CPE ARTICLE

Safe Harbor Rules For Calculating Casualty Losses For Victims Of Federally Declared Disaster Areas

By **VALRIE CHAMBERS**, Ph.D., CPA; **GERARD H. SCHREIBER, JR.**, CPA; and **BRIAN ELZWEIG**, JD, LL.M.

CURRICULUM: Tax

LEVEL: Intermediate

DESIGNED FOR: Designed primarily for tax practitioners, but there are issues that may be of interest to all in public practice

OBJECTIVES: With the current tax law, the Disaster Tax Relief and Airport and Airway Extension Act of 2017, the IRS Rev. Procs. 2018-8 and 2018-9, the Tax Cuts and Jobs Act of 2017 and the Bipartisan Budget Act of 2018, claiming casualty losses can be confusing. This article attempts to integrate these sources of guidance to assist tax preparers in determining the appropriate amount of the personal casualty loss deduction for individual taxpayers, including safe harbor provisions for recent storms.

KEY TOPICS: Tax law, casualty losses, safe harbors and hurricane tax preparation

PREREQUISITES: None

ADVANCED PREPARATION: None

In 2017, Americans saw three devastating hurricanes – Harvey, Irma and Maria – accompanied by flooding and other associated destruction of property. These storms created total damage estimates of $90 billion, $45 billion and $102 billion respectively.[1] Recent tax changes limit the ability to take some casualty losses. However, the deductibility of casualty losses in federally declared disaster areas remains intact, so this topic is still quite relevant.

The IRS has devised a choice of several safe harbors to make accounting for casualty losses beginning in 2018 different and in some ways easier. Weather experts predict a somewhat more active hurricane season this year (and into the future) and there was already one named storm ahead of the official start of hurricane season.

With the current tax law, the Disaster Tax Relief and Airport and Airway Extension Act of 2017,[2] the IRS Rev. Procs. 2018-8 and 2018-9, the Tax Cuts and Jobs Act of 2017[3] and the Bipartisan Budget Act of 2018,[4] claiming casualty losses can be confusing. This article attempts to integrate these sources of guidance to assist tax preparers in determining the appropriate amount of the personal casualty loss deduction for individual taxpayers.

Casualty Loss Rules Generally

A casualty loss is the damage, destruction or loss of property owned by a taxpayer caused by an external force that is sudden, unexpected ***and*** unusual.[5] Where a home located in a federally declared disaster area is made unsafe by a disaster and requires demolition or moving the home, the loss in value is a disaster loss provided that the tear-down order was issued within 120 days after the official disaster declaration.

The amount of the deductible casualty loss is limited to direct damage to the property. In the case of Hurricane Harvey where there was both a hurricane and a flood, the damage from multiple related casualty and thefts is treated as caused by a single casualty. Because losses are determined per taxpayer, losses for two individuals filing jointly are treated as one loss.[6]

The amount of the casualty loss is the lesser of the taxpayer's basis in the damaged property or the decrease in its fair market value (FMV), as determined by a competent appraisal.[7] The term "competent appraisal" is not well-defined; different types of appraisal are likely valid. In *Torassa and Sintef v. Commissioner,*[8] a Small Business Administration appraisal was accepted by the Tax Court. The decrease in FMV is the amount of the property's FMV immediately before the casualty less the property's FMV immediately after it. When using the cost of repairs to estimate casualty loss damage, the taxpayer must actually make the repairs.[9] Cleaning costs,[10] appraisal fees,[11] treatment of personal injuries, temporary housing and replacement cost of damaged property are not included in the amount of casualty loss calculation. Casualty losses are allowed on passive activities without regard to passive loss limitations.[12]

Adjusted basis is generally the cost of a piece of property,[13] as adjusted for any expenditure, receipt, loss or other item, properly chargeable to capital account, including the cost of improvements and betterments made to the property.[14] The cost includes sales tax, delivery, installation, settlement costs and other similar items, improvements that increase the length or quality of an asset's life, assessments for local improvements, legal fees for defending and perfecting title, and zoning costs. Decreases to basis include tax credits taken for costs of property, Section 179 election to expense property, previous net casualty or theft loss deductions.[15]

Cleaning costs, appraisal fees, treatment of personal injuries, temporary housing and replacement cost of damaged property are not included in the amount of casualty loss calculation.

