

Internal Revenue Code Section 165(h)(2)

Losses

(h) Treatment of casualty gains and losses.

(1) \$ 100 limitation per casualty. Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds \$ 500 (\$ 100 for taxable years beginning after December 31, 2009).



(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income.

(A) In general. If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of--

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses. If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Special rule for losses in federally declared disasters.

(A) In general. If an individual has a net disaster loss for any taxable year, the amount determined under paragraph (2)(A)(ii) shall be the sum of--

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of paragraph (2)(A) (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual.

(B) Net disaster loss. For purposes of subparagraph (A), the term "net disaster loss" means the excess of—

(i) the personal casualty losses--

(I) attributable to a federally declared disaster occurring before January 1, 2010, and

(II) occurring in a disaster area, over

(ii) personal casualty gains.

(C) Federally declared disaster. For purposes of this paragraph—

(i) Federally declared disaster. The term "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.

(ii) Disaster area. The term "disaster area" means the area so determined to warrant such assistance.

(4) Definitions of personal casualty gain and personal casualty loss. For purposes of this subsection—

(A) Personal casualty gain. The term "personal casualty gain" means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss. The term "personal casualty loss" means any loss described in subsection (c)(3). For purposes of paragraphs (2) and (3), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(5) Special rules.

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains. In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns. For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts. For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax. No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases. Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss.