

Section 139.—Disaster Relief Payments

Taxpayers are informed of the areas declared by the President to qualify as major disaster or emergency areas during 2002 under the Disaster Relief and Emergency Assistance Act. See Rev. Rul. 2003–29, on this page.

Section 165.—Losses

*26 CFR 1.165–11: Election in respect of losses attributable to a disaster.
(Also § 139, 1033; 1.1033(1)–1.)*

Election in respect of losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2002 under the Disaster Relief and Emergency Assistance Act.

Rev. Rul. 2003–29

Under § 165(i) of the Internal Revenue Code, if a taxpayer suffers a 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, 42 U.S.C. §§ 5121–5204c (1988 & Supp. V 1993) (the Act), the taxpayer may elect to claim a deduction for that loss on the taxpayer's federal income tax return for the taxable year immediately preceding the tax-

able year in which the disaster occurred. For purposes of § 165(i), a disaster includes an event declared a major disaster or an emergency under the Act.

Section 1.165–11(e) of the Income Tax Regulations provides that the election to deduct a disaster loss for the preceding year must be made by filing a return, an amended return, or a claim for refund on or before the later of (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time to file the return) for the taxable year in which the disaster actually occurred, or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time to file the return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

The provisions of § 165(i) apply only to losses that are otherwise deductible under § 165(a). An individual taxpayer may deduct losses if they are incurred in a trade or business, if they are incurred in a transaction entered into for profit, or if they are casualty losses under § 165(c)(3).

A determination by the President that an area warrants assistance by the Federal Government under the Act is also relevant to § 139(a) (regarding the exclusion from gross income of certain qualified disaster relief payments) and § 1033(h) (regarding the deferral of gain realized upon the involuntary conversion of certain property).

The President has determined that, during 2002, the areas listed below have been adversely affected by disasters of sufficient severity and magnitude to warrant assistance by the Federal Government under the Act.

A cumulative list of the areas warranting assistance each year under the Act (beginning in 1998) is available at the Federal Emergency Management Agency (FEMA) Internet site at www.fema.gov. Accordingly, the Internal Revenue Service requests comments regarding the need for future publication of this revenue ruling. Comments should be submitted by May 1, 2003, either to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:T:CRU (ITA)
Room 5041

or electronically via the Service internet site at: Notice.Comments@irs.counsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

FURTHER INFORMATION

For further information regarding this revenue ruling, contact James R. Roy at (202) 622–4950 (not a toll-free call).

Disaster Area

Disaster Description

Disaster Date

Alabama

Counties of Baldwin and Mobile

FEMA–1438–DR
Tropical Storm Isidore

September 23–October 1

Counties of Barbour, Bibb, Blount, Calhoun, Cherokee, Cleburne, Cullman, Dale, DeKalb, Etowah, Fayette, Franklin, Greene, Hale, Henry, Houston, Jefferson, Lamar, Lawrence, Marion, Marshall, Morgan, Pickens, Shelby, St. Clair, Talladega, Tuscaloosa, Walker, and Winston

