

HOW THE TAX LAW HELPS VICTIMS OF DISASTER LOSSES

The many victims of Hurricanes Charley, Ivan, Frances and Jeanne doubtless are now preoccupied with salvaging what they can and seeing what their insurance will cover. When the extent of their losses becomes clear, victims of these storms (as well as others looming on the horizon) will want to know what tax help they're entitled to. This explains the extra relief provisions available to those who are located in Presidentially declared disaster areas.

- **Election to deduct disaster losses in preceding year.**

A taxpayer who suffers a disaster loss can take the deduction in the tax year in which the disaster occurs, or can elect to deduct the loss in the immediately preceding tax year. Deductions for individuals, estates or trusts which incur a disaster loss with respect to nonbusiness property are subject to the limits on the deduction of casualty losses (generally, each casualty is reduced by \$100; and all personal casualty, disaster and theft losses for the year are deductible only to extent they cumulatively exceed 10% of adjusted gross income (AGI) regardless of whether the taxpayer deducts the loss in the tax year the disaster actually occurs or elects to deduct the loss in the preceding year.

Observation: Claiming the disaster loss for the year before the loss occurred saves taxes immediately, without the need to wait until the end of the year in which the loss was sustained. In some cases, the deduction may result in a net operating loss, which will bring a refund by a carryback to an earlier year. On the other hand, deducting the loss in the year the loss actually occurred may result in bigger tax savings if the taxpayer is in a higher bracket that year.

Observation: Because of the 10% AGI floor for deductibility, taxpayers weighing the value of an early disaster loss deduction must also consider the relative amounts of AGI they have or expect to have for the two tax years.

Illustration 1: Andrew lives in a county that is hit by severe storm and flooding damage in 2004 and subsequently is designated a Presidentially declared disaster. The flooding caused \$20,000 of uninsured damage to his home. Andrew estimates his AGI for 2004 will be \$100,000; for 2003, it was \$80,000. He had no personal casualty gains in either year.

If Andrew claims the loss on his 2004 return, the loss would first be reduced by the \$100-per-occurrence floor to \$19,900 and then reduced by 10% of his 2004 AGI (\$10,000) to \$9,900. If he files an amended return for 2003 and claims the loss in that year, the loss would be reduced by the \$100 threshold to \$19,900 and then reduced by 10% of his 2003 AGI (\$8,000) to \$11,900, or \$2,000 more than the loss he could deduct in 2003.

If Andrew also sustained casualty losses in 2003, deducting the current

loss in that year could magnify his deduction. For example, if he sustained a casualty loss of \$8,000 in 2003 (exactly equal to 10% of his AGI for that year), then he could deduct \$19,900 of his disaster loss by filing an amended return for 2003.

If the election to claim the loss in the previous year is made for an inventory loss, opening inventory must be reduced for the year in which the loss actually occurred so as not to result in a double deduction.

■ **Making the election.**

The election to deduct a disaster loss in the year before the year in which the loss occurs is made by filing a return, amended return or refund claim. The election must be made by the later of (1) the due date (without extensions) for filing the taxpayer's income tax return for the tax year in which the disaster actually occurred, or (2) the due date (with extensions) for the return for the preceding year. The return or claim should specify the date or dates of the disaster that caused the loss, and the city, town, county and state where the property was located at the time of the disaster. Taxpayers have 90 days in which to change their minds after making an election to deduct a disaster loss for the year before the year in which the loss occurs. The election becomes irrevocable after 90 days following the date the election was made.

Recommendation: An individual taxpayer who isn't in need of an immediate tax refund may find it preferable to wait until near the April 15, 2005, deadline before electing. Then he can make an informed judgment as to which tax year produces the greater tax saving from the deduction and choose that year to claim the loss.

■ **Disaster loss presumption where home is demolished.**

A taxpayer whose residence is located in a Presidentially declared disaster area may deduct any loss attributable to the disaster as a casualty loss if:

- (1) he is ordered by the state or local government in which the residence is located to demolish or relocate the residence,
- (2) the order is made no later than the 120th day after the date of the President's determination that the area warrants Federal disaster assistance, and
- (3) the residence was rendered unsafe for use as a residence because of the disaster.

