

ID: CCA_2019102215173264

UILC: 165.07-00

Number: **202002014**

Release Date: 1/10/2020

From: [REDACTED]
Sent: Tuesday, October 22, 2019 9:45 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Requesting ITA Coordination

You asked us whether Qualified Disaster Losses are subject to a \$500 limitation instead of the usual \$100 limitation in § 165(h)(1), and whether net Qualified Disaster Losses are subject to the 10% adjusted gross income (AGI) limitation in I.R.C. § 165(h)(2). You were correct about these rules applicable to Qualified Disaster losses, and neither of these rules is reflected in the Internal Revenue Code.

For taxable years beginning after December 31, 2009, section 165(h)(1) generally allows individuals to claim a casualty loss deduction to the extent that each casualty loss exceeds \$100. Section 165(h)(2) generally allows individuals to claim a casualty loss deduction to the extent that net casualty losses for the taxable year exceed 10 percent of an individual's adjusted gross income. Section 165(h)(5)(A) provides that individuals may only claim a personal casualty loss in tax years between December 31, 2017 and January 1, 2026 if it is attributable to a Federally declared disaster.

In the case of a qualified disaster-related personal casualty loss, individuals may claim a casualty loss deduction to the extent that each casualty loss exceeds \$500, rather than the \$100 limitation in §165(h)(1). Additionally, net qualified disaster-related personal casualty losses are not subject the 10% AGI limitation in § 165(h)(2).

Section 504(b) of the Disaster Tax Relief and Airport and Airway Extension Act (115 Pub. L. 63) provides that casualty losses attributable to Hurricane Harvey, Hurricane Irma, and Hurricane Maria are qualified disaster-related personal casualty losses subject to a \$500 limitation and not subject to a 10% AGI limitation. Section 2.06 of Rev. Proc. 2018-09 clarifies that the Disaster Tax Relief Act increases the § 165(h)(1) limitation from \$100 to \$500 and waives the § 165(h)(2) 10% AGI limitation for qualified disaster losses. Section 11028(c) of the Tax Cuts and Jobs Act of 2017 (115 P.L. 97) includes losses arising in a disaster area on or after January 1, 2016 and attributable to the events giving rise to a Presidential disaster declaration as qualified personal casualty losses. TJCA subjects these losses to a \$500 limitation and eliminates the 10% AGI limit. The Bipartisan Budget Act of 2018 includes losses arising from the California wildfire disaster area on or after October 8, 2017 and attributable to the wildfires as

qualified disaster-related personal casualty losses subject to a \$500 limitation and eliminates the 10% AGI limit.

Publication 547 and the Instructions for Form 4684 also explain the special rules for and definition of qualified disaster losses. They clarify that individuals with qualified disaster losses may only deduct unreimbursed amounts in excess of \$500 per casualty and that net casualty losses from qualified disasters do not need to exceed 10% of AGI to qualify for a deduction.

If you have any other questions, please contact me.