



TaxNewsFlash

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Regulations: Timing of losses related to federally declared disasters

The Treasury Department and IRS today released for publication in the Federal Register final and temporary regulations (T.D. 9789) and by cross-reference, a notice of proposed rulemaking (REG-150992-13) relating to the election to accelerate the timing of a loss sustained by a taxpayer attributable to a federally declared disaster. The IRS also issued Rev. Proc. 2016-53 as related guidance.

In connection with the [temporary regulations](#) [PDF 216 KB] issued under section 165(i) relating to the election to take a disaster loss in the preceding year, and the [proposed regulations](#) [PDF 203 KB], the IRS also issued [Rev. Proc. 2016-53](#) [PDF 42 KB] as guidance specifying how a taxpayer makes a section 165(i) election and incorporates the due date for making the election provided in these temporary regulations.

Summary

The temporary regulations extend the due date by which a taxpayer may elect to treat an allowable loss occurring in a disaster area and attributable to a federally declared disaster as sustained in the tax year immediately prior to the tax year in which the disaster occurred. The temporary regulations provide rules governing the time and manner of making a section 165(i) election, as well as the time and manner of revoking a section 165(i) election.

The temporary regulations:

- Define the following terms: federally declared disaster; federally declared disaster area; disaster loss; disaster year; and preceding year

- Provide that 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)
- Authorize the IRS and Treasury Department to issue additional guidance regarding the time and manner for making and revoking the section 165(i) election
- Extend the period of time for revoking a section 165(i) election to 90 days after the due date for making the election
- Reflect rules that a taxpayer cannot deduct the same loss in more than one tax year, so that taxpayers must amend the return for the disaster year in order to make the section 165(i) election for a disaster loss if the taxpayer has deducted that loss in the disaster year, or must amend the preceding year return to revoke a section 165(i) election before filing a return or amended return to deduct the loss in the disaster year

Rev. Proc. 2016-53 contains further guidance for taxpayers in amending returns and taking consistent return positions to minimize the administrative burden on the IRS in ensuring the prompt processing of refunds.

The regulations are effective immediately because, as noted in the preamble, they provide relief to taxpayers who suffer casualty losses attributable to federally declared disasters and the Treasury Department and the IRS anticipate a significant number of casualty losses arising from recent instances of flooding in areas located throughout the United States, including Texas and Louisiana.

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