Observation: The tax code creates a conclusive presumption that certain losses attributable to a federally declared disaster are casualty losses and qualify for tax relief as disaster losses. The taxpayer doesn't have to prove the disaster loss qualifies as a casualty loss.

Observation: Losses under this rule are still subject to the 100% and 10%-of-AGI limitations.

■ **Homes damaged in Presidentially declared disaster.**

Under the tax code's involuntary conversion rules, gain from an involuntary conversion is deferred if the proceeds of the converted property are timely reinvested in eligible replacement property (generally, property similar or related in service or use to the converted property). A taxpayer whose principal residence or contents is compulsorily or involuntarily converted due to a Presidentially declared disaster is entitled to three extra tax breaks:

- (1) Gain realized from the receipt of insurance proceeds for unscheduled personal property (property in the home but not scheduled property for insurance purposes) is not recognized.
- (2) Insurance proceeds for the conversion of the principal residence and any of its contents other than unscheduled personal property are treated as a common fund for purposes of the involuntary conversion rules.
- (3) The taxpayer gets a longer period of time in which to replace a principal residence under the involuntary conversion rules. In general, the replacement period ends four years (instead of the usual two years) after the close of the first tax year in which any part of the conversion gain is realized.

Observation: The involuntary conversion of a principal residence is treated as a sale for purposes of the home sale exclusion. However, any excess of the gain on the involuntary conversion over the available exclusion may be deferred under the involuntarily conversion rules. The amount realized for purposes of the involuntary conversion rules is the amount realized less the excluded gain.

Illustration 2: When his principal residence was involuntarily converted, a single taxpayer received \$350,000 for the property. He realized \$300,000 of gain on the conversion, \$250,000 of which is excluded. The taxpayer can avoid a current tax on the remaining \$50,000 of realized gain if he timely purchases a replacement residence costing at least \$100,000 (\$350,000 amount realized less \$250,000 excluded gain). Moreover, the taxpayer's basis in his new home would be reduced by only the \$50,000 of gain that's not taxed due to the involuntary conversion rules, there's no reduction on account of the excluded gain on the old residence. Thus, if the taxpayer bought a replacement residence for \$350,000, his basis in it would be \$300,000.

■ **Qualification for partial homesale exclusion.**

A partial home sale exclusion may apply to a taxpayer who fails to qualify for the full home sale exclusion because he doesn't meet the two-out-of-five-year

ownership and use rule, or previously sold another home within the two-year period ending on the sale date of the current home in a transaction to which the exclusion applied. The failure to meet either rule must result from the home being sold (or exchanged) due to (1) a change of place of employment, (2) health or (3) to the extent provided by regulations, other unforeseen circumstances. Unforeseen circumstances include the involuntary conversion of a residence, and a natural or man made disaster (or act of war or terrorism) resulting in a casualty to a principal residence. These events are treated as unforeseen circumstances whether or not the home is located in a Presidentially declared disaster area.

■ **Replacement for destroyed business/investment property.**

If property held for productive use in a trade or business or for investment is compulsorily or involuntarily converted as a result of a Presidentially declared disaster, and the taxpayer winds up with a gain, then tangible property of a type held for productive use in a trade or business is treated as property similar or related in service or use to the property converted.

Illustration 3: X Corp receives \$20,000 in insurance proceeds for a production machine (in which it has a basis of \$10,000) destroyed in a Presidentially declared disaster. X Corp replaces the machine with a \$20,000 delivery truck and does so on a timely basis (generally, within two years after the close of the first tax year in which any part of the gain on the involuntary conversion is realized). X Corp's \$10,000 of gain due to the involuntary conversion is not recognized currently. Under the regular involuntary conversion replacement rules, X Corp would have had to replace with a production machine similar in service or use to the destroyed machine.

Observation: To be eligible for the treatment allowed by the above rules, the replaced property (i.e., the property that was converted as a result of a Presidentially declared disaster) may be either property held for productive use in a trade or business or property held for investment. However, the replacement property must be tangible property held for productive use in a trade or business. It may not be intangible property, and it may not be property held for investment.

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