

Employer Qualified Disaster Relief Payments to Hurricane Harvey Victims are *not* taxable

In view of the devastation caused by Hurricane Harvey, employers are reminded that disaster relief payments made to employees who are victims of the storm may be excludable from gross income and taxable wages under IRC Section 139.

Background

IRC Section 139, added to the Code by the Victims of Terrorism Tax Relief Act of 2001, states that gross income does not include any amount received by an individual as a "qualified disaster relief payment." IRC Section 139(d) further specifies that a qualified disaster relief payment also will not be treated as wages for employment tax purposes or as net earnings from self-employment for self-employment tax purposes.

The term, "qualified disaster relief payment," means any amount paid to or for the benefit of an individual:

- ❖ To reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- ❖ To reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent such need is attributable to a qualified disaster, or
- ❖ By a federal, state, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare.

However, qualified disaster relief payments do not include payments for any expenses compensated by insurance or otherwise.

A "qualified disaster" means, among other things, a presidentially declared disaster as defined in IRC Section 165(h)(3)(C)(i) — i.e., any disaster determined by the President to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Employer payments to aid Hurricane Harvey victims

As a result of Hurricane Harvey, President Trump has declared various counties in [Texas](#) as major disaster areas. The President also made an emergency declaration

Texas Counties Eligible for Employer Disaster Relief Payments

- ❖ Aransas
- ❖ Austin
- ❖ Bastrop
- ❖ Bee
- ❖ Brazoria
- ❖ Calhoun
- ❖ Chambers
- ❖ Colorado
- ❖ DeWitt
- ❖ Fayette
- ❖ Fort Bend
- ❖ Galveston
- ❖ Goliad
- ❖ Gonzales
- ❖ Hardin
- ❖ Harris
- ❖ Jackson
- ❖ Jasper
- ❖ Jefferson
- ❖ Karnes
- ❖ Kleberg
- ❖ Lavaca
- ❖ Liberty
- ❖ Matagorda
- ❖ Montgomery
- ❖ Newton
- ❖ Nueces
- ❖ Orange
- ❖ Polk
- ❖ Refugio
- ❖ Sabine
- ❖ San Jacinto
- ❖ San Patricio
- ❖ Victoria
- ❖ Walker
- ❖ Waller
- ❖ Wharton

for [Louisiana](#); however, the Federal Emergency Management Agency (FEMA) has not yet listed the specific areas covered. (Note that the Louisiana governor [requested assistance](#) for the parishes of Beauregard, Calcasieu, Cameron, Jefferson Davis and Vermillion.)

The legislative history to IRC Section 139 indicates that a qualified disaster relief payment may be from any source, including an employer. The legislative history further provides that "in light of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the exclusion, provided that the amount of payments can be reasonably expected to be commensurate with the expenses incurred."

In Revenue Ruling 2003-12, the IRS cited this legislative history and ruled that employer grants to employees to cover medical, temporary housing and transportation expenses incurred as a result of a presidentially declared disaster (which were not reimbursed through insurance or otherwise) were excludable from income, even though the employees were not required to provide proof of actual expenses in order to receive a grant. However, the IRS indicated that the employer program at issue contained requirements to ensure that the grant amounts were reasonably expected to be commensurate with the amount of unreimbursed reasonable and necessary medical, temporary housing and transportation expenses incurred as a result of the disaster.

Deductibility of relief payments

The legislative history to IRC Section 139 states that no change from prior law was intended as to the deductibility of qualified disaster relief payments made by an employer merely because the payments are excludable by recipients. "Thus, it is intended that payments excludable from income under the provision are deductible to the same extent they would be if they were includable in income."

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