The amount of casualty loss is the value of the damage minus the amount of reimbursement received or expected to be received from insurance and other outside sources.[16] Losses on insured property are deductible only if a timely insurance claim for reimbursement was indeed filed; otherwise, only the portion of the loss *not* covered by insurance is deductible.[17]

Where reimbursements are used to satisfy a mortgage or other lien, the reimbursement still reduces the amount of the casualty loss. Where another party repairs or rebuilds an individual's personal-use residential real property at a *de minimis* or zero cost to the individual, the casualty loss is reduced by the value of those "no-cost repairs." If part of a federal disaster loan is canceled under this provision, it is considered reimbursement for the casualty loss.

Grants received under the Disaster Relief and Emergency Assistance Act reduce the casualty loss only to the extent that the grant specifically reimburses for the property loss.[18] Money received from an employer's emergency disaster fund is considered a reimbursement similar to insurance proceeds if that money must be used to rehabilitate or replace damaged property. Disaster relief, including food and medical supplies, does not reduce the amount of the casualty loss, nor do unrestricted cash gifts, as might be received by an online fundraising account (such as a GoFundMe account) or personal gift.

If a taxpayer receives reimbursement for a deductible casualty loss in a year after taking the deduction, the amount of the reimbursement will be included in gross income in the year received to the extent that it represented an itemized deduction in excess of the standard deduction amount.[19] If includible reimbursements exceed casualty losses, a taxpayer may actually have a casualty gain, such as when the taxpayer carried replacement value insurance. Casualty gains may be deferred under IRC §1033 or in the case of some personal residences that are subsequently sold, non-taxable under IRC §121.

Once the amount of the casualty loss is determined, limitations, if any, must be applied.[20] If the casualty loss is on business property, the net casualty loss is the deductible amount. Income producing property, like land held for investment and property used by an employee in the course of employment, is treated under the profit-seeking rules.[21] If the casualty loss arises from an activity not entered into for a profit, such as for personal-use property, two additional limits to casualty loss deductibility applied prior to 2018, a nominal amount per incident floor[22] and 10 percent of the taxpayer's adjusted gross income (AGI) per year.[23] The net casualty losses on personal-use property were deductible as an itemized deduction. Property with multiple uses must be allocated ratably according to their uses. The property need not be replaced to be deductible.[24]

Federally Declared Disaster Areas

Victims in a federally declared disaster area[25] receive additional tax relief. They may file the casualty loss against the tax year in which the casualty loss occurred or claim the casualty loss against the previous year's return.[26] Taxpayers generally elect to apply a casualty loss to the previous year on or before the date that is six months after the regular due date for the original return (without extensions) for the disaster year.[27] This election is revocable if, within 90 days after election, any refund or credit received attributable to the election is returned to the IRS with interest or if the revocation is made before the refund has been received. The IRS generally abates interest and penalties for amounts due on returns extended because the taxpayer is in a federally declared disaster area.

For qualified disasters, such as those arising from Hurricanes Harvey, Irma and Maria, losses can be deducted for both regular and alternative minimum taxes, whether the taxpayer itemizes or uses the standard deduction and are not subject to the 10 percent of Adjusted Gross Income limitation, but are subject to a $500 per incident floor.

Supporting Documentation

The taxpayer may have to substantiate the type of casualty, the date(s) of casualty and whether the property was owned by the taxpayer, or when not owned, the amount of the taxpayer's liability to the owner for damage. The taxpayer generally must be able to substantiate the bases for the value and the pre-casualty condition of the properties. Where the taxpayer's supporting documentation has been destroyed, copies can sometimes be obtained from third parties like banks, a county clerk (real estate records) and the IRS (copies of federal tax returns).

Litigation with the IRS could arise when taxpayers have difficulty determining the amount of their casualty losses under Reg. Sec. 1.165-7(a)(2). Guidance on the use of estimates, where necessary, can be found in AICPA's Statement on Standards for Tax Services No. 4 – Use of Estimates.[28]

Recently, the IRS has provided new safe harbors for calculating the amount of casualty losses, including for victims of Hurricanes Harvey, Irma and Maria. Use of these safe harbor methods is not mandatory and the IRS will not challenge the decrease in FMV to the extent an individual qualifies for and uses one or more of these methods. Safe harbors serve the IRS mission of providing effective tax administration.

