

Part III – Administrative, Procedural, and Miscellaneous

Postponement of Deadline for Making an Election to Deduct Certain Losses Attributable to Hurricanes Katrina, Rita, and Wilma

Notice 2006-17

PURPOSE

This Notice under § 7508A of the Internal Revenue Code postpones until October 16, 2006, the deadline to make an election under § 165(i) to deduct in the preceding taxable year losses attributable to Hurricane Katrina, Rita, or Wilma sustained in Presidentially declared disaster areas in Alabama, Louisiana, Florida, Mississippi, and Texas eligible for Public Assistance or Public Assistance and Individual Assistance.

BACKGROUND

Section 165(i) provides that if a taxpayer sustains a loss attributable to a disaster occurring in an area 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, 42 U.S.C. §§ 5121-5206 (the Stafford Act), 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 disaster includes an event declared a major disaster that occurred in an area later determined by the Federal Emergency Management Agency (FEMA) to be eligible for Individual Assistance, Public Assistance, or both, under the Stafford Act.

Generally, § 1.165-11(e) of the Income Tax Regulations provides that a taxpayer must 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. The election is irrevocable 90 days after it is made.

Section 7508A provides the Secretary 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 Presidentially 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) allows the Secretary 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)(vii) authorizes the Service to determine that any other person is affected by a Presidentially declared disaster and therefore eligible for relief. Under § 301.7508A-1(d)(2) the area of a Presidentially declared disaster for which the Service 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(d)(2), the Service has determined that the counties and parishes that FEMA has determined to be eligible for Public Assistance or Public Assistance and Individual Assistance pursuant to the major disaster declarations issued in response to Hurricanes Katrina, Rita, and Wilma, are covered disaster areas. See Notice 2005-73, 2005-42 I.R.B. 723 (October 17, 2005) (Katrina); IRS News Release IR-2005-110 (Rita); IRS News Release IR-2005-128 (Wilma); and Publication 4492 for a list of counties and parishes constituting covered disaster areas.

Under the authority of § 301.7508A-1(d)(1)(vii), 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 Katrina, Rita, or Wilma; (2) the loss occurred in the covered disaster area for the hurricane (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 16, 2006.

Affected taxpayers for purposes of this notice and the § 165(i) election are not affected taxpayers for purposes of other relief provided by the Service unless the taxpayer separately qualifies as an affected taxpayer under other guidance issued by the Service. See Notice 2005-73, IR-2005-110, and IR-2005-128 for the definition of an affected taxpayer for purposes of Hurricanes Katrina, Rita, and Wilma.

GRANT OF RELIEF

Under the authority of § 7508A, affected taxpayers, as defined above, are granted a postponement to October 16, 2006, to make an election under § 165(i) for losses attributable to Hurricane Katrina, Rita, or Wilma.

In order to assist the Service in identifying affected taxpayers to ensure that they receive the extension to make the § 165(i) election, affected taxpayers should mark "Hurricane Katrina," "Hurricane Rita," or "Hurricane Wilma" in red ink on the top of the return, amended return, or refund claim on which they are making the election. See Publication 4492 for special instructions on completing forms to make the § 165(i) election for a loss attributable to Hurricane Katrina, Rita, or Wilma.

This notice is limited to making of 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 Norma Rotunno of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Rotunno at (202) 622-7900 (not a toll-free call).