FEMA–1442–DR
Severe Storms and Tornadoes

November 5–12

| Disaster Area | Disaster Description | Disaster Date |
|---|--|------------------------------------|
| Alaska | | |
| Fairbanks North Star Borough, McGrath and Lime Village in the Iditarod Regional Education Attendance Area (REAA), Aniak, Crooked Creek, Red Devil, and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA, Alakanuk and Emmonak in the Lower Yukon REAA, and Ekwok and Stuyahok in the Southwest Region REAA. | FEMA-1423-DR Flooding | April 27-May 30 |
| Fairbanks North Star Borough, Denali Borough, Matanuska-Susitna Borough; the Regional Education Attendance Areas of Delta Greely, Alaska Gateway, Copper River, and Yukon-Koyukuk; the cities of Tetlin, Mentasta Lake, Nothway, Dot Lake, Chistochina, and Tanacross; and the unincorporated communities of Slana and Tok. | FEMA-1440-DR Earthquake | November 3-10 |
| Kenai Peninsula Borough, Kodiak Island Borough and Chignik Bay Area, to include Chignik Lake and Chignik Lagoon | FEMA-1445-DR Severe Winter Storms, Flooding, Coastal Erosion, and Tidal Surge | October 23-December 20 |
| Arizona | | |
| Counties of Apache, Coconino, Gila, and Navajo; and the Fort Apache Indian Reservation | FEMA-1422-DR Wildfires | June 18-July 7 |
| Arkansas | | |
| Counties of Ashley, Clay, Cleburne, Columbia, Craighead, Crittenden, Franklin, Greene, Independence, Jackson, Lincoln, Little River, Logan, Monroe, Poinsett, Prairie, Scott, Stone, White, and Woodruff | FEMA-1400-DR Severe storms and flooding | December 15, 2001-January 30, 2002 |
| Colorado | | |
| Counties of Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Broomfield, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Larimer, Las Animas, Lincoln, Mesa, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summitt, Teller, Washington, Weld, and Yuma; the Southern Ute and Ute Mountain Reservations; and the Cities of Broomfield and Denver | FEMA-1421-DR Wildfires | April 23-June 6 |

| Disaster Area | Disaster Description | Disaster Date |
|---|--|----------------------|
| Guam | | |
| Territory of Guam | FEMA-1426-DR Typhoon Chata'an | July 5-6 |
| Territory of Guam | FEMA-1446-DR Super Typhoon Pongsona | December 8-16 |
| Illinois | | |
| Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Ford, Fayette, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Logan, McDonough, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Piatt, Pike, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Union, Vermillion, Wabash, Washington, Wayne, White, and Williamson | FEMA-1416-DR Severe Storms, Tornadoes, and Flooding | April 21-May 23 |
| Indiana | | |
| Counties of Brown, Crawford, Dearborn, Dubois, Franklin, Gibson, Greene, Hamilton, Jackson, Jefferson, Johnson, Knox, Marion, Martin, Montgomery, Ohio, Orange, Owen, Parke, Pike, Posey, Putnam, Sullivan, Switzerland, Union, Vermillion, Vigo, and Washington | FEMA-1418-DR Severe Storms, Tornadoes and Flooding | April 28-June 7 |
| Counties of Bartholomew, Blackford, Brown, Daviess, Decatur, Delaware, Fayette, Franklin, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Jay, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Morgan, Owen, Pike, Posey, Randolph, Rush, Shelby, Sullivan, Tipton, and Vanderburg | FEMA-1433-DR Severe Storms and Tornadoes | September 20 |
| Iowa | | |
| Counties of Allamakee, Benton, Buchanan, Cedar, Clayton, Clinton, Delaware, Des Moines, Dubuque, Fayette, Henry, Iowa, Jackson, Johnson, Jones, Lee, Linn, Louisa, Muscatine, Scott, and Winneshiek | FEMA-1420-DR Severe Storms and Flooding | June 3-25 |

| Disaster Area | Disaster Description | Disaster Date |
|--|---|------------------------|
| Kansas | | |
| Counties of Allen, Anderson, Barber, Bourbon, Butler, Chautauqua, Coffey, Cowley, Crawford, Douglas, Elk, Franklin, Greenwood, Johnson, Labette, Linn, Miami, Montgomery, Neosho, Osage, Sumner, Wilson, Woodson, and Wyandotte | FEMA-1402-DR Severe Winter Ice Storm | January 29-February 15 |
| Kentucky | | |
| Counties of Bath, Bell, Bourbon, Boyd, Breathitt, Carter, Clay, Elliott, Fleming, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Menifee, Montgomery, Morgan, Nicholas, Owsley, Perry, Powell, Rowan, Wayne, and Whitley | FEMA-1407-DR Severe Storms and Flooding | March 17-21 |
| Counties of Breathitt, Breckenridge, Crittenden, Edmondson, Floyd, Grayson, Green, Hancock, Hardin, Henderson, Hopkins, Laurel, Letcher, Marion, Martin, McLean, Meade, Ohio, Owsley, Pike, Rockcastle, Union, and Webster | FEMA-1414-DR Severe Storms, Tornadoes, and Flooding | April 27-May 10 |
| Louisiana | | |
| Parishes of East Baton Rouge, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, and Terrebonne | FEMA-1435-DR Tropical Storm Isidore | September 21-October 1 |
| Parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Caldwell, Cameron, Catahoula, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, LaSalle, Livingston, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Vernon, Washington, West Baton Rouge, and West Feliciana | FEMA-1437-DR Hurricane Lili | October 1-16 |
| Mariana Islands, Northern | | |
| Island of Rota | FEMA-1430-DR Typhoon Chata'an | July 4-5 |
| Island of Rota | FEMA-1447-DR Super Typhoon Pongsona | December 8-16 |
| Maryland | | |
| Counties of Calvert, Charles, and Dorchester | FEMA-1409-DR Tornado | April 28 |

