

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:ITA:B01

PLR-147117-05

Date: February 2, 2006

This is in response to your request for a private letter ruling, filed by your authorized representative, _____, requesting relief under section 301.9100-3 of the Income Tax Regulations with regard to the election under section 165(i) of the Internal Revenue Code and section 1.165-11 of the Regulations. 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 immediately preceding the tax year in which the loss occurred.

The information submitted indicates that in August of 2004, your vacation home in _____

_____ suffered extensive damage due to Hurricane Charley. The President of the United States determined that the area of your vacation home warranted federal assistance under the Disaster Relief and Emergency Assistance Act.

The information further shows that you intended to make the election available under Code section 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. The error was not due to any lack of diligence or prompt action on your part.

Section 165(i) of the Code 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 regulations provides that a section 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 2004 disaster loss for the 2003 tax year must ordinarily be made by the due date of the 2004 return (April 15, 2005, for individuals).

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations set forth rules relating to the granting of extensions of time for making certain elections. Under section 301.9100-1(c) of the regulations, the Commissioner has discretion to 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 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 section 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, timely.

The information and affidavits submitted and the representations furnished by you and your tax professional establish that you 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 section 301.9100-3(c)(1). Accordingly, the requirements of section 301.9100-3 of the regulations for the granting of relief have been satisfied and you are granted an extension of time to make the election available under section 1.165-11 for the August 2004 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 you, as the taxpayers 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 your district director. In accordance with the provisions of a Power of Attorney and Declaration of Representative currently on file with this office, a copy of this letter ruling is also being sent to your 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,

THOMAS A. LUXNER
Chief, Branch 1
Office of the Associate Chief Counsel
(Income Tax and Accounting)

Enclosure:
Copy for section 6110 purposes

cc:

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.