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Rita Hite
Executive Vice President, American Tree
Farm System, Woodlands, and Policy
Tristan Daedalus
Policy Director
American Forest Foundation
2000 M Street NW Ste 550
Washington, DC 20036

Regarding: H.R. 4962

Dear Rita and Tristan:

This is a follow-up on H.R. 4962 Forest Recovery Act sponsored by Representative Buddy Carter of Georgia. Hopefully this bill will help call attention to the current tax inequity. Irrespective of whether H.R. 4962 is passed, it creates the credibility to work with Senator Daines and others.

On another important point, I am taking the liberty of expressing possible options to enhance the measure. I am offering these suggestions as a service to the members of the Montana Forest Owners Association.

From a big picture viewpoint, I see the following major issues with the bill:

1. The bill requires, as a consideration for the loss deduction, that the timber be reforested within five years. There must be some reason for putting this in the bill which I do not understand. A timber owner should be entitled to the full loss irrespective of what he or she does after the catastrophe. The damage and monetary loss occur at the time of the event. Further, this provision is difficult to enforce or monitor and may give opponents a reason to defeat the measure.
2. There is no reason to restrict losses to "uncut timber." It seems that the timber owner should be allowed a loss for all timber loss (cut or uncut). Damage to cut timber might be rarer, but could occur to decked logs, or to timber that was cut and in the process of limbing, etc.
3. Confusion arises when the bill inserts the term "casualty loss" into §165(b)(2) where it does not belong and only

causes confusion. The words "casualty loss" should be removed, at a minimum, from page 2, line 5, of the bill.

4. I do not understand the proposed revision to §165(h)(5)(A). What is its purpose? What is the situation where it would apply? If I do not understand this provision after repeated attempts, might others reach the same conclusion?
5. The proposed changes do not refer to the taxpayer's basis in computing the loss. As proposed, the law could create a conflict between §165(b)(1) and §165(b)(2). Section 165(b)(1) says the loss cannot exceed the basis but §165(b)(2) says the loss cannot be less than the difference in the fair market value before the loss and the salvage value. Both cannot be true. Further, there is no reference made to the resulting basis of the property after a loss is claimed. Does the original basis remain the same after the loss, or it is reduced or increased?
6. The fair market value before the loss should be further defined. The taxpayer has lost the opportunity to sell his or her timber at a good time of the year. Computing the fair market value at the exact time of the loss would be punitive.

There is an easier way to amend the law. Since the desired change only impacts timber owners, the entire law could be in a new section added to the Internal Revenue Code.

The following addition to Internal Revenue Code §165 may accomplish our goals:

"(n) Timber Losses

Notwithstanding any other provision of the Code, any deduction under subsection (c)(1) or under subsection (c)(2) for catastrophic losses to timber shall be allowed in an amount equal to the difference in fair market value of the timber (including pre-merchantable timber) immediately before and immediately after the catastrophic loss, without regard to any tax basis in the timber. The fair market value immediately before the catastrophic loss is defined as "the regional market value averaged across the prior 24 months." Any loss taken under this subsection (n) shall reduce the tax basis in the timber but shall not reduce the tax basis to less than zero, even if the taken-losses exceed the original tax basis. For this purpose, a catastrophic loss shall be limited to loss from fire, wind storms, ice storms, floods, earthquakes, and theft."

For easy reference, I have attached H.R. 4962 as Exhibit A, and §165 redlined per H.R. 4962 as Exhibit B.

I hope you take this letter seriously, and that you provide this letter to your experts who are dealing with this issue. These recommendations merit that level of consideration.

Thank you for all your efforts on behalf of non-industrial private forest landowners.

Sincerely yours,

A handwritten signature in cursive script that reads "Mike Christianson".

Michael J. Christianson

Exhibits:

- A H.R. 4962 Forest Recovery Act
- B Internal Revenue Code §165 redlined per H.R. 4962

.....
(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R.

To amend the Internal Revenue Code of 1986 to provide a special rule
for certain casualty losses of uncut timber.

IN THE HOUSE OF REPRESENTATIVES

Mr. CARTER of Georgia introduced the following bill; which was referred to
the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to provide
a special rule for certain casualty losses of uncut timber.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Timber Recovery Act”.