| Disaster Area | Disaster Description | Disaster Date |
|---|--|------------------------|
| Michigan | | |
| Counties of Baraga, Gogebic, Houghton, Marquette, and Ontonagan | FEMA-1413-DR Flooding | April 10–May 9 |
| Micronesia, Federated States of | | |
| Yap State | FEMA-1417-DR Typhoon Mitag | February 27–March 3 |
| Chuuk State | FEMA-1427-DR Tropical Storm Chata'an, including Flooding, Mudslides, and Landslides | July 2–4 |
| Minnesota | | |
| Counties of Becker, Beltrami, Clay, Clearwater, Goodhue, Hubbard, Itasca, Kittson, McLeod, Pennington, Polk, Roseau, and Wright | FEMA-1419-DR Severe Storms, Flooding, and Tornadoes | June 9–28 |
| Mississippi | | |
| Counties of Amite, Hancock, Harrison, Jackson, Lincoln, Pearl River, Pike, and Stone | FEMA-1436-DR Hurricane Isidore | September 23–October 6 |
| Counties of Clay, Lafayette, Lowndes, Monroe, Noxubee, and Oktibbeha | FEMA-1443-DR Severe Storms and Tornadoes | November 10–11 |
| Missouri | | |
| Counties of Adair, Audrain, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Clark, Clay, Clinton, Cooper, Daviess, Grundy, Henry, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Linn, Livingston, Macon, Marion, Monroe, Morgan, Pettis, Platte, Ralls, Randolph, Ray, Saline, Scotland, Shelby, St. Clair, Sullivan, and Vernon | FEMA-1403-DR Severe Winter Ice Storm | January 29–February 13 |
| Counties of Adair, Barry, Barton, Bollinger, Boone, Butler, Camden, Cape Girardeau, Carroll, Carter, Cedar, Christian, Chariton, Clark, Cooper, Crawford, Dade, Dallas, De Kalb, Dent, Douglas, Dunklin, Greene, Grundy, Hickory, Howard, Howell, Iron, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lewis, Lincoln, Linn, Livingston, McDonald, Macon, Madison, Maries, Marion, Mercer, Miller, Mississippi, New Madrid, Newton, Oregon, Osage, Ozark, Pemiscot, Perry, Phelps, Pike, Polk, Pulaski, Ralls, Ray, Reynolds, Ripley, Schuyler, Scotland, Scott, Shannon, Shelby, St. Francois, St. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright | FEMA-1412-DR Severe Storms and Tornadoes | April 24–June 10 |