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New Safe Harbor Rule

Individuals having substantiation for their casualty losses may use their actual losses or one of the safe harbor methods outlined in the revenue procedure.[29] Rev. Proc. 2018-8, issued December 13, 2017 (nine days before the passage of the Tax Cuts and Jobs Act), provides safe harbor methods to determine the amount of individual casualty and theft losses to personal-use property resulting from any federally declared disaster.[30] The guidance is effective December 13, 2017.[31]

The revenue procedure provides different guidelines for residential real property than for personal property. Personal-use residential real property is defined as real property that has at least one personal residence, including permanent improvements such as buildings, ornamental trees and shrubbery. Personal-use residential real property does not include a personal residence which, in whole or part, is used as rental property or contains a home office used in a trade or business or transaction entered into for a profit.

A personal residence can be a single-family home, townhome or duplex, but not a condominium, cooperative unit or any other structure where the individual who suffered the casualty loss does not own or owns only a fractional component of the structural components of the building, such as the foundation, walls and roof.[32]

Personal-use Residential Real Property

The five general personal-use residential real property safe harbor methods are: 1) Estimated Repair Cost Safe Harbor Method, 2) the De Minimis Safe Harbor Method, 3) the Insurance Safe Harbor Method, 4) the Contractor Safe Harbor Method, and 5) the Disaster Loans Safe Harbor Method. The Insurance Safe Harbor Method and the Contractor Safe Harbor Method parallel the safe harbor methods of the same name available for Hurricanes Katrina, Rita and Wilma.[33] There is also a Cost Index Safe Harbor Method for victims of Hurricane Harvey, Irma and Maria, as was similarly available for Hurricanes Katrina, Rita and Wilma, found in Rev. Proc. 2018-9. If an individual owns two or more parcels of personal-use residential real property, different methods may be used for each real property.[34]

Estimated Repair Cost Safe Harbor Method

Under this method, for individuals with casualty losses of $20,000 or less before considering the casualty loss limitations, the decrease in FMV may be estimated by using the lesser of two itemized repair estimates prepared by separate and independent licensed contractors. Only the costs to restore the individual's property to the condition existing immediately prior to the casualty loss are deductible; the costs of improvements or additions that increase the value of the property above its pre-casualty value, such as might be incurred to meet new construction codes, must be excluded from the estimate for safe harbor purposes.[35]

De Minimis Safe Harbor Method

If the amount of loss before applying the dollar amount and 10 percent AGI limitations is less than $5,000, the individual may simply make a good faith estimate of the decrease in the FMV of the belongings, provided they maintain records describing the personal belongings that were affected and the method for estimating the loss.[36]

Insurance Safe Harbor Method

Under the Insurance Safe Harbor Method, an individual taxpayer may use the estimated loss determined in reports prepared by the individual's homeowners' or flood insurance company to determine the decrease in fair market value of an individual's personal-use residential real estate.[37]

Contractor Safe Harbor Method

Under the Contractor Safe Harbor Method, an individual may estimate the decrease in FMV using the contract price from a licensed contractor for the itemized costs to restore the individual's personal-use residential real property to the condition it was in immediately prior to the hurricane repairs. The costs of any improvements or additions that increase the value of the personal-use residential real property above its pre-hurricane value or to elevate the personal residence to meet new construction requirements, must not be included in the casualty loss amount. To use the Contractor Safe Harbor Method, the contract must be a binding, signed contract.[38]

Disaster Loan Appraisal Safe Harbor Method

Under the Disaster Loan Appraisal Safe Harbor Method, an individual may use an appraisal prepared to obtain a loan of federal funds or a loan guarantee from the federal government as an estimate of the loss that the individual sustained.[39]

Continued on page 48

Cost Index Safe Harbor Method

Under the Cost Index Safe Harbor Method, an individual who was a victim of Hurricanes Harvey, Irma or Maria may determine the amount of the decrease in FMV for casualty losses for their personal-use residential real property damaged or destroyed using government-issued tables. As with the other safe harbor methods, the IRS will not challenge a qualifying individual's determination of a decrease in value where the tables were properly applied.

