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Rev. Proc. 2016-53

SECTION 1. PURPOSE

This revenue procedure contains rules and procedures regarding the election under § 165(i) of the Internal Revenue Code (Code) to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred. Specifically, this revenue procedure provides the procedures and requirements for making and revoking an election under § 165(i).

SECTION 2. BACKGROUND

.01 For purposes of § 165(i), a federally declared disaster is 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 or a successor enactment. A disaster area is the area that is determined to be eligible for assistance pursuant to the Presidential declaration. See § 165(i)(5) and 42 U.S.C. § 5122.

.02 A loss from a federally declared disaster (disaster loss) is a form of casualty loss. See § 165. A casualty loss is generally allowed as a deduction only for the taxable year in which the loss is sustained (disaster year). Section 165(i) provides an exception to the general rule by allowing a taxpayer to elect to treat a disaster loss as having been sustained in the taxable year immediately preceding the disaster year

(preceding year). The § 165(i) election applies to the entire loss sustained by the taxpayer from the disaster during the disaster year.

.03 Contemporaneously with this revenue procedure, the Department of the Treasury and the IRS are issuing temporary regulations that extend the date by which a taxpayer must make a § 165(i) election to six months after the due date of the taxpayer's federal income tax return for the disaster year (without regard to any extension of time to file). The temporary regulations also extend the time for revoking a § 165(i) election to ninety (90) days after the due date for making the election.

.04 Pursuant to § 1.165-11T(h) of the Income Tax Regulations, the Department of the Treasury and the IRS are publishing this revenue procedure (See § 601.601(d)(2) of the Statement of Procedural Rules) regarding the requirements for making and revoking elections under § 165(i).

SECTION 3. MANNER OF MAKING ELECTION

01. A taxpayer makes a § 165(i) election by deducting the disaster loss on either an original federal tax return or an amended federal tax return for the preceding year. A taxpayer must include with the original federal tax return or amended federal tax return, an election statement indicating the taxpayer is making a § 165(i) election.

.02 The election statement must contain the following information:

- (1) The name or a description of the disaster and date or dates of the disaster which gave rise to the loss.

(2) The address, including the city, town, county, parish, State, and zip code, where the damaged or destroyed property was located at the time of the disaster.

.03 For an election made on an original federal tax return, a taxpayer must provide the information required by section 3.02 of this revenue procedure on Lines 1 or 19 (as applicable) of Form 4684 (Casualties and Thefts). A taxpayer filing an original federal tax return electronically may attach a statement as a PDF document if there is insufficient space on Lines 1 or 19 of the Form 4684 to provide the information required by section 3.02. For an election made on an amended federal tax return, a taxpayer may provide the information required by section 3.02 by any reasonable means. Reasonable means include, but are not limited to, writing the name or a description of the disaster, the State in which the damaged or destroyed property was located at the time of the disaster, and "Section 165(i) Election" on the top of the Form 4684 and providing the rest of the information required by section 3.02 in either the Explanation of Changes in Form 1040X (Amended U.S. Individual Income Tax Return), Form 1120X (Amended U.S. Corporation Income Tax Return), or other appropriate form, or directly on the Form 4684, attaching a statement if there is insufficient room on the form.

SECTION 4. PROCEDURES TO ENSURE CONSISTENCY IN PROCESSING DISASTER YEAR AND PRECEDING YEAR RETURNS

.01 A taxpayer may not make a § 165(i) election for a disaster loss if the loss is claimed as a deduction for the disaster year. If a taxpayer has claimed a deduction for a disaster loss in the disaster year and the taxpayer wishes to make a § 165(i) election with respect to such loss, the taxpayer must file an amended return to remove the previously deducted loss. The amended return must be filed on or before the date that the taxpayer files the return or amended return for the preceding year that includes the § 165(i) election.

02. Similarly, a taxpayer may not revoke a previously made § 165(i) election and deduct the loss in the disaster year unless the taxpayer files an amended return to remove the loss for the preceding year. The amended return removing the § 165(i) election must be filed on or before the date that the taxpayer files the return or amended return for the disaster year that includes the loss.

.03 A taxpayer that is required to file an amended return under this section must pay or make arrangements to pay any additional tax and interest due as a result of removing the duplicative disaster loss deduction on that amended return.

SECTION 5. DUE DATE FOR ELECTION AND RELATED ACTIONS

.01 A taxpayer must make the § 165(i) election on an original federal tax return or an amended federal tax return for the preceding year. The original federal tax return or amended federal tax return must be filed on or before the date that is six months after the original due date for the taxpayer's federal tax return for the disaster year (determined without regard to any extension of time to file). See § 1.165-11T(f).

.02 The taxpayer need not request an extension of time to file the federal tax return for the disaster year in order to benefit from the due date identified in the temporary regulations.

SECTION 6. REVOCATION OF ELECTION

.01 A taxpayer may revoke a previously made § 165(i) election by filing an amended return for the preceding year that contains a revocation statement. The revocation statement must include the following information:

- (1) a statement clearly showing that the election is being revoked;
- (2) the name or a description of the disaster and date or dates of the disaster for which the election was originally claimed; and
- (3) the address, including the city, town, county, parish, State, and zip code, where the damaged or destroyed property was located at the time of the disaster and for which the taxpayer originally claimed the election.

.02 Subject to the requirements in section 4.02, a taxpayer may revoke the election on or before the date that is ninety (90) days after the due date for making the election. See § 1.165-11T(g).

.03 A taxpayer may provide the information required in section 6.01 in either the Explanation of Changes in Form 1040X (Amended U.S. Individual Income Tax Return), Form 1120X (Amended U.S. Corporation Income Tax Return), or other appropriate form or on a statement attached to the amended return.

SECTION 7. EFFECTIVE/APPLICABILITY DATE

This revenue procedure applies to any § 165(i) elections, revocations, and other related actions that can be made or taken on or after October 13, 2016.

SECTION 8. COMMENTS

The Department of the Treasury and the IRS request comments from the public on the rules and procedures contained in this revenue procedure. Comments must be submitted by January 11, 2017. Comments, identified by Rev. Proc. 2016-53, may be sent by one of the following methods:

- By Mail:
Internal Revenue Service
Attn: CC:PA:LPD:PR (Rev. Proc. 2016-53)
Room 5203
P.O. Box 7602
Ben Franklin Station
Washington, D.C. 20044
- By Hand or Courier Delivery: Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:
Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Rev. Proc. 2016-XX)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
- Electronic: Alternatively, persons may submit comments electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Rev. Proc. 2016-53" in the subject line of any electronic communications.

All submissions will be available for public inspection and copying in Room 1621, 1111 Constitution Avenue, N.W., Washington, D.C., from 9 a.m. to 4 p.m.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Daniel Cassano and Christopher Wrobel of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Cassano at (202) 317-7011 (not a toll-free call).