| Disaster Area | Disaster Description | Disaster Date |
|--|--|------------------------|
| Montana | | |
| Counties of Glacier, Hill, Liberty, Pondera, and Toole; and the Blackfeet Indian Reservation | FEMA-1424-DR Severe Storms and Flooding | June 8-21 |
| New York | | |
| County of Erie | FEMA-1404-DR Severe Winter Storm | December 24-29, 2001 |
| Counties of Cattaraugus, Chautauqua, Erie, Genesee, and Wyoming | FEMA-3170-EM Snowstorm | December 24-29, 2001 |
| Counties of Clinton and Essex | FEMA-1415-DR Earthquake | April 20 |
| North Carolina | | |
| Counties of Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Harnett, Iredell, Lee, Lincoln, McDowell, Mecklenburg, Montgomery, Moore, Nash, Orange, Person, Randolph, Rowan, Rutherford, Stanly, Union, Vance, and Wake | FEMA-1448-DR Severe Ice Storms | December 4-6 |
| North Dakota | | |
| Counties of Grand Forks, Pembina, Stutsman, Traill, and Walsh; and the Fort Berthold Indian Reservation | FEMA-1431-DR Severe Storms, Tornadoes, and Flooding | June 8-August 11 |
| Ohio | | |
| Counties of Hancock, Ottawa, Paulding, Putnam, Seneca, and Van Wert | FEMA-1444-DR Severe Storms and Tornadoes | November 10 |
| Oklahoma | | |
| Counties of Alfalfa, Beaver, Becker, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Creek, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, McClain, Noble, Nowata, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Rogers, Stephens, Texas, Tillman, Tulsa, Washington, Washita, Woods, and Woodward | FEMA-1401-DR Ice Storm | January 30-February 11 |
| Oregon | | |
| Counties of Coos, Curry, Douglas, Lane, and Linn | FEMA-1405-DR Severe Winter Storm with High Winds | February 7-8 |

| Disaster Area | Disaster Description | Disaster Date |
|---|---|------------------------|
| Tennessee | | |
| Counties of Anderson, Bedford, Bledsoe, Blount, Cannon, Claiborne, Clay, Cocke, Cumberland, Decatur, DeKalb, Dickson, Fentress, Giles, Grainger, Hancock, Hardin, Hawkins, Jackson, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, McNairy, Macon, Marshall, Maury, Meigs, Overton, Roane, Scott, Sevier, Van Buren, Warren, and Wayne | FEMA-1408-DR Severe Storms and Flooding | January 23-March 20 |
| Counties of Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Henderson, Madison, Marshall, Montgomery, Morgan, Rutherford, Scott, Sumner, and Tipton | FEMA-1441-DR Severe Storms, Tornadoes, and Flooding | November 9-12 |
| Texas | | |
| Counties of Atascosa, Bandera, Bee, Bexar, Blanco, Brown, Burnet, Caldwell, Calhoun, Callahan, Coleman, Comal, Dimmit, Duval, DeWitt, Eastland, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Jim Wells, Jones, Karnes, Kendall, Kerr, La Salle, Live Oak, McMullen, Medina, Nueces, Real, San Patricio, San Saba, Taylor, Travis, Uvalde, Victoria, Wilson, and Zavala | FEMA-1425-DR Severe Storms and Flooding | June 29-July 31 |
| Counties of Brazoria, Frio, Galveston, Jim Wells, La Salle, Live Oak, Matagorda, Nueces, San Patricio, Webb, and Wharton | FEMA-1434-DR Tropical Storm Fay | September 6-30 |
| Counties of Aransas, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, and San Patricio | FEMA-1439-DR Severe Storms, Tornadoes, and Flooding | October 24-November 15 |
| Vermont | | |
| Counties of Caledonia, Essex, Franklin, Lamoille, and Orleans | FEMA-1428-DR Severe Storms and Flooding | June 5-13 |
| Virginia | | |
| Counties of Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe; and Independent City of Norton | FEMA-1406-DR Severe Storms and Flooding | March 17-20 |
| Counties of Buchanan and Tazewell | FEMA-1411-DR Severe Storms and Tornado | April 28-May 3 |
| West Virginia | | |
| Counties of Logan, McDowell, Mercer, Mingo, and Wyoming | FEMA-1410-DR Severe Storms, Flooding, and Landslides | May 2-20 |