5 **SEC. 2. CASUALTY LOSSES OF UNCUT TIMBER.**

6 (a) IN GENERAL.—Section 165(b) of the Internal
7 Revenue Code of 1986 is amended—

8 (1) by striking “For purposes of subsection
9 (a)” and inserting the following:

1 “(1) IN GENERAL.—For purposes of subsection
2 (a)”, and

3 (2) by adding at the end the following new
4 paragraph:

5 “(2) SPECIAL RULE FOR CASUALTY LOSS OF
6 UNCUT TIMBER.—

7 “(A) IN GENERAL.—In the case of the loss
8 of any uncut timber from fire, storm, or other
9 casualty, or from theft, the basis for deter-
10 mining the amount of the deduction for such
11 loss (as otherwise determined under paragraph
12 (1)) shall not be less than the excess of—

13 “(i) the fair market value of such
14 uncut timber determined immediately be-
15 fore such loss was sustained, over

16 “(ii) the salvage value of such timber.

17 “(B) EXCLUSION OF TIMBER NOT HELD
18 FOR SALE.—Subparagraph (A) shall not apply
19 to any timber unless such timber is held for the
20 purpose of being cut and sold.

21 “(C) INCLUSION OF PRE-MERCHANTABLE
22 TIMBER.—For purposes of this paragraph, the
23 term ‘uncut timber’ shall not fail to include pre-
24 merchantable timber.

1 “(D) REFORESTATION REQUIREMENT.—
2 Subparagraph (A) shall not apply unless the
3 uncut timber subject to the loss is reforested
4 (with hardwoods, softwoods, or any combination
5 thereof) by planting, seeding, or appropriate
6 site preparation, not later than the close of the
7 5-year period beginning on the date of such
8 loss.”.

9 (b) EXCEPTION TO REPEAL OF PERSONAL CASUALTY
10 LOSSES.—Section 165(h)(5)(A) is amended by inserting
11 “or a loss of uncut timber (within the meaning of sub-
12 section (b)(2)) to which subsection (b)(2)(A) applies”
13 after “Federally declared disaster (as defined in sub-
14 section (i)(5))”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 the date of the enactment of this Act.

Checkpoint Contents

Federal Library

Federal Source Materials

Code, Regulations, Committee Reports & Tax Treaties

Internal Revenue Code

Current Code

Subtitle A Income Taxes §§1-1563

Chapter 1 NORMAL TAXES AND SURTAXES §§1-1400U-3

Subchapter B Computation of Taxable Income §§61-291

Part VI ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS §§161-199A

§165 Losses.

Internal Revenue Code

§ 165 Losses.

(a) General rule.

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction.

~~For purposes of subsection (a)(1)~~ **IN GENERAL. – for purposes of subsection (a)**, the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in [section 1011](#) for determining the loss from the sale or other disposition of property.

(2) SPECIAL RULE FOR CASUALTY LOSS OF UNCUT TIMBER.-

(A) IN GENERAL. – In the case of the loss of any uncut timber from fire, storm, or other casualty, or from theft, the basis for determining the amount of the deduction for such loss (as otherwise determined under paragraph (1)) shall not be less than the

excess of-

(i) the fair market value of such uncut timber determined immediately before such loss was sustained, over

(ii) the salvage value of such timber.

(B) EXCLUSION OF TIMBER NOT HELD FOR SALE. – Subparagraph (A) shall not apply to any timber unless such timber is held for the purpose of being cut and sold.

(C) INCLUSION OF PRE-MERCHANTABLE TIMBER. – For purposes of this paragraph, the term ‘uncut timber’ shall not fail to include pre-merchantable timber.

(D) REFORESTATION REQUIREMENT. – Subparagraph (A) shall not apply unless the uncut timber subject to the loss is reforested (with hardwoods, softwoods, or any combination thereof) by planting, seeding, or appropriate site preparation, not later than the close of the 5-year period beginning on the date of such loss.

(c) Limitation on losses of individuals.

In the case of an individual, the deduction under [subsection \(a\)](#) shall be limited to

(1)

losses incurred in a trade or business;

(2)

losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3)

except as provided in [subsection \(h\)](#) , losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses.