There are seven tables that can be found in Rev. Proc 2018-9 that give the safe harbor cost per square foot indices for total losses, near total losses, interior flooding (of over one foot), structural damage from wind, rain and debris, roof covering damage from wind, rain and debris, damage to a detached structure and damage to decking. The cost indices are specific to the state or territory in which the damage occurred.

Personal Belongings Safe Harbor Methods

Individuals may use a personal belongings safe harbor method for most tangible personal property that they own that is not used in a trade or business or transaction entered into for a profit. However, this safe harbor method is not applicable if that property is a boat, aircraft, mobile home, trailer, vehicle[40] or antique, or other asset that maintains or increases its value over time.[41]

If the amount of loss before applying the dollar amount and 10 percent AGI limitation is less than $5,000, the individual may simply make a good faith estimate of the decrease in the FMV of the belongings, provided they maintain records describing the personal belongings that were affected and the method for estimating the loss.[42]

For larger losses, the replacement cost method may be used to determine the FMV of the personal belongings immediately before the hurricane. Individuals electing this safe harbor must apply the method to all personal belongings for which a casualty loss is claimed, with the exception of certain vehicles.[43] To apply this method, the taxpayer inventories each item of personal property lost, the age in years of that property and the current replacement cost of those items. Replacement cost for each item is multiplied by the applicable table percentage, which is based on the age in years of each damaged item. See Table 1.

TABLE 1
Personal Belongings Valuation Table[44]

Year	% of Replacement Cost to Use
1	90%
2	80%
3	70%
4	60%
5	50%
6	40%
7	30%
8	20%
9+	10%

Other Hurricane Harvey, Irma and Maria Relief Provisions

The Disaster Tax Relief and Airport and Airway Extension Act of 2017[45] provided other casualty and theft loss relief where the casualty or theft occurred to taxpayers living in certain areas affected by Hurricanes Harvey, Irma and Maria. When individuals who suffered an economic loss from these storms take an early distribution of up to $100,000 from a retirement plan, the 10 percent additional tax on the early distributions made on or after specified dates will be waived.[46] Similarly, penalties on 2016 federally declared disasters and 2017 qualified wildfire distributions will be waived. The dates, by disaster and source, are shown in Table 2.

Such distributions are still subject to regular income tax unless the taxpayer repays the distribution by making additional contributions to a retirement account within three years. Any unrepaid amount will be included in gross income by dividing the amount over a three-year period. If a taxpayer made a withdrawal from a retirement fund to purchase a home in the hurricane area and that contract was cancelled due to the hurricane, an individual may recontribute

