

## **Part III - Administrative, Procedural, and Miscellaneous**

### **Postponement of Deadline for Making an Election to Deduct for the Preceding Taxable Year Losses Attributable to Hurricane Sandy**

Notice 2013-21

#### **PURPOSE**

This Notice postpones until October 15, 2013, the deadline to make an election under § 165(i) of the Internal Revenue Code to deduct in the preceding taxable year losses attributable to Hurricane Sandy sustained in a federally declared disaster area in Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, or West Virginia resulting from Hurricane Sandy. This postponement is granted under § 7508A.

#### **BACKGROUND**

In late October 2012, Hurricane Sandy struck the east coast causing severe damage in a number of states. The President of the United States issued major disaster and emergency declarations under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), for certain areas in Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and West Virginia. The Federal Emergency Management Agency (FEMA) determined certain areas within those states and the District of Columbia to be eligible for Public Assistance or Individual Assistance under the Stafford Act.

Section 165(i) provides that if a taxpayer sustains a loss attributable to a federally declared disaster occurring in a disaster area, the taxpayer may elect to deduct that loss on the taxpayer's return for the taxable year immediately preceding the taxable year in which the disaster occurred. For purposes of § 165(i), a federally declared disaster is a disaster determined by the President to warrant assistance by the Federal Government under the Stafford Act (including a disaster for which the President issues a major disaster declaration or an emergency declaration), and a disaster area is the area so determined to be eligible for such assistance. See § 165(h)(3)(C) and 42 U.S.C. § 5122.

Section 1.165-11(e) of the Income Tax Regulations requires a taxpayer to make the § 165(i) election by filing a return, an amended return, or a refund claim on or before the later of: (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time for filing the return) for the taxable year in which the disaster actually occurred; or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time for filing the return) for the immediately preceding taxable year. Section 1.165-11(e) provides that the return or claim should specify the date or dates of the disaster that gave rise to the loss, and the city, town, county, and State in which the property that was damaged or destroyed was located at the time of the disaster. The election is irrevocable 90 days after the taxpayer makes the election.

Section 7508A provides the Secretary of the Treasury with authority to postpone the time for performing certain acts under the internal revenue laws for up to one year for a taxpayer affected by a federally declared disaster. Section 301.7508A-1(c)(1) of the Regulations on Procedure and Administration lists several specific acts performed by taxpayers for which § 7508A relief may apply, and § 301.7508A-1(c)(1)(vii) authorizes the

IRS and Treasury Department to specify additional acts. Section 301.7508A-1(d)(1) describes several types of affected taxpayers eligible for relief under § 7508A. Section 301.7508A-1(d)(1)(ix) authorizes the IRS to determine that any other person is affected by a federally declared disaster and therefore eligible for relief. Under § 301.7508A-1(d)(2), the area of a federally declared disaster for which the IRS has determined that the postponement of one or more deadlines applies is referred to as a covered disaster area.

#### AFFECTED TAXPAYERS FOR WHICH THE SECTION 165(i) DEADLINE IS POSTPONED

Under the authority of § 7508A and §§ 301.7508A-1(c)(1)(vii) and 301.7508A-1(d)(1)(ix), the IRS has determined that the areas that FEMA has determined to be eligible for Public Assistance or Public Assistance and Individual Assistance pursuant to the major disaster and emergency declarations issued in response to Hurricane Sandy are covered disaster areas. A list of those areas is available at the Federal Emergency Management Agency (FEMA) website at [www.fema.gov/disaster](http://www.fema.gov/disaster).

Under the authority of § 301.7508A-1(d)(1)(ix), a taxpayer is an affected taxpayer to which the postponement of the deadline for making the §165(i) election applies if: (1) the taxpayer sustained a loss attributable to Hurricane Sandy; (2) the loss occurred in a covered disaster area for Hurricane Sandy (regardless of whether the taxpayer's principal residence or principal place of business is in one of the covered disaster areas); and (3) the deadline for the taxpayer to make a § 165(i) election for that loss, but for this notice, would be before October 15, 2013.

Affected taxpayers for purposes of this notice are not affected taxpayers for purposes of other relief provided by the IRS unless the taxpayer separately qualifies as an affected taxpayer under other guidance issued by the IRS.

## GRANT OF RELIEF

Under the authority of § 7508A, the IRS grants affected taxpayers, as defined above, a postponement to October 15, 2013, to make an election under § 165(i) for losses attributable to Hurricane Sandy.

To assist the IRS in identifying affected taxpayers to ensure that they receive this postponement of the deadline to make the § 165(i) election, affected taxpayers should include a reference to this notice, Notice 2013-21, with their return, amended return, or refund claim on which they are making a postponed § 165(i) election pursuant to this notice. The return or claim should also include the other information requested in § 1.165-11(e).

This notice is limited to making an election under § 165(i) and does not affect the application of any other section of the Code or the regulations.

## DRAFTING INFORMATION

The principal author of this notice is Grace H. Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Kim on (202) 622-7900 (not a toll-free call).