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions. For purposes of the preceding sentence, in the case of taxable years beginning after December 31, 2017, and before January 1, 2026, the term "losses from wagering transactions" includes any deduction otherwise allowable under this chapter incurred in carrying on any wagering transaction.

(e) Theft losses.

For purposes of [subsection \(a\)](#) , any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses.

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in [sections 1211 and 1212](#) .

(g) Worthless securities.

(1) General rule.

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined.

For purposes of [this subsection](#) , the term "security" means-

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation.

For purposes of [paragraph \(1\)](#) , any security in a corporation affiliated with a taxpayer which is a

domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if-

(A) the taxpayer owns directly stock in such corporation meeting the requirements of [section 1504\(a\)\(2\)](#) , and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom.

(h) Treatment of casualty gains and losses.

(1) Dollar limitation per casualty.

Any loss of an individual described in [subsection \(c\)\(3\)](#) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds \$500 (\$100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income.

(A) In general. If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of-

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses. If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year-

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Definitions of personal casualty gain and personal casualty loss.

For purposes of this subsection-

(A) Personal casualty gain. The term "personal casualty gain" means the recognized gain from any involuntary conversion of property which is described in [subsection \(c\)\(3\)](#) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss. The term "personal casualty loss" means any loss described in [subsection \(c\)\(3\)](#) . For purposes of paragraph (2), the amount of any personal casualty loss shall be determined after the application of [paragraph \(1\)](#) .

(4) Special rules.

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains. In any case to which [paragraph \(2\)\(A\)](#) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns. For purposes of [this subsection](#) , a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts. For purposes of [paragraph \(2\)](#) , the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax. No loss described in [subsection \(c\)\(3\)](#) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases. Any loss of an individual described in [subsection \(c\)\(3\)](#) to the extent covered by insurance shall be taken into account under [this section](#) only if the individual files a timely insurance claim with respect to such loss.

(5) Limitation for taxable years 2018 through 2025.

(A) In general. In the case of an individual, except as provided in [subparagraph \(B\)](#) , any personal casualty loss which (but for this paragraph) would be deductible in a taxable year beginning after December 31, 2017, and before January 1, 2026, shall be allowed as a deduction under subsection (a) only to the extent it is attributable to a Federally declared disaster (as defined in subsection (i)(5)) **or a loss of uncut timber (within the meaning of subsection (b)(2)) to which subsection (b)(2)(A) applies.**

(B) Exception related to personal casualty gains. If a taxpayer has personal casualty gains for any taxable year to which [subparagraph \(A\)](#) applies-

(i) [subparagraph \(A\)](#) shall not apply to the portion of the personal casualty loss not attributable to a Federally declared disaster (as so defined) to the extent such loss does not exceed such gains, and

(ii) in applying [paragraph \(2\)](#) for purposes of [subparagraph \(A\)](#) to the portion of personal casualty loss which is so attributable to such a disaster, the amount of personal casualty gains taken into account under [paragraph \(2\)\(A\)](#) shall be reduced by the portion of such gains taken into account under [clause \(i\)](#) .

(i) Disaster losses.

(1) Election to take deduction for preceding year.

Notwithstanding the provisions of [subsection \(a\)](#) , any loss occurring in a disaster area and attributable to a federally declared disaster 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.

(2) Year of loss.

If an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction is claimed.

(3) Amount of loss.

The amount of the loss taken into account in the preceding taxable year by reason of [paragraph \(1\)](#) shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss.

(4) Use of disaster loan appraisals to establish amount of loss.

Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a federally declared disaster may be used to establish the amount of any loss described in [paragraph \(1\)](#) or [\(2\)](#) .

(5) Federally declared disasters.

For purposes of [this subsection](#) -

(A) In general. The term '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.

(B) Disaster area. The term 'disaster area' means the area so determined to warrant such assistance.

(j) Denial of deduction for losses on certain obligations not in registered form.

(1) In general.

Nothing in [subsection \(a\)](#) or in any other provision of law shall be construed to provide a deduction for any loss sustained on any registration-required obligation unless such obligation is in registered form (or the issuance of such obligation was subject to tax under [section 4701](#)).

