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and was attributable to the events giving rise to the Presidential disaster declaration, such losses are deductible without regard to whether aggregate net losses exceed ten percent of a taxpayer's adjusted gross income. Under the provision, in order to be deductible, the losses must exceed \$500 per casualty. Additionally, such losses may be claimed in addition to the standard deduction.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with a clarification that casualty loss relief applies to losses arising in taxable years beginning after December 31, 2015, and before January 1, 2018.

6. Attorneys' fees relating to awards to whistleblowers (sec. 11078 of the Senate amendment and sec. 62(a)(21) of the Code)

PRESENT LAW

The Code provides an above-the-line deduction for attorneys' fees and costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination, certain claims against the Federal Government, or a private cause of action under the Medicare Secondary Payer statute.³⁸⁶ The amount that may be deducted above-the-line may not exceed the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim. Additionally, the Code provides an above-the-line deduction for attorneys' fees and costs paid by, or on behalf of, the individual in connection with any award for providing information regarding violations of the tax laws.³⁸⁷ The amount that may be deducted above-the-line may not exceed the amount includible in the taxpayer's gross income for the taxable year on account of such award.³⁸⁸

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides an above-the-line deduction for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim under State False Claim

³⁸⁶ Secs. 62(a)(20) and (e). Section 62(e) defines "unlawful discrimination" to include a number of specific statutes, any federal whistle-blower statute, and any federal, state, or local law "providing for the enforcement of civil rights" or "regulating any aspect of the employment relationship . . . or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law."

³⁸⁷ Secs. 7623 and 62(a)(21).

³⁸⁸ Secs. 7623 and 62(a)(21).

Acts, the SEC whistleblower program,³⁸⁹ and the Commodity Future Trading Commission whistleblower program.³⁹⁰

Effective date.—The provision is effective for taxable years beginning after December 31, 2017.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Clarification of whistleblower awards (sec. 11079 of the Senate amendment and new sec. 7623(c) of the Code)

PRESENT LAW

Awards to whistleblowers

The Code authorizes the IRS to pay such sums as deemed necessary for: “(1) detecting underpayments of tax; or (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same.”³⁹¹ Generally, amounts are paid based on a percentage of proceeds collected based on the information provided.

The Tax Relief and Health Care Act of 2006 (the “Act”)³⁹² established an enhanced reward program for actions in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000 and, if the taxpayer is an individual, the individual’s gross income exceeds \$200,000 for any taxable year in issue. In such cases, the award is calculated to be at least 15 percent but not more than 30 percent of collected proceeds (including penalties, interest, additions to tax, and additional amounts).

The Act permits an individual to appeal the amount or a denial of an award determination to the United States Tax Court (the “Tax Court”) within 30 days of such determination. Tax Court review of an award determination may be assigned to a special trial judge.

Rules relating to taxpayers with foreign assets

U.S. persons who transfer assets to, and hold interests in, foreign bank accounts or foreign entities may be subject to self-reporting requirements under both the Foreign Account Tax Compliance Act provisions in the Code and the provisions in the Bank Secrecy Act and its underlying regulations (which provide for FinCEN Form 114, Report of Foreign Bank and Financial Accounts, the “FBAR”), as discussed below. Amounts recovered for violations of FATCA provisions in the Code may be considered for purposes of computing a whistleblower award under the Code. However, the IRS has found that amounts recovered for violations of non-tax laws, including the provisions of the Bank Secrecy Act (and FBAR) for which the IRS has delegated authority, may not be considered for purposes of computing an award under the Code.³⁹³

³⁸⁹ 15 U.S.C. secs. 78u–6 and 78u–7.

³⁹⁰ 7 U.S.C. sec. 26.

³⁹¹ Sec. 7623.

³⁹² Pub. L. No. 109–432.

³⁹³ Chief Counsel Memorandum, “Scope of Awards Payable Under I.R.C. section 7623,” April 23, 2012, available at <http://www.tax-whistleblower.com/resources/PMTA-2012-10.pdf>. Under Title 31, “[t]he Secretary may pay a reward to an individual who provides original information