

Wildfires and Federal Disaster Declarations: A Tax Perspective

by Robert W. Wood and Alex Z. Brown



Robert W. Wood



Alex Z. Brown

Robert W. Wood and Alex Z. Brown practice law with Wood LLP (www.WoodLLP.com). Wood is the author of *Taxation of Damage Awards and Settlement Payments* (www.TaxInstitute.com).

In this article, Wood and Brown examine the definition of federally declared disaster for tax purposes and the key benefits that hinge on it.

This discussion is not intended as legal advice.

Copyright 2025 Robert W. Wood and
Alex Z. Brown.
All rights reserved.

If your home or property is destroyed or damaged in a wildfire, you will likely have surprisingly complex tax issues. If you recover money from insurance or a lawsuit — or if you just claim a casualty loss on your taxes — you need to be aware of some tax rules. Several key tax issues and benefits hinge on whether your fire was a “federally declared disaster” for tax purposes.

Casualty Loss Deductions and More

Claiming a casualty loss on your taxes after a disaster can help you keep funds you would otherwise have to pay in taxes. Casualty loss

deductions are limited to the lesser of your adjusted tax basis in your damaged property, and the reduction in the fair market value of the property from the disaster. So even if you lost a very expensive home with a high FMV, if you paid a small amount for it many years ago, your basis — and therefore your tax deduction — is small.

Since 2018, you can generally claim this deduction only if your loss was in a federally declared disaster. This limitation is set to expire at the end of 2025, but the One Big Beautiful Bill Act in Congress would make the rule permanent. You can claim a casualty loss deduction in the tax year immediately before the year of the disaster. Thus, the Los Angeles fire victims who lost homes in January 2025 can claim a casualty loss on their 2024 taxes, even though the loss did not occur during 2024. Claiming a casualty loss is a popular tax break for fire victims in disaster areas, but it can have downsides if they later receive insurance or lawsuit proceeds.

Involuntary Conversions

Section 1033 is a key relief provision for victims of disasters. Generally, amounts received for damage to property, including property insurance payments, are treated as sales proceeds for tax purposes. Whether you have gain is based on your tax basis in the property.

Section 1033 generally allows property owners to elect to defer paying tax on their casualty gain. Making the election allows you to reinvest insurance or litigation proceeds into the repair, reconstruction, or replacement of your damaged property within a prescribed time limit. The time to reinvest can be tricky and depends heavily on your facts. It is possible that the section 1033 replacement period may have already ended (because of your previous receipt of insurance payments) when a litigation recovery for the fire is eventually paid. If you can meet the tricky timing,

you need not pay immediate tax on the casualty gain, and the gain can be deferred indefinitely until the property is later sold. The net effect of these rules is that a fire victim can often avoid owing any income tax on their insurance proceeds until the property is later sold.

Section 1033 in Federal Disaster Areas

The applicable rules under section 1033 depend on whether the involuntary conversion occurred in a federally declared disaster area. With a federally declared disaster, you can:

1. exclude from your income most insurance proceeds received for personal property damaged or destroyed in the disaster if that property was located at your primary residence;
2. treat all other insurance proceeds for damage to your primary residence as a single asset to get the full benefit of your adjusted tax bases in all the affected property before any casualty gain is produced;
3. treat the acquisition of any replacement property related to your principal residence as qualifying replacement property for any other property located at your principal residence;
4. double the replacement period for damaged property under a section 1033 election from two years to four years; and
5. treat the acquisition of any tangible property to be held for productive use in a trade or business as qualifying replacement property for any other damaged property that was held for productive use in a trade or business or held for investment.

If you have casualty gain from a federally declared wildfire that damaged your principal residence for the first time in a given tax year, you have four years from December 31 of that year to reinvest the proceeds under section 1033. Despite these more liberal tax rules, there can still be timing issues for nonprincipal residences, and more issues generally. Any casualty gain you have in any subsequent tax year must be reinvested by the same deadline, which was based on the first year you had casualty gain. Therefore, it is possible that some casualty gain may have less

than four years to be reinvested under section 1033, if casualty gain was first triggered in a previous tax year.

Although section 1033 is not the only tax code provision fire victims need to know, it is usually the main way that those victims can rebuild without current tax if their recovery payments produce casualty gain.