(2) Definitions.

For purposes of this subsection-

(A) Registration-required obligation. The term "registration-required obligation" has the meaning given to such term by [section 163\(f\)\(2\)](#) .

(B) Registered form. The term "registered form" has the same meaning as when used in

[section 163\(f\)](#) .

(3) Exceptions.

The Secretary may, by regulations, provide that this subsection and [section 1287](#) shall not apply with respect to obligations held by any person if-

(A) such person holds such obligations in connection with a trade or business outside the United States,

(B) such person holds such obligations as a broker dealer (registered under Federal or State law) for sale to customers in the ordinary course of his trade or business,

(C) such person complies with reporting requirements with respect to ownership, transfers, and payments as the Secretary may require, or

(D) such person promptly surrenders the obligation to the issuer for the issuance of a new obligation in registered form,

but only if such obligations are held under arrangements provided in regulations or otherwise which are designed to assure that such obligations are not delivered to any United States person other than a person described in [subparagraph \(A\)](#) , [\(B\)](#) , or [\(C\)](#) .

(k) Treatment as disaster loss where taxpayer ordered to demolish or relocate residence in disaster area because of disaster.

In the case of a taxpayer whose residence is located in an area which has been 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, if-

(1)

not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2)

the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in [subsection \(i\)](#) .

(l) Treatment of certain losses in insolvent financial institutions.

(1) In general.

If-

(A) as of the close of the taxable year, it can reasonably be estimated that there is a loss on a qualified individual's deposit in a qualified financial institution, and

(B) such loss is on account of the bankruptcy or insolvency of such institution,

then the taxpayer may elect to treat the amount so estimated as a loss described in [subsection \(c\)\(3\)](#) incurred during the taxable year.

(2) Qualified individual defined.

For purposes of [this subsection](#) , the term "qualified individual" means any individual, except an individual-

(A) who owns at least 1 percent in value of the outstanding stock of the qualified financial institution,

(B) who is an officer of the qualified financial institution,

(C) who is a sibling (whether by the whole or half blood), spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an individual described in [subparagraph \(A\)](#) or [\(B\)](#) , or

(D) who otherwise is a related person (as defined in [section 267\(b\)](#)) with respect to an individual described in [subparagraph \(A\)](#) or [\(B\)](#) .

(3) Qualified financial institution.

For purposes of [this subsection](#) , the term "qualified financial institution" means-

(A) any bank (as defined in [section 581](#)),

(B) any institution described in [section 591](#) ,

(C) any credit union the deposits or accounts in which are insured under Federal or State law or are protected or guaranteed under State law, or

(D) any similar institution chartered and supervised under Federal or State law.

(4) Deposit.

For purposes of [this subsection](#) , the term "deposit" means any deposit, withdrawable account, or withdrawable or repurchasable share.

(5) Election to treat as ordinary loss.

(A) In general. In lieu of any election under [paragraph \(1\)](#) , the taxpayer may elect to treat the amount referred to in [paragraph \(1\)](#) for the taxable year as an ordinary loss described in [subsection \(c\)\(2\)](#) incurred during the taxable year.

(B) Limitations.

(i) Deposit may not be federally insured. No election may be made under [subparagraph \(A\)](#) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

(ii) Dollar limitation. With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under [subparagraph \(A\)](#) may be made by the taxpayer for any taxable year shall not exceed \$20,000 (\$10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

(6) Election.

Any election by the taxpayer under [this subsection](#) for any taxable year-

(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

(B) may be revoked only with the consent of the Secretary.

(7) Coordination with section 166.

[Section 166](#) shall not apply to any loss to which an election under [this subsection](#) applies.

(m) Cross references.

(1)

For special rule for banks with respect to worthless securities, see [section 582](#) .

(2)

For disallowance of deduction for worthlessness of securities to which [subsection \(g\)\(2\)\(C\)](#) applies, if issued by a political party or similar organization, see [section 271](#) .

(3)

For special rule for losses on stock in a small business investment company, see [section 1242](#) .

(4)

For special rule for losses of a small business investment company, see [section 1243](#) .

(5)

For special rule for losses on small business stock, see [section 1244](#) .