

§ 1.165-9

Loss to be taken into account for purposes of section 165(a): (\$3,500 but not to exceed adjusted basis of \$4,000 at time of theft)	\$3,500
Less: Insurance received in 1963	2,000

Deduction allowable for 1963 1,500

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6786, 29 FR 18502, Dec. 29, 1964]

§ 1.165-9 Sale of residential property.

(a) *Losses not allowed.* A loss sustained on the sale of residential property purchased or constructed by the taxpayer for use as his personal residence and so used by him up to the time of the sale is not deductible under section 165(a).

(b) *Property converted from personal use.* (1) If property purchased or constructed by the taxpayer for use as his personal residence is, prior to its sale, rented or otherwise appropriated to income-producing purposes and is used for such purposes up to the time of its sale, a loss sustained on the sale of the property shall be allowed as a deduction under section 165(a).

(2) The loss allowed under this paragraph upon the sale of the property shall be the excess of the adjusted basis prescribed in § 1.1011-1 for determining loss over the amount realized from the sale. For this purpose, the adjusted basis for determining loss shall be the lesser of either of the following amounts, adjusted as prescribed in § 1.1011-1 for the period subsequent to the conversion of the property to income-producing purposes:

(i) The fair market value of the property at the time of conversion, or

(ii) The adjusted basis for loss, at the time of conversion, determined under § 1.1011-1 but without reference to the fair market value.

(3) For rules relating to casualty losses of property converted from personal use, see paragraph (a)(5) of § 1.165-7. To determine the basis for depreciation in the case of such property, see § 1.167(g)-1. For limitations on the loss from the sale of a capital asset, see paragraph (c)(3) of § 1.165-1.

(c) *Examples.* The application of paragraph (b) of this section may be illustrated by the following examples:

Example (1). Residential property is purchased by the taxpayer in 1943 for use as his personal residence at a cost of \$25,000, of which \$15,000 is allocable to the building. The taxpayer uses the property as his personal residence until January 1, 1952, at which time its fair market value is \$22,000, of which \$12,000 is allocable to the building. The taxpayer rents the property from January 1, 1952, until January 1, 1955, at which time it is sold for \$16,000. On January 1, 1952, the building has an estimated useful life of 20 years. It is assumed that the building has no estimated salvage value and that there are no adjustments in respect of basis other than depreciation, which is computed on the straight-line method. The loss to be taken into account for purposes of section 165(a) for the taxable year 1955 is \$4,200, computed as follows:

Basis of property at time of conversion for purposes of this section (that is, the lesser of \$25,000 cost or \$22,000 fair market value)	\$22,000
Less: Depreciation allowable from January 1, 1952, to January 1, 1955 (3 years at 5 percent based on \$12,000, the value of the building at time of conversion, as prescribed by § 1.167(g)-1)	1,800

Adjusted basis prescribed in § 1.1011-1 for determining loss on sale of the property	20,200
Less: Amount realized on sale	16,000

Loss to be taken into account for purposes of section 165(a)	4,200
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In this example the value of the building at the time of conversion is used as the basis for computing depreciation. See example (2) of this paragraph wherein the adjusted basis of the building is required to be used for such purpose.

Example (2). Residential property is purchased by the taxpayer in 1940 for use as his personal residence at a cost of \$23,000, of which \$10,000 is allocable to the building. The taxpayer uses the property as his personal residence until January 1, 1953, at which time its fair market value is \$20,000, of which \$12,000 is allocable to the building. The taxpayer rents the property from January 1, 1953, until January 1, 1957, at which time it is sold for \$17,000. On January 1, 1953, the building has an estimated useful life of 20 years. It is assumed that the building has no estimated salvage value and that there are no adjustments in respect of basis other than depreciation, which is computed on the straight-line method. The loss to be taken into account for purposes of section 165(a) for the taxable year 1957 is \$1,000, computed as follows:

Basis of property at time of conversion for purposes of this section (that is, the lesser of \$23,000 cost or \$20,000 fair market value)	\$20,000
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Internal Revenue Service, Treasury

§ 1.165-11

Less: Depreciation allowable from January 1, 1953, to January 1, 1957 (4 years at 5 percent based on \$10,000, the cost of the building, as prescribed by § 1.167(g)-1	2,000
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Adjusted basis prescribed in § 1.1011-1 for determining loss on sale of the property	\$18,000
Less: Amount realized on sale	17,000
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Loss to be taken into account for purposes of section 165(a)	1,000

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6712, 29 FR 3652, Mar. 24, 1964]

§ 1.165-10 Wagering losses.

Losses sustained during the taxable year on wagering transactions shall be allowed as a deduction but only to the extent of the gains during the taxable year from such transactions. In the case of a husband and wife making a joint return for the taxable year, the combined losses of the spouses from wagering transactions shall be allowed to the extent of the combined gains of the spouses from wagering transactions.

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

(a) *In general.* Section 165(h) provides that a taxpayer who has sustained a disaster loss which is allowable as a deduction under section 165(a) may, under certain circumstances, elect to deduct such loss for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

(b) *Loss subject to election.* The election provided by section 165(h) and paragraph (a) of this section applies only to a loss:

(1) Arising from a disaster resulting in a determination referred to in subparagraph (2) of this paragraph and occurring—

- (i) After December 31, 1971, or
- (ii) After December 31, 1961, and before January 1, 1972, and during the period following the close of a particular taxable year of the taxpayer and on or before the due date for filing the income tax return for that taxable year (determined without regard to any extension of time granted the taxpayer for filing such return);

(2) Occurring in an area subsequently determined by the President of the

United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1974; and

(3) Constituting a loss otherwise allowable as a deduction for the year in which the loss occurred under section 165(a) and the provisions of §§ 1.165-1 through 1.165-10 which are applicable to such losses.

(c) *Amount of loss to which election applies.* The amount of the loss to which section 165(h) and this section apply shall be the amount of the loss sustained during the period specified in paragraph (b)(1) of this section computed in accordance with the provisions of section 165 and those provisions of §§ 1.165-1 through 1.165-10 which are applicable to such losses. However, for purposes of making such computation, the period specified in paragraph (b)(1) of this section shall be deemed to be a taxable year.

(d) *Scope and effect of election.* An election made pursuant to section 165(h) and this section in respect of a loss arising from a particular disaster shall apply to the entire loss sustained by the taxpayer from such disaster during the period specified in paragraph (b)(1) of this section in the area specified in paragraph (b)(2) of this section. If such an election is made, the disaster to which the election relates will be deemed to have occurred in the taxable year immediately preceding the taxable year in which the disaster actually occurred, and the loss to which the election applies will be deemed to have been sustained in such preceding taxable year.

(e) *Time and manner of making election.* An election to claim a deduction with respect to a disaster loss described in paragraph (b) of this section for the taxable year immediately preceding the taxable year in which the disaster actually occurred must be made by filing a return, an amended return, or a claim for refund clearly showing that the election provided by section 165(h) has been made. In general, the return or claim should specify the date or dates of the disaster which gave rise to the loss, and the city, town, county, and State in which the property which was damaged or destroyed was located at the time of the disaster. An election in respect of a