Tax Exclusion for 2020-2025

In December 2024 Congress enacted the Federal Disaster Tax Relief Act of 2023, providing an exclusion in the tax law so that many wildfire settlements are tax free if received during 2020 through 2025. The exclusion only applies to fires that were federally declared disasters. For wildfires that are not federally declared disasters, fire victims must rely on section 1033 and other provisions.

The new law applies only to payments to individuals, so partnerships, irrevocable trusts, and various other entities appear not to qualify. The exclusion's only major carveout is that an amount cannot be excluded if it compensates the taxpayer for a loss or expense that has already been reimbursed by another source, say through insurance.

What Are Federally Declared Disasters?

All these tax provisions use the "federally declared disaster" term and cite section 165(i)(5). Section 165(i)(5) defines a federally declared disaster as "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," commonly known as the Stafford Act. The Stafford Act appears to have three principal types of disaster relief declarations for wildfires:

1. emergency declarations under section 501 of the act;
2. major disaster declarations under section 401 of the act; and
3. fire management assistance declarations under section 420 of the act.

Emergency declarations are for emergencies in which immediate federal assistance is needed and the normal formalities for declaring a major

disaster would take too long. The Federal Emergency Management Agency website suggests disasters that receive emergency declarations under section 501 of the Stafford Act are often assigned numbers with the prefix “EM,” presumably for “emergency.”¹ Emergency declarations are less common for wildfires, perhaps because fire management assistance declarations under section 420 of the Stafford Act provide a separate avenue for emergency federal assistance with wildfires. Indeed, only two wildfires appear to have been issued emergency declarations since 2019: the 2020 Oregon wildfires² and the 2021 California Caldor fire.³

Major disaster declarations under section 401 of the Stafford Act have the prefix “DR” on the FEMA website. Major disaster declarations under the Stafford Act qualify victims for the widest scope of direct federal assistance through FEMA. If a fire victim checks to see if they qualify for direct federal assistance from the official U.S. government website, the application deadlines for direct federal relief are typically all disasters with major disaster declarations under section 401.⁴

Some wildfires were issued major disaster declarations, including the 2015 California Butte fires,⁵ the 2017 North Bay fires,⁶ and the 2018 Woolsey and Camp fires.⁷ Any wildfire with a major disaster declaration or an emergency declaration clearly qualifies as a federally declared disaster for tax purposes. Reg. section 1.165-11(b)(1) states that a federally declared disaster for tax purposes “includes both a major disaster declared under section 401 of the Stafford Act and an emergency declared under section 501 of the Stafford Act.” Therefore, these two types of declarations are specifically identified as being

included within the definition of a federally declared disaster for tax purposes.

Fire Management Assistance Declarations?

How about the third category? Reg. section 1.165-11(b)(1) is silent about fire management assistance declarations, the third major type of declaration for wildfires under the Stafford Act. The statutory language suggests that a federally declared disaster refers to any disaster that has received a declaration by (or by a delegation of) the president asserting that it qualifies for federal assistance under the Stafford Act. Plainly, section 420’s fire management assistance declarations (and the relief they authorize) are a form of federal assistance authorized under the text of section 420 to be provided or authorized by “the President” (although usually delegated in practice to a FEMA regional administrator).

Fire management assistance declarations usually do not provide or authorize the same scope of direct federal assistance to wildfire victims as major disaster declarations. Instead, fire management assistance declarations authorize FEMA to provide grant money, equipment, supplies, and personnel to state or local governments to help those governments more effectively deal with the containment of and recovery from wildfires.⁸ Perhaps because fire management assistance declarations do not provide direct federal assistance to the individual wildfire victims, for nontax purposes they are often treated as if they are not federally declared disasters, or as if they do not provide federal assistance to wildfire victims.

Because federal assistance is being provided to the state and local government, the individual victim’s point of contact to receive disaster relief may remain the state or local government, even if the relief appearing to be provided by that government is actually provided by the federal government under the fire management assistance declaration. However, section 165(i)(5) does not contain text suggesting that it is required that the federal government provide direct assistance to victims of a federally declared disaster. It only requires that the disaster be

¹ Similarly, all disaster declarations under the Stafford Act also appear to include a suffix indicating which state requested the federal assistance. Therefore, all disaster declarations for California wildfires appear to end with “CA.”

² EM-3542-OR.

³ EM-3571-CA. Sometimes the EM designation is listed after the declaration number, e.g., 3571-EM-CA instead of EM-3571-CA, but this does not appear to indicate any substantive distinction, and sometimes the ordering appears to change from webpage or document to other webpage or document for the same disaster.

⁴ See DisasterAssistance.gov.

⁵ DR-4240-CA.

⁶ DR-4344-CA.

⁷ DR-4407-CA.

⁸ See Stafford Act section 420, 42 U.S.C. section 5187.

determined by the president to “warrant assistance by the Federal Government” under the Stafford Act.

In a 2019 program manager technical assistance, the IRS Office of Chief Counsel concluded that for the purposes of qualifying as a federally declared disaster, the assistance granted under the Stafford Act could include “Individual Assistance and/or Public Assistance.”⁹ The term “Public Assistance” is generally used to describe the kind of indirect federal assistance through state or local governments authorized under provisions of the Stafford Act, including as a result of fire management assistance declarations.¹⁰

The provision of money, equipment, supplies, and FEMA personnel to a state or local government to assist in wildfire containment and recovery efforts appears under its plain meaning to squarely fall within the definition of “assistance by the Federal Government” under the Stafford Act. Indirect assistance may also be provided to state and local governments as the result of an emergency declaration or major disaster declaration. Although the term “federally declared disaster” by its plain meaning seems to most directly suggest the major disaster declaration under section 401 of the Stafford Act, the fact that emergency declarations are also specifically included within the definition of federally declared disaster under Treasury regulations suggests that the term should not be limited to major disaster declarations, despite the superficial similarities in terminology.

Many recent major wildfires received disaster declarations under section 420’s fire management assistance provisions. The LA fires in 2025, including those in Pacific Palisades, were originally granted federal management assistance declarations but not major disaster declarations. This is clear from the prefix “FM” to the FEMA disaster declaration numbers (that is, FM-5549-CA (Palisades fire), FM-5550-CA (Eaton fire), and

FM-5551-CA (Hurst fire)) and by the text of the notices announcing the disaster declarations.

However, on the day after wildfire victims were granted relief under section 420’s fire management assistance provisions, they were then also the subject of a major disaster declaration under section 401.¹¹ This supplemental disaster declaration is important for victims for nontax reasons because it opened up more avenues for direct federal assistance. But it is not clear that the major disaster declaration was required for federal tax purposes, if the fire management assistance declaration was already sufficient to qualify the fire as a federally declared disaster. For at least one recent wildfire, the 2021 Caldor fire, in order to provide the full scope of federal relief deemed needed, FEMA decided it was necessary to issue disaster declarations under all three provisions of the Stafford Act used to declare wildfire disasters: a major disaster declaration (DR-4619-CA), an emergency declaration (EM-3571-CA), and a fire management assistance declaration (FM-5413-CA).

Still, most wildfires remain disasters declared only under section 420’s fire management assistance relief provisions, without a major disaster declaration under section 401 or an emergency declaration under section 501.¹² In fact, between 2018 and 2025, 356 fires nationwide received fire management assistance declarations, but only 28 received major disaster declarations. We are not aware of any cases or IRS guidance suggesting that only the 28 wildfires with major disaster declarations are federally declared disasters within the meaning of code section 165(i)(5). They still appear to fall within the statutory definition.

More practically, FEMA’s website still identifies wildfires that have received fire management assistance declarations as “disasters” and has assigned them declaration numbers. Similarly to emergency declarations and major disaster declarations, fire management assistance declarations appear on the FEMA website under the heading “All Disaster

⁹ PMTA 2019-008 (Jun. 28, 2019).

¹⁰ See, e.g., Congressional Research Service, “A Brief Overview of FEMA’s Public Assistance Program” (Feb. 28, 2024) (“[Public Assistance] is only available after the President declares an emergency or major disaster or FEMA authorizes a Fire Management Assistant [sic] Grant (FMAG) under the Stafford Act.”).

¹¹ See DR-4856-CA.

¹² See, e.g., the 2019 California Kincadee fire (FM-5295-CA).

Declarations,” and the declaration information page for any fire management assistance declaration includes subheadings for “How a Disaster Gets Declared,” “Disaster Authorities,” “Historic Disasters,” “Disaster Recovery Centers,” and “More About This Disaster.”

Fire management assistance relief under section 420 of the Stafford Act appears to often be granted for wildfires for the same purpose that an emergency declaration might be used outside the wildfire context. There have only been four wildfires nationwide that have been issued emergency declarations since 2018, compared with the 356 fires that received a fire management assistance declaration.