Disaster Area**Disaster Description****Disaster Date****Wisconsin**

Counties of Adams, Clark, Dunn, Marathon, Marinette, Portage, Waushara, and Wood

FEMA-1429-DR
Severe Storms and Flooding

June 21-25

Counties of Barron, Burnett, Chippewa, Clark, Dunn, Langlade, Lincoln, Marathon, Polk, Portage, Price, Rusk, Sawyer, Shawano, St. Croix, Taylor, Washburn, Waupaca, and Wood

FEMA-1432-DR
Severe Storms, Tornadoes, and Flooding

September 2-6

Section 170.—Charitable, etc., Contributions and Gifts

26 CFR 1.170-1: Charitable, etc., contributions and gifts; allowance of deduction. (Also §§ 170; 1.170A-7.)

Charitable contributions; patents. Under section 170(a) of the Code, a taxpayer's contribution to a qualified charity of: (1) a license to use a patent is not deductible if the taxpayer retains any substantial right in the patent; (2) a patent subject to a conditional reversion is not deductible unless the likelihood of the reversion is so remote as to be negligible; and (3) a patent subject to a license or transfer restriction generally is deductible, but the restriction reduces the amount of the charitable contribution for section 170 purposes.

Rev. Rul. 2003-28**ISSUES**

(1) Is a taxpayer's contribution to a qualified charity of a license to use a patent deductible under § 170(a) of the Internal Revenue Code if the taxpayer retains any substantial right in the patent?

(2) Is a taxpayer's contribution to a qualified charity of a patent subject to a conditional reversion deductible under § 170(a)?

(3) Is a taxpayer's contribution to a qualified charity of a patent subject to a license or transfer restriction deductible under § 170(a)?

FACTS

Situation 1. X contributes to University, an organization described in § 170(c) (qualified charity), a license to use a patent, but retains the right to license the patent to others.

Situation 2. Y contributes a patent to University subject to the condition that A, a faculty member of University and an expert in the technology covered by the patent, continue to be a faculty member of University during the remaining life of the patent. If A ceases to be a member of University's faculty before the patent expires, the patent will revert to Y. The patent will expire 15 years after the date Y contributes it to University. On the date of the contribution, the likelihood that A will cease to be a member of the faculty before the patent expires is not so remote as to be negligible.

Situation 3. Z contributes to University all of Z's interests in a patent. The transfer agreement provides that University may not sell or license the patent for a period of 3 years after the transfer. This restriction does not result in any benefit to Z, and under no circumstances can the patent revert to Z.

LAW AND ANALYSIS*Issue (1)*

Section 170(a) provides, subject to certain limitations, a deduction for any charitable contribution, as defined in § 170(c), payment of which is made within the taxable year.

Section 170(f)(3) denies a charitable contribution deduction for certain contributions of partial interests in property. Section 170(f)(3)(A) denies a charitable contribution deduction for a contribution of less than the taxpayer's entire interest in property unless the value of the interest contributed would be allowable as a deduction under § 170(f)(2) if the donor were to transfer the interest in trust.

Section 170(f)(2) allows a charitable contribution deduction, in the case of property that the donor transfers in trust, if the trust is a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. Further, § 170(f)(2) allows a deduction for the value of an interest in property (other than a remainder interest) that the donor transfers in trust if the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage, distributed yearly, of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying § 671.

By its terms, § 170(f)(3)(A) does not apply to, and therefore does not disallow a deduction for, a contribution of an interest that, even though partial, is the taxpayer's entire interest in the property. If, however, the property in which such partial interest exists was divided in order to create such interest, and thus avoid § 170(f)(3)(A), a deduction is not allowed. Section 1.170A-7(a)(2)(i) of the Income Tax Regulations.

Sections 170(f)(3)(B)(ii) and 1.170A-7(b)(1) allow a deduction under § 170 for a contribution not in trust of a partial interest that is less than the donor's entire interest in property if the partial interest is an undivided portion of the donor's entire interest. An undivided portion of a donor's entire interest in property consists of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. A charitable contribution in perpetuity of an interest in property not in trust does not constitute a contribution of an undivided portion of the