

 Fact Sheet

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Tax Law Changes Related to National Disaster Relief

FS-2009-8, January 2009

Note: The summary of the National Disaster Relief Act contained in a previous version of FS-2009-8, issued on Jan. 16, contained three errors that are corrected below.

- *The summary incorrectly stated that the National Disaster Relief Act provides all taxpayers with an increased charitable mileage deduction and an increase in the charitable use of a vehicle allowance. This relief only applies to taxpayers affected by certain of the Midwestern Disasters of 2008 and was provided by the Heartland Disaster Tax Relief Act of 2008. The incorrect language is omitted below.*
- *The summary information found incorrectly identified the National Disaster Relief Act as providing a new set of disaster private activity bonds for business reconstruction. The incorrect language is omitted below.*
- *The summary information incorrectly identified the mortgage revenue bond requirements as pertaining only to affected business taxpayers, rather than all affected taxpayers.*

The National Disaster Relief Act of 2008, Subtitle B or Title VII of the Emergency Economic Stabilization Act of 2008, signed into law on Oct. 3, 2008, as Public Law 110-343, provides tax relief for victims of federally declared disasters occurring after Dec. 31, 2007, and before Jan. 1, 2010.

Prior to enactment of the National Disaster Relief Act, when a major disaster struck, Congress would draft legislation providing targeted tax benefits for taxpayers affected by the disaster that were specific to that particular disaster.

The National Disaster Relief Act, which provides a broad package of tax benefits that may be used by anyone who is affected by a federally declared disaster, effectively replaces the strategy of providing targeted benefits for disaster victims in the weeks or months following the incident. Certain provisions of the National Disaster Relief Act of 2008 do not apply to the Midwestern disaster areas — disasters affecting the Midwest that were declared from May 20, 2008 through July 31, 2008 — because the Heartland and Hurricane Ike Disaster Relief Act, part of the same legislation that resulted in the National Disaster Relief Act, provides other tax benefits. See [Publication 4492-B](#) for detailed information on the tax benefits that apply to the Midwestern disaster areas.

The National Disaster Relief Act provides the following tax benefits:

- Allows all taxpayers, not just those who itemize, to claim the casualty loss deduction regardless of the taxpayer's adjusted gross income level;
- Increases the amount by which all individual taxpayers must reduce their personal casualty losses from each casualty from \$100 to \$500 for taxable years beginning after Dec. 31, 2008. The reduction amount returns to \$100 for taxable years beginning after Dec. 31, 2009;
- Removes the requirement that the net casualty loss deduction be allowed only if the casualty loss exceeds 10 percent of the taxpayer's adjusted gross income;
- Provides a five-year net operating loss (NOL) carryback for qualified natural disaster losses.
- Waives certain mortgage revenue bond requirements for affected taxpayers and allows the bond proceeds to be used for rebuilding.

For business taxpayers, the Act also:

- Allows an affected business taxpayer to deduct certain qualified disaster cleanup expenses;
- Allows an affected business taxpayer to deduct 50 percent of the cost of qualifying property in addition to the regular depreciation allowance that is normally available; and
- Increases the limits that an affected business taxpayer can expense for qualifying section 179 property.

Major portions of the National Disaster Relief Act are highlighted below.

See [Publication 547](#), *Casualties, Disasters, and Thefts*, for information necessary in preparing 2008 tax returns.

Section 706: Losses Attributable to Federally Declared Disasters

Section 706 of the National Disaster Relief Act provides relief to individual taxpayers whose personal-use property was damaged or destroyed by a casualty in a federally declared disaster area.

Under prior law, individuals who suffered casualty losses as a result of a Presidentially-declared disaster — the term was redefined as “federally declared disaster” in the legislation — were required to reduce the loss from each casualty event by \$100 and reduce the total of their casualty losses for the tax year by 10 percent of their adjusted gross income. In addition, these individuals were required to claim their casualty losses as an itemized deduction.

The new law removes the 10 percent of adjusted gross income limitation for net disaster losses and allows individuals to claim the net disaster losses even if they do not itemize their deductions.

To qualify, a loss must be attributable to a federally declared disaster and occur in an area determined by the President to warrant federal assistance. A federally declared disaster is any disaster subsequently determined by the President to warrant assistance

by the federal government under the Stafford Act. The deduction is limited to the “net disaster loss” which consists of the excess of personal casualty losses attributable to a federally declared disaster over personal casualty gains. The new law is effective for disasters declared in taxable years beginning after Dec. 31, 2007, and occurring before Jan. 1, 2010. Information on disaster declarations and the areas they encompass may be found at the [Federal Emergency Management Agency](#) (FEMA) Web site.

