

**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:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B01

PLR-117580-05

Date:

September 02, 2005

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Dear \_\_\_\_\_ :

This is in response to your letter dated Date 3, Year 4, filed on behalf of the above-named Taxpayers, husband and wife, in which you request that Taxpayers be granted an extension of time under § 301.9100-3 of the Income Tax Regulations to make an election under § 165(i) of the Internal Revenue Code. Specifically, you have requested a ruling authorizing Taxpayers to elect to deduct in taxable Year 1 a disaster loss that occurred in Year 2.

On Date 1, Year 2, Taxpayers incurred a loss attributable to an earthquake. The President of the United States subsequently determined that the damage caused by the disaster warranted assistance under the Disaster Relief and Emergency Assistance Act. Taxpayers consulted their accounting firm soon after the disaster occurred to inquire about the tax consequences of the event and to inquire about the § 165(i) election. Due to the disaster occurring at the end of Year 2 and the difficulty of establishing the amount of the loss, the Taxpayers filed an extension for their Year 2 return from April 15, Year 3, to and including October 15, Year 3, believing that this would allow them time to make the § 165(i) election. However, the Taxpayer's representative failed to discover that, under section 1.165-11(e) of the regulations, the deadline for making the election was April 15, Year 3, the due date of the Taxpayer's return for the Year 2 tax year, without extensions. Consequently, the Taxpayer's election was not timely filed. Upon discovering the due date, the Taxpayers submitted this request promptly.

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 for filing this income tax return (determined without regard to any extension of time granted the taxpayer for filing such return) for the taxable year in which the disaster occurred, or (2) the due date of filing the income tax return (determined with regard to any extension of time granted the taxpayer for filing such return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred. Thus, the deadline for a calendar year taxpayer to file an election under § 165(i) for a disaster occurring in Year 2 was normally April 15, Year 3, the unextended due date of the Taxpayers' return for the Year 2 tax year.

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.

Section 301.9100-1(c) of the regulations provides that the Commissioner, in his or her discretion, may grant a reasonable extension of time to make a regulatory election under Subtitle A of the Code.

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 the standards that the Commissioner will use to determine 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 (1) whether the taxpayer acted reasonably and in good faith in the matter, and (2) 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.

The Taxpayers have submitted an affidavit that states that they were advised about the § 165(i) election by a qualified tax professional, but that the tax professional failed to inform them until Date 2, Year 4 that the § 165(i) election had to be made by April 15, Year 3. The tax professional has submitted an affidavit that states that he was unaware that the election for the Year 2 casualty loss had to be made by April 15, Year 3. Furthermore, the Taxpayers have also declared that due to the turmoil in the affected

area the magnitude of the loss was not known until early Year 4. Upon discovering the error in failing to make the § 165(i) election, the Taxpayers promptly submitted a request for relief.

The information submitted and the representations and affidavits furnished by the Taxpayers and their tax professional establish that the Taxpayers 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 the Taxpayers are granted an extension of time to make the election available under sections 165(i) and 1.165-11 for the December Year 2 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized 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  
(Income Tax & Accounting)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes

cc: