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Treas. Reg. Section 1.165-11

Election to take disaster loss deduction for preceding year

(a) In general. Section 165(i) allows a taxpayer who has sustained a loss attributable to a federally declared disaster in a taxable year to elect to deduct that disaster loss in the preceding year. This section provides rules and procedures for making and revoking an election to claim a disaster loss in the preceding year.

(b) Definitions. The following definitions apply for purposes of this section:

(1) A federally declared disaster means any disaster 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.

(2) A federally declared disaster area is the area determined to be eligible for assistance pursuant to the Presidential declaration in paragraph (b)(1) of this section.

(3) A disaster loss is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction for the disaster year under section 165(a) and §§1.165-1 through 1.165-10.

(4) The disaster year is the taxable year in which a taxpayer sustains a loss attributable to a federally declared disaster.

(5) The preceding year is the taxable year immediately prior to the disaster year.

(c) Scope and effect of election. An election made pursuant to section 165(i) for a disaster loss attributable to a particular disaster applies to the entire loss sustained by the taxpayer from that disaster during the disaster year. If the taxpayer makes a section 165(i) election with respect to a particular disaster occurring during the disaster year, the disaster to which the election relates is deemed to have occurred, and the disaster loss to which the election applies is deemed to have been sustained, in the preceding year.

(d) Requirement to file consistent returns. A taxpayer may not make a section 165(i) election for a disaster loss if the taxpayer claims a deduction (as a loss, as cost of goods sold, or otherwise) for the same loss for the disaster year. If a taxpayer has claimed a deduction for a disaster loss for the disaster year and the taxpayer wants to make a section 165(i) election with respect to that loss, the taxpayer must file an amended Federal income tax return to remove the previously deducted loss on or before the date that the taxpayer makes the section 165(i) election for the loss. Similarly, if a taxpayer has claimed a deduction for a disaster loss for the preceding year based on a section 165(i) election and the taxpayer wants to revoke that election, the taxpayer must file an amended Federal income tax return to remove the loss for the preceding year on or

before the date the taxpayer files the Federal income tax return or amended Federal income tax return for the disaster year that includes the loss.

(e) Manner of making election. An election under section 165(i) to deduct a disaster loss for the preceding year is made either on an original Federal income tax return for the preceding year or an amended Federal income tax return for the preceding year in the manner specified by guidance issued pursuant to this section.

(f) Due date for making election. The due date for making the section 165(i) election is six months after the due date for filing the taxpayer's Federal income tax return for the disaster year (determined without regard to any extension of time to file).

(g) Revocation. Subject to the requirements in paragraph (d) of this section, a section 165(i) election may be revoked on or before the date that is ninety (90) days after the due date for making the election.

(h) Applicability date. This section applies to elections and revocations that are made on or after October 16, 2019.