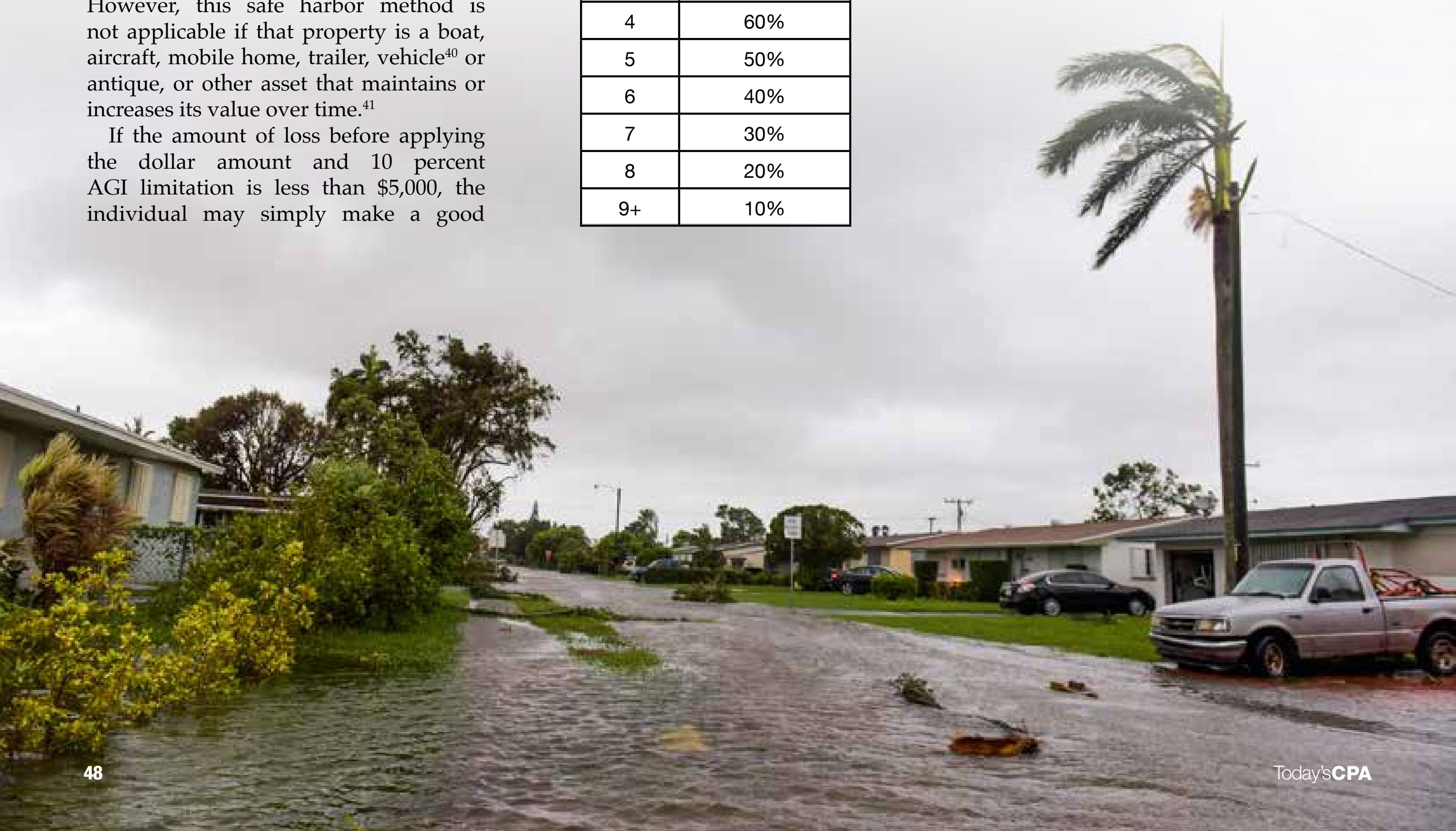

TABLE 2
Early Withdrawal Penalty Waiver Table

Casualty	Distribution Date On or After:	Distribution Date Before:	Cite
Hurricane Harvey	August 23, 2017	January 1, 2019	Pub. Law No.115-63, Sec. 502(a)(4)(A)
Hurricane Irma	September 4, 2017	January 1, 2019	
Hurricane Maria	September 16, 2017	January 1, 2019	
2016 Federally Declared Disasters	January 1, 2016	January 1, 2018	Pub. Law No.115-97, Sec. 11028(b)(1)(D)
Qualified Wildfires	October 8, 2017	January 1, 2019	Pub. Law No.115-123, Sec. 20102(a)(4)(A)

funds to the retirement plan without tax or penalty. The limit and repayment deadline for loans from retirement plans have also been extended. This favorable tax treatment was extended by the Tax Cuts and Jobs Act to include similar distributions made on or after January 1, 2016 and before January 1, 2018 for all victims in federally declared disaster areas whose principal place of abode was in such an area.

Additionally, employers who were not open for business because of the hurricanes are eligible for an employee retention tax credit in the amount of 40 percent of the qualified wages paid to employees while the business was closed, up to $6,000 per employee whose principal place of employment on specified dates was in a hurricane disaster zone. "Qualified wages" must have been paid or incurred on or after August 23, 2017, but before January 1, 2018. To qualify, the wages must have been paid during the period that began when the employee's principal place of employment became inoperable and ended when the business had resumed significant operations. These credits reduce the wages deduction and may be less effective if the taxpayer is subject to alternative minimum tax.[47]

