

Part III – Administrative, Procedural, and Miscellaneous

NOTICE TO ADDRESS AMENDED RETURNS FOR HURRICANE-RELATED CASUALTY LOSSES AND SUBSEQUENT GRANTS REIMBURSING SUCH LOSSES

Notice 2008-95

The purpose of this notice is to inform taxpayers how to file an amended return to take advantage of section 3082(a) of the Housing and Economic Recovery Act of 2008, Public Law 110-289 (the Act). Section 3082 of the Act permits taxpayers to elect to file an amended return to reduce certain previously taken casualty losses when the taxpayers receive certain hurricane relief grants (referenced below) in a later year.

SCOPE

This notice and section 3082(a) of the Act apply only to casualty losses taken as a result of damage to or the destruction of a taxpayer's principal residence caused by Hurricane Katrina, Wilma, or Rita for which grants were authorized under Public Laws 109-148, 109-234, and 110-116 (hurricane relief grants), including the Louisiana Road Home Grants and the Mississippi Development Authority Hurricane Katrina Homeowner Grants. Section 3082(a) of the Act gives taxpayers the option to amend their returns to reduce their previously deducted casualty losses and pay the resulting tax, rather than include grant amounts in income in the year of receipt.

This notice applies to all relevant amended returns, including those that may have been filed before the passage of section 3082(a) or the publication of this notice.

BACKGROUND

Section 165(a) of the Internal Revenue Code (the Code) generally permits a taxpayer to deduct "any loss sustained during the taxable year and not compensated for by insurance or otherwise." Section 1.165-1(d)(2)(iii) of the Income Tax Regulations provides that if a taxpayer deducts a loss and in a subsequent tax year receives reimbursement for the loss, the taxpayer does not recompute the tax for the year in which the deduction was taken, but includes the amount of the reimbursement in gross income for the year in which the reimbursement was received, subject to the provisions of section 111 of the Code. See *Montgomery v. Commissioner*, 65 T.C. 511, 519 (1975) (requiring a taxpayer who deducted a casualty loss and then received an insurance payment in a later year to report, pursuant to §1.165-1(d)(2)(iii), the insurance reimbursement in the tax year received and not to amend the prior loss-year return). Section 111(a) provides that the recovery of an amount deducted in a prior tax year is not included in gross income, but only to the extent the deducted amount did not reduce the amount of tax imposed. Therefore, if a taxpayer claims a deduction and in a subsequent year recovers all or part of the amount previously deducted, the general rule is that the taxpayer must report the recovered amount as income in the year of the recovery to the extent the prior deduction reduced the amount of tax owed for any year.

On July 30, 2008, section 3082(a) of the Act was enacted to provide an exception to the above rules in certain limited circumstances. Section 3082(a)(1) provides that, notwithstanding any provision of the Code, if a taxpayer claims a deduction for any tax year with respect to a casualty loss to a principal residence (within the meaning of section 121 of the Code) resulting from Hurricane Katrina, Rita, or

Wilma, and in a subsequent tax year receives a hurricane relief grant as reimbursement for the loss, the taxpayer may elect to file an amended income tax return for the tax year in which the deduction was allowed (and for any tax year to which the deduction was carried) and reduce (but not below zero) the amount of the deduction by the amount of the reimbursement.

Section 3082(a)(2) requires taxpayers who elect to amend their returns in this way to file the amended returns by the later of: (A) the due date for filing the return for the year in which the taxpayer receives the grant; or (B) July 30, 2009, which is one year after the date section 3082 was enacted. If a taxpayer chooses to file an amended return reducing the prior deduction, section 3082(a)(3) of the Act provides that any underpayment of tax resulting from the reduced deduction shall not be subject to any penalty or interest under the Code so long as the additional tax is paid not later than one year after the filing of the amended return.

FILING PROCEDURE

Required form. Taxpayers should use Form 1040X, Amended U.S. Individual Income Tax Return, to adjust a previously taken casualty loss. The amended return must be filed for the tax year in which a prior casualty loss was claimed and must reduce (but not below zero) the casualty loss deduction by the amount of the grant received as reimbursement for the loss.

Where to file. Form 1040X should be filed with the Austin Campus. Mail properly labeled forms to:

Department of the Treasury
Internal Revenue Service Center

Austin, TX 73301-0255

Label. To ensure proper processing consistent with this notice, taxpayers must identify amended returns as being filed under the terms of this notice. Label the top of the Form 1040X: "Hurricane Grant Relief" in dark, bold letters.

Materials to be submitted with the amended return. Taxpayers must include the following materials with their amended returns:

1. Proof of the amount of any hurricane relief grant received;
2. A completed Form 2848, Power of Attorney and Declaration of Representative, if a taxpayer wishes to designate a representative.

Time for filing. An amended return pursuant to this notice must be filed by the later of the due date for the return for the year in which the hurricane relief grant was received, as extended, or July 30, 2009. Solely for purposes of determining eligibility for the waiver of penalties and interest for purposes of section 3082, the Service will treat any amended return filed before July 30, 2009, as filed on July 30, 2009.

Payment of balance due. To avoid interest and penalties, payment of the balance due on the amended return must be made within one year of the timely filing of the amended return. Payments made subsequent to the filing of the amended return should clearly designate that the payment is to be applied to reduce the balance due as reflected on the amended return per this notice. The Service will not take action to collect the balance due reflected on the amended return for the one year period following the filing of the amended return.

Assessment of balance due. Upon the filing of an amended return, the Service immediately will assess the balance due resulting from the reduction in the casualty loss

claimed. This assessment will be reflected on the taxpayer's accounts as an outstanding liability.

Limitations. No other adjustments may be taken on the amended return filed for purposes of this notice unless the period of limitation for making an assessment under section 6501 is open for the tax year without regard to section 3082(a).

SPECIAL RULE FOR PREVIOUSLY FILED AMENDED RETURNS

If a taxpayer previously filed an amended return for the casualty loss year that reduced the previously claimed casualty loss deduction by the grant amount or reported any of the grant amount as income, the taxpayer must notify the Service to receive the benefits provided by this notice. The taxpayer must send a copy of the previously filed Form 1040X, or submit a Form 843, to the address listed above. The Form 1040X or Form 843 should include the taxpayer's own contact information as well as a properly executed power of attorney, if applicable. The taxpayer also must provide (1) copies of the original return for the year of the casualty loss deduction and any other amended returns for that year that were filed prior to publication of this notice, and (2) copies of the original return and amended returns, if any, for the year of receipt of the grant if any portion of the grant was previously reported as income in the year of receipt. These documents must be sent by the later of the due date for the return for the year in which the hurricane relief grant was received, as extended, or July 30, 2009. The Service will contact the taxpayer or the taxpayer's representative, as appropriate, to discuss any necessary adjustments.

ADDITIONAL CONSIDERATIONS

The option to file an amended return is permissive. Taxpayers are not required to amend a prior year's return and may, instead, include amounts received as a hurricane relief grant in gross income in the year in which the grant was received to the extent the prior casualty loss deduction reduced the amount of tax owed for any year pursuant to § 1.165-1(d)(2)(iii). Taxpayers and their representatives must consider carefully which option is best under their particular circumstances.

EFFECTIVE DATE

This notice is effective as of the date it is published in the Internal Revenue Bulletin.

DRAFTING INFORMATION

The principal author of this notice is Cynthia McGreevy of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Ms. McGreevy on (202) 622-4910 (not a toll-free call).