CLICK HERE to return to the home page

Revenue Ruling 2009-9, Law and Analysis, Issue 3

Year of deduction

Section 165 (e) provides that any loss arising from theft is treated as sustained during the taxable year in which the taxpayer discovers the loss. Under §§ 1.165-8 (a) (2) and 1.165-1 (d), however, if, in the year of discovery, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss for which reimbursement may be received is sustained until the taxable year in which it can be ascertained with reasonable certainty whether or not the reimbursement will be received, for example, by a settlement, adjudication, or abandonment of the claim. Whether a reasonable prospect of recovery exists is a question of fact to be determined upon examination of all facts and circumstances.

A may deduct the theft loss in Year 8, the year the theft loss is discovered, provided that the loss is not covered by a claim for reimbursement or other recovery as to which A has a reasonable prospect of recovery. To the extent that A's deduction is reduced by such a claim, recoveries on the claim in a later taxable year are not includible in A's gross income. If A recovers a greater amount in a later year, or an amount that initially was not covered by a claim as to which there was a reasonable prospect of recovery, the recovery is includible in A's gross income in the later year under the tax benefit rule, to the extent the earlier deduction reduced A's income tax. See § 111; § 1.165-1 (d) (2) (iii). Finally, if A recovers less than the amount that was covered by a claim as to which there was a reasonable prospect of recovery that reduced the deduction for theft in Year 8, an additional deduction is allowed in the year the amount of recovery is ascertained with reasonable certainty.