Taxpayers in hurricane disaster areas may use the earned income from the immediately preceding years to determine the earned income tax credit and the child tax credit. Importantly, those in the hurricane disaster areas do ***not*** need to deduct 10 percent of AGI or itemize their deductions to take a hurricane casualty loss. This treatment is extended beyond the 2017 hurricanes. While the dates are confusing, effective after December 31, 2107 and before January 1, 2026, victims of 2016 disasters may add their net personal-use casualty losses from disaster areas to the standard deduction and use this casualty loss to reduce their alternative minimum taxable income. However, the increase from $100-per-casualty to $500-per-casualty is also extended to other casualties in federally declared disaster areas during the same time.[48]

How to Claim the Casualty Loss Deduction

Taxpayers report casualty gains and losses from casualties and thefts on Form 4684, Casualties and Thefts. Personal-use property still needs to be listed and Publication 584, Casualty, Disaster and Theft Loss Workbook (Personal-Use Property) is useful. Where 2017 losses are claimed on the 2016 return, a statement should be included with the 2016 original or amended return affirmatively making the election and listing the name and date of the disaster, as well as the city, county, state and zip code where the damaged property was located. This statement may be made on line 1 or 19 of Form 4684 or as an attachment. Beginning in 2018, the election will be made in Part I of Section D of Form 4684.

If a safe harbor method from Rev. Proc. 2018-8 is used, an affirmative written statement, along with the specific safe harbor method used, must be filed. Where the Cost Index Safe Harbor Method from Rev. Proc. 2018-9 is used, a statement and the number of the table used should be attached to Form 4684, Casualties and Thefts.

To revoke a prior election, a similar statement is required. That statement must include an affirmative revocation statement, the name and date of the disaster, as well as the address including the city, county, state and zip code where the damaged property was located and follow the instructions for the form.

2017 Legislative Changes Beginning 2016 and the New Safe Harbor Rules

Legislative changes in 2017 suspend personal casualty and theft losses deductions *except for those incurred in a federally declared disaster area*, beginning after December 31, 2017.[49] House fires from casualties such as lightning strikes will no longer qualify for tax relief. The government website www.FEMA.gov/Disaster posts federal declarations. In the past, major storms have generally been given such a declaration.

Knowing the Laws and Safe Harbors

The law regarding casualty losses has just changed rapidly in the face of many federally declared natural disasters creating billions of dollars' worth of damage. When claiming a casualty loss deduction, it is imperative that CPAs know the laws and safe harbors pertaining to specific applicable storms. This includes special provisions that allow for damages to be claimed, even if records that show property valuations are destroyed. Further, remember that beginning in 2018, deductions for casualty losses are limited to those in a federally declared disaster area.

ABOUT THE AUTHORS:

VALRIE CHAMBERS, Ph.D., CPA is Chair of the M.E. Rinker, Sr. Institute of Tax and Accountancy at Stetson University in DeLand Florida.

GERARD H. SCHREIBER, Jr., CPA is a partner in Schreiber & Schreiber, CPAs, Metairie, Louisiana. He has been nicknamed the "Master of Disaster" for his extensive work in this area, beginning with Hurricane Katrina.

BRIAN ELZWEIG, JD, LL.M. is an Assistant Professor of Business Law and a research fellow of the Reubin O'D. Askew Institute of Multidisciplinary Studies at the University of West Florida.

CONTINUED ON PAGE 55

Please note that when registration is complete, a confirmation email will be sent and provide a hyperlink to access the quiz.

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1. The Tax Cuts and Jobs Act of 2017 eliminates the casualty loss tax deductions beginning in 2018 for which of the following:

A. Personal casualties not in a federally declared disaster area.
B. All personal casualty losses.
C. All casualties not in a federally declared disaster area.
D. Any casualty not reimbursable by insurance.

2. All of the following are safe harbor methods for computing casualty losses under Revenue Procedure 2018-8 except:

A. Estimated Repair Cost Safe Harbor Method
B. DeMinimis Safe Harbor Method
C. Insurance Safe Harbor Method
D. Sentimental Value Safe Harbor Method

3. Assuming a casualty qualifies for a deduction, what percent of AGI limitation for personal, itemized casualty losses is in effect after the Tax Cuts and Jobs Act of 2017?