The new law also changes the amount by which all individual taxpayers must reduce their personal casualty losses from each casualty from \$100 to \$500. This change is effective for taxable years beginning after Dec. 31, 2008. The reduction amount returns to \$100 for taxable years beginning after Dec. 31, 2009.

For more information on these tax law changes, see [Publication 547](#), *Casualties, Disasters, and Thefts*.

Section 712 provides that these changes to the law do not apply to the casualty losses in the Midwestern disaster areas declared during the period beginning on May 20, 2008, and ending on July 31, 2008. See [Publication 4492-B](#) for more information on the Midwestern disaster areas.

Section 707: Expensing of Qualified Disaster Expenses

Section 707 of the National Disaster Relief Act allows taxpayers to elect to currently deduct qualified disaster expenses in the tax year paid or incurred. Qualified disaster expenses consist of expenditures paid or incurred in connection with a trade or business or with business-related property that otherwise must be capitalized and that are:

- For the abatement or control of hazardous substances that were released on account of a federally declared disaster;
- Debris removal or demolition of structures on real property damaged or destroyed by a federally declared disaster; or
- For the repair of business-related property damaged by a federally declared disaster.

As previously explained, a federally declared disaster is any disaster subsequently determined by the President to warrant assistance by the federal government under the Stafford Act. This provision is effective for amounts paid or incurred after Dec. 31, 2007, in connection with disasters declared after that date and federally declared disasters occurring before Jan. 1, 2010.

Section 712 provides that these changes to the law do not apply to the casualty losses in the Midwestern disaster areas declared during the period beginning on May 20, 2008, and ending on July 31, 2008.

Section 708: Net Operating Losses Attributable to Federally Declared Disasters

In general, a net operating loss is carried back two years and carried forward 20. Section 708 of the National Disaster Relief Act allows taxpayers to carry back a

qualified disaster loss five years. A qualified disaster loss is the lesser of the taxpayer's net operating loss for the taxable year or the sum of the following:

- The taxpayer's losses allowable under section 165 of the Internal Revenue Code for the taxable year attributable to a federally declared disaster occurring before Jan. 1, 2010, and occurring in a disaster area; and
- The taxpayer's deduction for the taxable year for qualified disaster expenses allowable under section 198A(a) of the Internal Revenue Code (or the amount that would have been allowable if the taxpayer deducted qualified disaster expenses).

A qualified disaster loss is treated a net operating loss that is separate from the taxpayer's regular NOL.

Section 708 also includes a provision that allows taxpayers to elect to treat their qualified disaster loss as a regular net operating loss subject to the two-year carryback rule.

Finally, Section 708 provides an exception to the general rule that a taxpayer may use an alternative minimum tax (AMT) net operating loss deduction to offset only 90 percent of the taxpayer's alternative minimum taxable income. Section 708 provides that the 90-percent limit does not apply to the portion of the AMT net operating loss deduction attributable to a qualified disaster loss.

These rules apply to disasters declared in taxable years beginning after Dec. 31, 2007.

Section 712 provides that these changes to the law do not apply to the Midwestern disaster areas declared during the period beginning on May 20, 2008, and ending on July 31, 2008.

Section 709: Waiver of Certain Mortgage Revenue Bond Requirements Following Federally Declared Disasters

Section 709 of the National Disaster Relief Act adds new paragraph 12 to section 143(k) of the Internal Revenue Code, which waives certain mortgage revenue bond requirements otherwise applicable where an affected taxpayer's principal residence is destroyed or damaged as a result of a federally declared disaster. An earlier law, the Housing Assistance Tax Act of 2008 enacted on June 30, 2008, also added a different §143(k)(12) to the Code. So currently there are two §143(k)(12)s in the Code.

New Code section 143(k)(12)(A) provides that, at the election of the taxpayer, if a person's principal residence is destroyed — the home is rendered unsafe for use as a result of a federally declared disaster occurring between Dec. 31, 2007 and Jan. 1, 2010, or the home is demolished or relocated because of an order issued as a result of such federally declared disaster occurring during such timeframe — then for two years following the date of such disaster, the three-year requirement of section 143(d)(1) does not apply and the purchase price requirement is relaxed. Accordingly, such person may receive a mortgage loan financed with the proceeds of tax exempt qualified mortgage bonds regardless of whether he owned his principal residence within three years of

receiving such mortgage loan, and such mortgage loan may be for the acquisition of a home which costs 110 percent of the average area purchase price.

