

NAICS industry title	Small business size standard
Toy and Hobby Goods and Supplies Merchant Wholesalers.	100 employees
Hobby, Toy and Game Stores.	\$27.5 million
Souvenir Stores .....	\$7.5 million
Political Organizations .....	\$7.5 million
Electronic Shopping .....	\$32.5 million
Electronic Auctions .....	\$38.5 million
Mail-Order Houses .....	\$38.5 million

From the record of this proceeding, the Commission is unable to conclude how many of the above-listed entities qualify as small businesses. The record does not contain information regarding the size of the entities subject to the Rules. Moreover, the relevant NAICS categories include many entities that do not engage in activities covered by the Rules. Therefore, estimates of the percentage of small businesses in those categories would not necessarily reflect the percentage of small businesses subject to the Rules in those categories.

Even absent this data, however, the Commission does not expect that the amendments will have a significant economic impact on small entities. As discussed above in Section V, the amendments do not impose any new costs upon persons or entities engaged in commerce concerning items that comply with the marking requirements of the Hobby Act and Rules. This document serves as notice to the Small Business Administration of the agency's certification of no effect. The Commission has nonetheless determined that it is appropriate to publish the following final regulatory flexibility analysis to ensure that the economic impact of the amendments on small entities is fully addressed.

*(1) Need for, and objectives of, the amendments to the Rules.*

As explained above, the amendments are intended to harmonize the Rules with the Hobby Act, as amended by the CCPA. Amending 16 CFR 304.3 extends the Rules' coverage to persons engaged in the sale in commerce of imitation numismatic items, and persons or entities that provide substantial assistance or support to any manufacturer, importer, or seller of covered items under certain circumstances. The legal basis for this amendment is the CCPA, which expanded the scope of the Hobby Act.

*(2) Significant issues raised by comments in response to the proposed amendments to the Rules.*

The Commission received no substantive comments from the public and no comments from the Chief

Counsel for Advocacy of the Small Business Administration. Consequently, no significant issues have arisen from comments, and no changes have been made to the proposed rule in the final rule as a result of comments.

*(3) A description of and an estimate of the number of small entities to which the Rules will apply.*

As noted earlier, staff estimates that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules, and from 500 to 2,500 manufacturers and importers of imitation political items are subject to the Rules.

*(4) A description of the projected reporting, recordkeeping and other compliance requirements.*

The Rules impose a disclosure (marking) burden, currently estimated at 5 hours annually. The amendment is not expected to increase this burden on any person or entity subject to and in compliance with the Rules. The additional burden imposed by the amendment will result solely from the expanded scope of the Rules to cover certain additional persons and entities, consistent with the Hobby Act, as amended. As noted earlier, the disclosure burden imposed by the Rules is normally addressed in the manufacturing process, which requires graphic or other design skills for the die, cast, mold or other process used to manufacture the item.

*(5) Steps taken by the agency to minimize the significant economic impact, if any, on small entities, consistent with the stated objectives of applicable statutes.*

Commission staff have not identified any significant alternatives that would accomplish the statute's objectives while minimizing any significant economic impact on small entities. The amendment, as explained earlier, is intended to bring the scope of the Rules in line with the scope of the Hobby Act, as amended by the CCPA. Neither the Act nor the Rules exempt small entities, or impose lesser or different requirements on such entities. Such exemptions or alternative requirements would undermine the purpose and effect of the Act and the Rules, to the extent that Congress has determined by law that covered items, regardless of the size of the entity that manufactures, imports or sells them, require markings (*i.e.*, disclosures) under certain circumstances for the protection of consumers who may purchase such items.

**List of Subjects in 16 CFR Part 304**

Hobbies, Labeling, Trade practices.

For the reasons set forth above, the Federal Trade Commission amends 16 CFR part 304 as follows:

**PART 304—RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT**

■ 1. The authority citation for this part continues to read as follows:

**Authority:** 15 U.S.C. 2101 *et seq.*

■ 2. Revise § 304.3 to read as follows:

**§ 304.3 Applicability.**

Any person engaged in the manufacturing, or importation into the United States for introduction into or distribution in commerce, of imitation political or imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. Any person engaged in the sale in commerce of imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. It shall be a violation of the Act and the regulations promulgated thereunder for a person to provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or to any manufacturer or importer of imitation political items, if that person knows or should have known that the manufacturer, importer, or seller is engaged in any practice that violates the Act and the regulations promulgated thereunder.

By direction of the Commission.

