

WNTS Insight

A Washington National Tax Services (WNTS)
Publication

November 9, 2012

Employers may provide tax-free relief to victims of Hurricane Sandy

In brief

Recent announcements by the IRS will make it easier for employers and employees to provide tax-free support to co-workers, their families, and other individuals who have been affected by Hurricane Sandy. Employers and individuals located in the areas affected by Hurricane Sandy may receive significant relief with respect to certain employment tax withholding and reporting obligations.

In IR-2012-84, the IRS announced that Hurricane Sandy was a 'qualified disaster' for purposes of Code section 139. As a result, certain relief payments made by employers to employees are excluded from the employee's gross income and wages.

In IR-2012-88, the IRS stated that employees may donate their vacation, sick, or personal leave in exchange for employer contributions to qualified charities assisting the Hurricane Sandy victims.

Finally, in IR-2012-83, the IRS postponed various employment tax filing and payment deadlines until February 1, 2013. The relief currently applies to affected taxpayers located in Connecticut, New Jersey, and New York. Other locations may be added based on additional damage assessments by the Federal Emergency Management Agency.

Tax-free reimbursements to employees

Many employers are providing financial assistance to employees affected by Hurricane Sandy. In IR-2012-84, the IRS informed employers and other taxpayers that because Hurricane Sandy is designated as a qualified disaster for federal tax



purposes, qualified disaster relief payments made to individuals by their employer or any person can be excluded from those individuals' taxable income.

Under section 139, gross income does not include any amount received by an individual as a 'qualified disaster relief payment.' Qualified disaster relief payments include reimbursements made to cover necessary personal, family, living, or funeral expenses that are not covered by insurance. In addition, reimbursements made to repair or rehabilitate personal residences or replace the contents of a residence are qualified payments to the extent the expenses are not covered by insurance.

Amounts that are excluded from gross income as qualified disaster relief payments are not treated as wages, net earnings from self-employment, or compensation subject to tax. Thus, they are not reported on Forms W-2 or 1099 and are not subject to federal income, social security, Medicare, unemployment (FUTA), or self-employment taxes.

Additionally, under Revenue Ruling 2003-12, generally applicable documentation requirements do not apply to qualified disaster relief payments. The ruling indicates that the IRS will not require individuals to account for actual disaster-related expenses if the amount of the payments reasonably is expected to be commensurate with the expenses incurred.

Relief for leave donation and leave-sharing plans

Leave donations. In IR-2012-88, the IRS indicated that employees may elect to forego their vacation, sick, or personal leave to assist the victims of Hurricane Sandy. Under the temporary rules, employers may give cash to the charitable organizations in exchange for the value of leave time donated by their employees. The money must be donated by January 1, 2014, and must be made to a section 170(c) organization for the relief of victims of Hurricane Sandy.

The value of the donated leave will not be included in the employee's income or wages. Accordingly, it will not be subject to income or employment tax withholding or reported in the employee's Form W-2. However, employers will be permitted a deduction for the cash payments.

Notice 2012-69 provides the details of the tax relief. Similar relief was provided to encourage charitable leave donations following Hurricane Katrina in 2005 and after the September 11, 2001, terrorist attacks.

Major disaster leave-sharing plans. Employers already may have a major disaster leave-sharing plan in place. These plans are intended to enable employees to donate leave that will be used by, and provide relief to, their co-workers. As a result, under existing tax guidance, employees may donate sick or vacation days to an employer-sponsored leave-sharing plan to assist co-workers who may have been adversely affected by the hurricane.

Notice 2006-59 provides guidance on the federal employment tax consequences of certain leave-sharing plans that permit employees to deposit leave in an employer-sponsored leave bank for use by other employees who have been adversely affected by a major disaster. Specifically, the donated leave will not be included in the donor-employee's wages for federal income and employment tax purposes, provided that the leave-sharing plan meets certain requirements. However, payments made must be treated as wages to the leave recipient for federal income and employment tax

purposes. Furthermore, the employee-donor may not claim an expense, charitable contribution, or loss deduction for the leave donation.

Postponement of filing and payment deadlines

The IRS announced in IR-2012-83 that it is postponing various employment tax filing and payment deadlines starting in late October, giving affected taxpayers until February 1, 2013, to file these returns and pay any taxes due.

Specifically, an employer's third- and fourth-quarter Forms 941, normally due on October 31, 2012, and January 31, 2013, respectively, are due February 1, 2013. Similarly, Form 940, an employer's annual FUTA tax return, is due February 1, 2013. In addition, the IRS is waiving failure-to-deposit penalties associated with federal income, social security, Medicare, and FUTA tax deposits due on or after the disaster area start date as long as the deposits are made by November 26, 2012.

The IRS automatically will abate interest, late payment, and late filing penalties for taxpayers located in the disaster areas. In addition, the IRS will work with taxpayers outside the disaster area if their books, records, or tax professionals are located in the areas affected by Hurricane Sandy.

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