

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:
CC:ITA:B01
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Date:
November 04, 2008

Dear _____ :

This is in response to your request for a private letter ruling, filed by your authorized representative, regarding the late filing of an election under § 165(i) of the Internal Revenue Code. You have requested an extension of time for making the disaster loss election, which will enable you to claim the loss for the tax year preceding the loss, under § 301.9100-3 of the Procedure and Administration Regulations.

The information submitted indicates that in October 2007, your home and surrounding property suffered damage due to wildfires. The President of the United States determined that the area warranted Federal assistance under the Disaster Relief and Emergency Assistance Act.

The information further shows that you intended to make the election available under § 165(i) on a timely basis, and engaged a qualified tax professional in order to assure the making of a proper election. However, due to an error or misunderstanding on the part of the tax professional, the election was not made in a proper manner. The error was not due to any lack of due diligence or prompt action on your part.

Section 165(i) provides that any 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 Disaster Relief and Emergency Assistance Act may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

Section 1.165-11(e) of the Income Tax Regulations, provides that a § 165(i) disaster loss election must be made on or before the later of (1) the due date (without regard to extensions) for filing the income tax return for the taxable year in which the disaster actually occurred, or (2) the due date (with extensions) for filing the income tax return for the taxable year immediately preceding the taxable year in which the disaster actually occurred. Thus, for example, an election by a calendar year taxpayer to deduct

a 2007 disaster loss for the 2006 tax year must ordinarily be made by the due date of the 2007 return (April 15, 2008, for individuals).

Sections 301.9100-1 through 301.9100-3 set forth rules relating to the granting of extensions of time for making certain elections. Under § 301.9100-1(c), the Commissioner in his or her discretion may grant a reasonable extension of time to make a regulatory election under Subtitle A of the Code, provided the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Section 301.9100-2 sets forth rules governing automatic extensions for certain regulatory elections. The automatic extension provisions of § 301.9100-2, however, do not apply in this situation.

Section 301.9100-3 sets forth standards that the Commissioner will employ in determining whether to grant discretionary relief in situations that do not meet the requirements of section 301-9100-2. The standards set forth in section 301-9100-3 are whether the taxpayer acted reasonably and in good faith in the matter, and whether the granting of relief will prejudice the interests of the government. Generally, a taxpayer will be deemed to have acted reasonably and in good faith where the taxpayer reasonably relied on a qualified tax professional, and that professional failed to make, or advise the taxpayer to make, the election at issue.

The information submitted and the representations furnished by the taxpayer and its tax professionals establish that the taxpayer acted reasonably and in good faith in this matter. Furthermore, the granting of relief in this case will not prejudice the interests of the government within the meaning of § 301-9100-3 (c)(1). Accordingly, the requirements of § 301-9100-3 for the granting of relief have been satisfied and the taxpayer is granted an extension of time to make the election available under § 1.165-11 for the October 2007, disaster loss. This extension shall be for a period of 45 days from the date of this letter ruling.

This ruling is limited to the making of the described election. Except to the extent specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject loss/transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling is being sent to the Director of Compliance. In

accordance with the provisions of a power of attorney currently on file with this office, a copy of this letter ruling is also being sent to the taxpayer's representative.

Please attach a copy of this letter ruling to the (amended) federal income tax return for the taxable year in which the described disaster loss will be taken into account.

Sincerely,

JOHN P. MORIARTY
Branch Chief, Branch 1
(Income Tax & Accounting)

cc: