



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable John Mica
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Mr. Mica:

This letter responds to your inquiry dated July 28, 2009, on behalf of your constituent, . He asks whether home owners are entitled to casualty loss deductions for damage to their property caused by Tropical Storm Fay.

explains that flooding caused by Tropical Storm Fay damaged a large number of homes in Florida and completely destroyed some homes. The government is purchasing and removing many completely destroyed homes to avoid future property damage. (The displaced homeowners may qualify for tax relief under section 165(k) of the Internal Revenue Code.)

is particularly concerned about the casualty losses for the remaining homes. Whether the owner of any of the remaining homes is entitled to a casualty loss deduction under section 165 of the Code, and the amount of any such deduction, is a factual determination that must be made on a case-by-case basis.

For a residential property owner to have a deductible loss, the owner's property must have been physically damaged by the storm. The owner may determine the amount of his or her loss either by calculating the cost of repairs attributable to the storm damage or by obtaining a competent appraisal of the value of the property (section 1.165-7(a)(2) of the Income Tax Regulations). The owner may deduct the decrease in fair market value of the property attributable to the physical damage, but the owner may not deduct the decrease in fair market value resulting from unrelated market fluctuations (section 1.165-7(a)(2)(i) of the Income Tax Regulations). It is important that each owner whose property was physically damaged seek a competent appraisal of his or her own residential property. The appraisal must determine the fair market value of the residential property immediately before the storm as well as the decrease in fair market

value attributable to the physical damage caused by the storm (section 1.165-7(a)(2)(i) of the Income Tax Regulations). Home owners should not base casualty loss claims on government officials' generic assessment of the average decline in fair market value in an area, because such an assessment does not address the specific facts of each owner's situation or establish the home owner's actual loss.

Further information on the methods of valuing losses, and other general information on casualty losses, including special rules for disaster areas, is found in Publication 547, *Casualties, Disasters, and Thefts*. I am enclosing a copy of the publication.

I hope this information is helpful. If you have any questions, please call me at _____, or _____ at _____.

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)

Enclosure