**Donald S. Clark,**

Secretary.

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**BILLING CODE P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9789]

**RIN 1545-BM03**

**Election To Take Disaster Loss Deduction for Preceding Year**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the election to accelerate the timing of a loss sustained by a taxpayer attributable to a federally declared disaster. The text of the temporary

regulations also serves as the text of the proposed regulations (REG-150992-13) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES: Effective Date:** These regulations are effective October 13, 2016.

**Applicability Dates:** For dates of applicability, see § 1.165-11T(i).

**FOR FURTHER INFORMATION CONTACT:** Daniel Cassano (202) 317-7011 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 165(i) of the Internal Revenue Code (Code) regarding the election to deduct a loss attributable to a federally declared disaster for the taxable year prior to the year in which the disaster occurred.

Under section 165, a loss from a federally declared disaster is a form of casualty loss. A casualty loss is generally allowed as a deduction only for the taxable year in which the loss is sustained (disaster year). Section 165(i) provides an exception to the general timing rule by allowing a taxpayer to elect to treat an allowable loss occurring in a disaster area and attributable to a federally declared disaster as sustained in the taxable year immediately prior to the taxable year in which the disaster occurred (preceding year).

Taxpayers make the election under section 165(i) by clearly indicating on an original return, an amended return, or a refund claim, that the election has been made. The existing regulations under section 165(i) provide that the original return, amended return, or refund claim must be filed 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 for filing the return) for the disaster year; or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time for filing the return) for the preceding year. Thus, taxpayers typically have until the unextended due date of the return for the disaster year to make the section 165(i) election.

Concerns have been raised that the due date for making the section 165(i) election may not always provide sufficient time for taxpayers affected by disasters to consider whether to make the election. These concerns led the Department of the Treasury (Treasury Department) and the IRS to issue notices postponing the due date in the wake of a number of federally declared disasters

in the last ten years. Notice 2006-17, 2006-1 C.B. 559, postponed the due date for victims of Hurricanes Katrina, Rita, and Wilma to make a section 165(i) election for their disaster losses to October 16, 2006. Notice 2013-21, 2013-15 I.R.B. 903, postponed the due date for victims of Hurricane Sandy to make a section 165(i) election for their disaster losses to October 15, 2013. Notice 2014-20, 2014-16 I.R.B. 937, postponed the due date for victims of a major Colorado flooding event to make a section 165(i) election for their disaster losses to October 15, 2014.

**Explanation of Provisions**

*1. Definitions*

These temporary regulations add a paragraph that defines the following terms for purposes of the temporary regulations: Federally declared disaster; federally declared disaster area; disaster loss; disaster year; and preceding year. A *federally declared disaster* means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or a successor enactment. A *federally declared disaster area* is the area determined to be eligible for assistance pursuant to the Presidential declaration in paragraph (b)(1) of the section. A *disaster loss* is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction for the disaster year under section 165(a) and §§ 1.165-1 through 1.165-10 of the Income Tax Regulations. The *disaster year* is defined as the taxable year in which a taxpayer sustains a loss attributable to a federally declared disaster. The *preceding year* is the taxable year immediately prior to the disaster year.

*2. Time and Manner of Making the Section 165(i) Election*

These temporary regulations generally provide that the due date for making the section 165(i) election is six months after the due date for filing the taxpayer's federal income tax return for the disaster year (determined without regard to any extension of time to file). This amount of time is comparable to the length of the postponements of the due dates for making the election granted in the notices identified in the Background section of this preamble.

These temporary regulations also authorize the Treasury Department and the IRS to issue additional guidance regarding the time and manner for making the section 165(i) election. The

authorization in these temporary regulations will permit the Treasury Department and the IRS to act quickly to adapt to both taxpayer needs and the needs of tax administration as future disasters occur.

Contemporaneously with these temporary regulations, the Treasury Department and the IRS are issuing Rev. Proc. 2016-53, I.R.B. 2016-44, which specifies how a taxpayer makes a section 165(i) election and incorporates the due date for making the election provided in these temporary regulations.

*3. Revocations of a Section 165(i) Election*

These temporary regulations extend the period of time for revoking a section 165(i) election to ninety (90) days after the due date for making the election. This change conforms to the rule established by the United States Tax Court in *Matheson v. Commissioner*, 74 T.C. 836 (1980), *acq.*, AOD-1980-177. These temporary regulations also authorize the Treasury Department and the IRS to issue additional guidance regarding the time and manner of revoking the election. Rev. Proc. 2016-53 specifies how a taxpayer revokes a section 165(i) election and incorporates the due date for revoking the election provided in these temporary regulations.