During the same period, the FEMA website’s search function produced emergency declarations under section 501 of the Stafford Act for at least 23 disasters involving flooding, 61 disasters involving hurricanes, and 10 disasters involving tornadoes. This suggests that a principal reason, perhaps *the* principal reason, that only four wildfires were issued emergency declarations in the same period may be that substantially the same federal emergency assistance normally provided through emergency declarations for other types of disasters is being provided for wildfires through the fire management assistance declarations.

There are of course differences between the two types of declarations.¹³ However, both are usually granted to provide federal assistance to state and local governments to help contain emerging disasters. The regulations under section 165 suggest that emergency declarations under section 501 of the Stafford Act are considered federally declared disasters for tax purposes, regardless of whether they later result in a major disaster declaration. It would be unusual if similar federal assistance usually provided for wildfires, and also under a provision of the Stafford Act, would not be treated similarly as an emergency declaration for income tax purposes.

State-Declared Disasters

Some devastating wildfires were not designated as disasters by FEMA under any provisions of the Stafford Act. For example, 2020’s Mountain View fire burned for nearly a month, consuming nearly 21,000 acres in California, destroying 80 buildings (damaging many more), and killing at least one person. Nevertheless, this fire was not large enough for FEMA to consider it outside the combined capability of the California state and local governments and relief organizations to address without federal involvement. Therefore, the Mountain View fire was designated a state disaster by California, but not a federal disaster by FEMA.

A disaster declaration by a state is not sufficient to qualify a disaster as a federally declared disaster for federal tax purposes. Section 165(i)(5) clearly requires a federal designation under the Stafford Act, a federal law. It is easy to get confused, but no state-declared disaster that is not a federally declared disaster has a disaster description and designation on the FEMA website. For example, there is no FEMA disaster declaration page for the 2020 Mountain View fire, under the EM, DR, or FM prefixes.

For state-declared disasters that are not federally declared disasters, the main federal recognition of the disaster is not by FEMA. Instead, the recognition (if any) is usually by the U.S. Small Business Administration. The Small Business Act authorizes the SBA to facilitate loans to victims in the aftermath of disasters, and the relevant definition for disaster under the Small Business Act’s disaster loan assistance program is broader than just federally declared disasters; it can include state-declared disasters.¹⁴

Therefore, in state-declared disasters, the SBA may publish a notice in the *Federal Register* acknowledging that a state-declared disaster qualifies for loan assistance under the Small Business Act.¹⁵ These SBA notices also assign a disaster number to the disasters that qualify for disaster loan assistance under the Small Business

¹³ See, e.g., FEMA, “Wildfires and Declarations: An Overview” (Apr. 2024).

¹⁴ P.L. 85-536, as amended, 15 U.S.C. 631 *et seq.*

¹⁵ See, e.g., “Administrative Declaration of a Disaster for the State of California,” 86 F.R. 1558 (Jan. 8, 2021).

Act, presumably to help with the administration of the disaster loan assistance program.

The disaster numbers the SBA assigned to state-declared disasters for the disaster loan assistance program under the Small Business Act do not correspond to the formatting of FEMA disaster declarations, but most wildfire victims likely may not notice such an arcane sign that the SBA notices are related to an entirely different statutory regime. It can be confusing for wildfire victims if during their internet research, they come across an SBA notice in the *Federal Register* regarding a wildfire. The fact that it is a federal agency assigning a disaster number to the wildfire in the *Federal Register* as part of an announcement that relief under a federal law is available to victims can easily make it seem like the disaster being described must be a federally declared disaster.

However, for federal income tax purposes, a federally declared disaster must be a disaster declared under a provision of the Stafford Act, which is nominally done by the president

although nearly always in practice by delegation to FEMA. Unfortunately for the victims of the wildfires that fall into the category of state-declared disasters, an SBA notice applying the disaster loan assistance provisions under the Small Business Act is not sufficient to make a state-declared disaster a federally declared disaster for income tax purposes.

Conclusion

Wildfire victims face tax challenges no matter what, and it is easy to get overwhelmed. Federal disaster declarations can make the tax road much easier, starting with extended filing deadlines and other various types of relief. More materially, federal disaster declarations have enormous impacts on casualty loss deductions, more liberal section 1033 deferral rules, and the huge tax exclusion that the recently passed Federal Disaster Tax Relief Act of 2023 can provide. And it may not be as simple as you think to determine if a particular fire was the subject of a qualifying declaration. ■