New Code section 143(k)(12)(B) provides that, at the election of the taxpayer, if a person's principal residence is damaged as a result of a federally declared disaster occurring after Dec. 31, 2007, and before Jan. 1, 2010, any loan taken by such person to repair or reconstruct such residence in an amount equal to the lesser of the cost of such repair or reconstruction or \$150,000 may be treated as a qualified rehabilitation loan and thus may be financed using the proceeds of tax-exempt qualified mortgage bonds. An election, once made, cannot be revoked unless permission is granted by the Secretary.

Section 709 further provides that a taxpayer who makes a section 143(k)(12) election may not also elect to apply the special rules for residences located in disaster areas found in Code section 143(k)(11). The special rules found in Code section 143(k)(11) allow taxpayers to use the proceeds of tax exempt qualified mortgage bonds issued between May 1, 2008, and Jan. 1, 2010, to finance mortgage loans for residences located in disaster areas for two years from the date of the applicable disaster declaration without regard to the three-year requirement by treating the residence as if it were a targeted area residence for purposes of the purchase price requirement and the income requirements. This provision, unlike § 143(k)(12), does not limit the financing only to those taxpayers whose homes were damaged by the disaster.

Section 712 provides that these changes to the law do not apply to the Midwestern disaster areas declared during the period beginning on May 20, 2008, and ending on July 31, 2008.

Section 710: Special Depreciation Allowance for Qualified Disaster Property

Section 710 of the National Disaster Relief Act provides a special 50 percent depreciation allowance for purchases of qualified disaster assistance property. It allows taxpayers to deduct 50 percent of the cost of qualified disaster assistance property in addition to the regular depreciation allowance that is normally available.

This new special "bonus depreciation" allowance applies to most types of tangible personal property and computer software acquired on or after the date on which the federally declared disaster occurs, and placed in service on or before Dec. 31 of the third year following the date on which the federally declared disaster occurs. In addition, the new bonus depreciation allowance applies to most nonresidential real property and residential rental property acquired on or after the date on which the federally declared disaster occurs, and placed in service on or before Dec. 31 of the fourth year following the date on which the federally declared disaster occurs.

To qualify for the new bonus depreciation allowance, 80 percent or more of the use of the property must be in the disaster area and in the active conduct of a trade or business by the taxpayer in that disaster area. Also, the property owner must rehabilitate property damaged, or replace property destroyed or condemned, as a result of the federally declared disaster and must be similar in nature to, and located in the same county as, the property being rehabilitated or replaced.

Section 711: Increased Expensing for Qualified Disaster Assistance Property

In general, a taxpayer may elect to expense up to a certain amount or dollar limit of section 179 property placed in service during the tax year. However, this dollar limit is reduced, but not below zero, if the cost of section 179 property placed in service during that year exceeds a certain amount, or reduced dollar limit. For 2008, the dollar limit is \$250,000 and the reduced dollar limit is \$800,000.

Section 711 of the National Disaster Relief Act increases the limits that businesses can expense for qualified section 179 disaster assistance property. Generally, the new law increases the dollar limit that is normally available for a particular tax year by the lesser of \$100,000, or the cost of qualified section 179 disaster assistance property placed in service during that year. Also, the new law generally increases the reduced dollar limit that is normally available for a particular year by the lesser of \$600,000, or the cost of qualified section 179 disaster assistance property placed in service during that year.

Qualified section 179 disaster assistance property is section 179 property that is qualified disaster assistance property for purposes of the new bonus depreciation allowance provided under section 710 of the National Disaster Relief Act. Section 179 property is most types of tangible personal property and off-the-shelf computer software.

The new law did not change the amount that a taxpayer can elect to expense for certain sport utility vehicles and certain other vehicles placed in service during the tax year. Accordingly, a taxpayer cannot elect to expense more than \$25,000 of the cost of these types of vehicles.

Section 712: Coordination with Heartland Disaster Relief

Section 712 of the National Disaster Relief Act explains that certain provisions contained in the National Disaster Relief Act do not apply to the Midwestern Disaster Areas. For information specific to the Midwestern Disaster Areas, see [Publication 4492-B](#).