*4. Consistent Return Positions*

These temporary regulations reflect rules established elsewhere in federal tax law that a taxpayer cannot deduct the same loss in more than one taxable year. Taxpayers must amend the return for the disaster year in order to make the section 165(i) election for a disaster loss if the taxpayer has deducted such loss for the disaster year. Similarly, taxpayers must amend the preceding year return to revoke a section 165(i) election before filing a return or amended return to deduct the loss in the disaster year. Rev. Proc. 2016-53 contains further guidance for taxpayers in amending returns and taking consistent return positions to minimize the administrative burden on the IRS in ensuring the prompt processing of refunds.

*5. Immediate Effect*

These temporary regulations are effective immediately because they provide relief to taxpayers who suffer casualty losses attributable to federally declared disasters and the Treasury Department and the IRS anticipate a significant number of casualty losses arising from recent instances of flooding

in areas located throughout the United States, including Texas and Louisiana.

### Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal authors of these regulations are Daniel Cassano and Christopher Wrobel of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.165–11 is revised to read as follows:

#### § 1.165–11 Election in respect of losses attributable to a disaster.

(a) through (j) [Reserved]. For further guidance, see § 1.165–11T(a) through (j).

■ **Par. 3.** Section 1.165–11T is added to read as follows:

#### § 1.165–11T Election to take disaster loss deduction for preceding year (temporary).

(a) *In general.* Section 165(i) allows a taxpayer who has sustained a loss attributable to a federally declared disaster in a taxable year to elect to deduct that disaster loss in the preceding year. This section provides rules and procedures for making and

revoking an election to claim a disaster loss in the preceding year.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) A *federally declared disaster* means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or a successor enactment.

(2) A *federally declared disaster area* is the area determined to be eligible for assistance pursuant to the Presidential declaration in paragraph (b)(1) of this section.

(3) A *disaster loss* is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction for the disaster year under section 165(a) and §§ 1.165–1 through 1.165–10.

(4) The *disaster year* is the taxable year in which a taxpayer sustains a loss attributable to a federally declared disaster.

(5) The *preceding year* is the taxable year immediately prior to the disaster year.

(c) *Scope and effect of election.* An election made pursuant to section 165(i) for a disaster loss attributable to a particular disaster applies to the entire loss sustained by the taxpayer from that disaster during the disaster year. If the taxpayer makes a section 165(i) election with respect to a particular disaster occurring during the disaster year, the disaster to which the election relates is deemed to have occurred, and the disaster loss to which the election applies is deemed to have been sustained, in the preceding year.

(d) *Requirement to file consistent returns.* A taxpayer may not make a section 165(i) election for a disaster loss if the taxpayer claims a deduction (as a loss, as cost of goods sold, or otherwise) for the same loss for the disaster year. If a taxpayer has claimed a deduction for a disaster loss for the disaster year and the taxpayer wishes to make a section 165(i) election with respect to such loss, the taxpayer must file an amended return to remove the previously deducted loss on or before the date that the taxpayer makes the section 165(i) election for such loss. Similarly, if a taxpayer has claimed a deduction for a disaster loss for the preceding year based on a section 165(i) election and the taxpayer wishes to revoke that election, the taxpayer must file an amended return to remove the loss for the preceding year on or before the date the taxpayer files the return or

amended return for the disaster year that includes the loss.

(e) *Manner of making election.* An election under section 165(i) to deduct a disaster loss for the preceding year is made on an original federal tax return for the preceding year or an amended federal tax return for the preceding year in the manner specified by guidance issued pursuant to these regulations. See paragraph (h) of this section.

(f) *Due date for making election.* The due date for making the section 165(i) election is six months after the due date for filing the taxpayer's federal income tax return for the disaster year (determined without regard to any extension of time to file).

(g) *Revocation.* Subject to the requirements in paragraph (d) of this section, a section 165(i) election may be revoked on or before the date that is ninety (90) days after the due date for making the election.

(h) *Additional guidance.* The time and manner for making and revoking a section 165(i) election under paragraphs (d), (e), (f), and (g) of this section may be modified through guidance published in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d) of this chapter).

(i) *Effective/applicability date.* This section is effective October 13, 2016 and applies to elections, revocations, and any other related actions that can be made or taken on or after October 13, 2016.

(j) *Expiration date.* The section expires October 13, 2019.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: September 19, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4022

#### Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to