A. 0%
B. 5%
C. 10%
D. 15%

4. A taxpayer wants to withdraw funds from a retirement plan to rebuild after a personal casualty loss in a federally declared disaster area. Which protection is available for such taxpayers?

A. They are allowed to withdraw up to $100,000 from a retirement plan without the 10 percent penalty that normally applies to early withdrawals.
B. They do not have to pay tax on the withdrawal if it is used and not replaced.
C. Their withdrawals are taxed at a favorable, long-term capital gain rate.
D. The tax on withdrawals is deferred for until they retire.

5. A taxpayer who was a victim of Hurricane Harvey lost a house and all basis records for that house in that hurricane/flood. How might the taxpayer document the amount of that loss?

A. The taxpayer loses the entire casualty loss, except to the extent that they can provide third party documentation of the amount of the actual loss sustained.
B. There is a Revenue Procedure that provides alternate casualty loss valuation tables, which may be used to determine a taxpayer's casualty loss.
C. The taxpayer may estimate the amount of the loss based on the expenditures that the IRS allows when calculating an offer in compromise for back taxes for someone of their income level.
D. The taxpayer may use the Hurricane Katrina casualty loss valuation tables.

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6. Lightning strikes a taxpayer's home, setting it on fire in a small, local thunderstorm. Which limitation most likely has the biggest effect on the amount of the deductible personal casualty loss?

A. No casualty loss is allowed for amount reimbursed by insurance.
B. Only amounts in excess of 10% of AGI are deductible.
C. There is a $100/incident floor.
D. No personal casualty loss is allowable unless it occurred in a federally declared disaster area.

7. For a personal casualty loss to be deductible, which of the following must a taxpayer do?

A. They must file an insurance claim for the casualty if they are insured.
B. They must restore or replace whatever property was damaged.
C. They must have a qualified appraisal after repairs are made.
D. They must attach receipts to the tax return.

8. Which of the following is true of a business casualty loss?

A. It is deductible whether or not it is in a federally declared disaster area.
B. Only the amount in excess of 10% of AGI is deductible.
C. It is only available if the taxpayer itemizes their deductions.
D. It is only deductible if the business is insured.

9. Victims in a federally declared disaster area may file a casualty loss claim on his/her tax return against which of the following years?

A. The return for the tax year in which the loss occurred only.
B. The return for the previous tax year only.
C. The return for either the tax year in which the loss occurred or the previous tax year.
D. The return for the tax year following the year in which it occurred.

10. When using the cost of repairs to estimate a casualty loss, which of the following may be considered when making the calculation?

A. Cleaning costs of a flooded house.
B. Appraisal fees.
C. Replacement cost of a damaged automobile.
D. Repairs made to a damaged roof.

