



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9878]

RIN 1545-BP44

Election to Take Disaster Loss Deduction for Preceding Year

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation relating to the election to accelerate the timing of a loss sustained by a taxpayer attributable to a federally declared disaster. Additionally, this document removes the temporary regulation.

DATES: Effective Date: The final regulation is effective **[INSERT DATE OF FILING IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see § 1.165-11(h).

FOR FURTHER INFORMATION CONTACT: Daniel Cassano (202) 317-7011 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 165(i) of the Internal Revenue Code regarding the election to

deduct a loss attributable to a federally declared disaster for the taxable year prior to the year in which the disaster occurred. On October 14, 2016, a temporary regulation (TD 9789) was published in the **Federal Register** (81 FR 70938) relating to the election to take a disaster loss deduction for the preceding year. A notice of proposed rulemaking (REG-150992-13) cross-referencing the temporary regulation was also published in the **Federal Register** (81 FR 71025) on October 14, 2016. Finally, a revenue procedure (Rev. Proc. 2016-53, 2016-44 I.R.B. 530) was published in the **Internal Revenue Bulletin** on October 31, 2016 (the revenue procedure with the proposed and temporary regulations collectively, “the 2016 guidance”). The 2016 guidance extended the deadline to make the section 165(i) election as well as the deadline to revoke the section 165(i) election. The 2016 guidance also clarified various rules associated with the section 165(i) election. For example, the 2016 guidance clarified that the election is made on either an original Federal income tax return for the preceding year or an amended Federal income tax return for the preceding year.¹

No public comments were received and no public hearing was requested or held. This final regulation adopts the proposed regulation substantially without change. Additionally, the temporary regulation is removed.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding

¹ To facilitate this election, Section D, *Election to Deduct Federally Declared Disaster Loss in Preceding Tax Year*, was added to Form 4684, *Casualties and Thefts*.

review of tax regulations. Because the regulation does not impose a collection of information on small entities, a Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis is not required. Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal author of this regulation is Daniel Cassano of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in its development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1-- INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.165-11T [Removed]

Par. 2. Remove § 1.165-11T.

Par. 3. Revise § 1.165-11 to read as follows:

§1.165-11 Election to take disaster loss deduction for preceding year.

(a) In general. Section 165(i) allows a taxpayer who has sustained a loss attributable to a federally declared disaster in a taxable year to elect to deduct that disaster loss in the preceding year. This section provides rules and procedures for making and revoking an election to claim a disaster loss in the preceding year.

(b) Definitions. The following definitions apply for purposes of this section:

(1) A federally declared disaster means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(2) A federally declared disaster area is the area determined to be eligible for assistance pursuant to the Presidential declaration in paragraph (b)(1) of this section.

(3) A disaster loss is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction for the disaster year under section 165(a) and §§1.165-1 through 1.165-10.

(4) The disaster year is the taxable year in which a taxpayer sustains a loss attributable to a federally declared disaster.

(5) The preceding year is the taxable year immediately prior to the disaster year.

(c) Scope and effect of election. An election made pursuant to section 165(i) for a disaster loss attributable to a particular disaster applies to the entire loss sustained by

the taxpayer from that disaster during the disaster year. If the taxpayer makes a section 165(i) election with respect to a particular disaster occurring during the disaster year, the disaster to which the election relates is deemed to have occurred, and the disaster loss to which the election applies is deemed to have been sustained, in the preceding year.

(d) Requirement to file consistent returns. A taxpayer may not make a section 165(i) election for a disaster loss if the taxpayer claims a deduction (as a loss, as cost of goods sold, or otherwise) for the same loss for the disaster year. If a taxpayer has claimed a deduction for a disaster loss for the disaster year and the taxpayer wants to make a section 165(i) election with respect to that loss, the taxpayer must file an amended Federal income tax return to remove the previously deducted loss on or before the date that the taxpayer makes the section 165(i) election for the loss. Similarly, if a taxpayer has claimed a deduction for a disaster loss for the preceding year based on a section 165(i) election and the taxpayer wants to revoke that election, the taxpayer must file an amended Federal income tax return to remove the loss for the preceding year on or before the date the taxpayer files the Federal income tax return or amended Federal income tax return for the disaster year that includes the loss.

(e) Manner of making election. An election under section 165(i) to deduct a disaster loss for the preceding year is made either on an original Federal income tax return for the preceding year or an amended Federal income tax return for the preceding year in the manner specified by guidance issued pursuant to this section.

(f) Due date for making election. The due date for making the section 165(i) election is six months after the due date for filing the taxpayer's Federal income tax return for the disaster year (determined without regard to any extension of time to file).

(g) Revocation. Subject to the requirements in paragraph (d) of this section, a section 165(i) election may be revoked on or before the date that is ninety (90) days after the due date for making the election.

(h) Applicability date. This section applies to elections and revocations that are made on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 3, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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