part 1 of Division 2 of Title 5 of the Government Code).

6 SEC. 3. This act provides for a tax levy within the meaning of
7 Article IV of the Constitution and shall go into immediate effect.

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