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[1] Jeff Masters, Hurricane Maria Damage Estimate of $102 Billion Surpassed only by Katrina, Weather Underground, Nov. 22, 2017, https://www.wunderground.com/cat6/hurricane-maria-damages-102-billion-surpassed-only-katrina.
[2] Pub. Law No.115-63.
[3] Pub. Law No.115-97, 131 Stat. 2054.
[4] Pub. Law No. 115-123.
[5] However, losses from gradual deterioration, e.g. erosion, are not casualties. See *Matheson v. Comm*., 2 USTC ¶830, 10AFTR 945, 54F.2d537 (CA-2, 1931), 1931 U.S. Appeals Lexis 3966.
[6] If spouses file separately, each spouse is subject to a $100/$500 floor for each casualty (Reg. §1.165-7(b)(4)(iii)) in addition to the 10% of AGI per year floor.
[7] Rev. Reg. §1.165-7(a)(2)(i).
[8] T.C. Summary Opinion 2010-174.
[9] See *Lamphere v. Commissioner*, 70 T.C. 391, 396 (1978), acq., 1978-2 C.B. 2; *Farber v. Commissioner*, 57 T.C. 714, 719 (1972), acq., 1972-2 C.B. 2.
[10] Costs of cleaning and repairs are not casualty losses, but those costs might be used to measure the decrease in FMV if the taxpayer actually made the repairs and they were necessary to bring the property back to its pre-casualty condition, providing the amount spent for repairs is not excessive and do not improve the property beyond its pre-casualty condition. See Reg. §1.165-7(a)(2).
[11] However, appraisal fees, photographs for documenting the casualty loss and similar costs may be deductible as an itemized deduction subject to the 2% of Adjusted Gross Income floor.
[12] Rev. Reg. §1.469-2(d)(2)(xi).
[13] IRC §1012 and Rev. Reg. §1.1012-1(a).
[14] IRC §1016(a)(1) and Rev. Reg §1.1016-2(a).
[15] IRC §1016.
[16] Rev. Reg. §1.165-1(c)(4).
[17] Internal Revenue Code (IRC) §165(h)(4)(E).
[18] IRC Sec. 139 provides for an exclusion from income for other relief payments, such as certain FEMA payments.
[19] Rev. Reg. §1.165-1(d)(2)(iii). Also see IRC Sec. 111 for the tax benefit rule, generally. IRS Publication 525, Worksheet 2, "Recovery of Itemized Deductions" is very useful in figuring taxable recovery.
[20] IRC §§162, 67 and 212 allow for the deduction of casualty losses on property held for profit. IRC §165(c)(3) allows for the deduction of casualty and theft losses on personal-use property, including casualty losses relating to hobbies (§183). Also see Regs. §1.165-8(d). For business properties, taxpayers must also consider repair regulations in computing the loss on business property.
[21] IRC §§67 and 165(c)(2).
[22] IRC §165(h)(1).
[23] IRC §165(h)(2).
[24] Reg. §1.165-7(a)).
[25] A federally declared disaster area is an area where the victims of a disaster are eligible for federal assistance under the Disaster Relief and Emergency Assistance Act (IRC §1033(h)). This term will also be used for determining whether involuntary conversion rules apply (IRC §1033(h); IRC §165(i)(5)), qualified disaster relief payments are excludable from gross income (IRC §139), certain NOL carrybacks apply (IRC §172) and deadlines may be postponed by the IRS (IRC §7508A). These areas are listed at www.fema.gov/diasters.
[26] IRC §165(i).
[27] See Rev. Proc. 2016-53.
[28] https://www.aicpa.org/content/dam/aicpa/.../tax/.../ssts-no.4-use-of-estimates.pdf.
[29] Id. §1.04.
[30] Rev. Proc. 2018-8, Introduction.
[31] Id. §7.
[32] Rev. Proc. 2018-8, §3.02.
[33] For the complete safe harbor treatment under Hurricanes Katrina, Rita and Wilma, see Rev. Proc. 2006-32.
[34] Rev. Proc. 2018-8, §4.01.
[35] Rev. Proc. 2018-8, §4.02.
[36] Rev. Proc. 2018-8, §5.01.
[37] Rev. Proc. 2018-8, §4.04.
[38] Rev. Proc. 2018-8, §4.05.
[39] Id.
[40] In this Rev. Proc., a vehicle is defined as "an automobile, motorcycle, motor home, recreational vehicle, sport utility vehicle, off-road vehicle, van, or truck." Rev. Proc. 2018-8, §5.02.
[41] Rev. Proc. 2018-8, §5.03. Individuals may determine pre-disaster values of boats, aircraft, mobile homes, trailers and other vehicles through established pricing sources as outlined in Rev. Rul. 2002-67, 2002-2 C.B. 873 or Publication 561, *Determining the Value of Donated Property.*
[42] Rev. Proc. 2018-8, §5.01.
[43] Rev. Proc. 2018-8, §5.02.
[44] Rev. Proc. 2018-8, §5. These are the same percentages used in the Katrina safe harbor rules, http://www.irs.gov/irb/2006-28_IRB/ar11.html.
[45] Pub. L. No. 115-63, (Sept. 29, 2017).
[46] Tax Cuts and Jobs Act of 2017 Sec. 11028(b).
[47] See Form 5884-A, *Credits for Affected Disaster Area Employees.*
[48] IRC §165(h), as amended by the Tax Cuts and Jobs Act (Act), P.L. 115-97, §11028(c)(1)(A).
[49] IRC §165(h), as amended by the Tax Cuts and Jobs Act (Act), P.L. 115-97, §11044.