

# Employers Can Provide Tax-Free Disaster Assistance to Employees

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The **Internal Revenue Code (Code)** allows an employer to provide tax-free disaster relief to its employees, and the employer may still take a tax deduction for these payments, if the payments constitute qualified disaster relief payments. To qualify for the tax-free treatment, Code Section 139 defines a “qualified disaster relief payment” to mean any amount paid to or for the benefit of an individual, including payments to employees:

- 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 rented or owned personal residence (or to repair, rehabilitate or replace its contents) damaged by a qualified disaster

Of importance, qualified disaster relief payments exclude any income replacement payments, such as payments of lost wages, lost business income or unemployment benefits. In addition, although an employee is not required to substantiate that the qualified disaster relief payments are related to a qualified disaster, the employer may exclude such payments from income only to the extent that insurance does not otherwise compensate the employee for the loss.

A “qualified disaster” under Code Section 139 includes a presidential-declared disaster or an event the Secretary of the Treasury determines is catastrophic. Localities impacted by Hurricane Sandy that have been designated for qualified disaster treatment include:

- **Connecticut Counties:** Fairfield, Mashantucket Pequot Indian Reservation, Middlesex, New Haven and New London
- **New Jersey Counties:** Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, Somerset and Union
- **New York Counties:** Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk and Westchester

Although qualified disaster relief payments assist employees, the payments also confer tax benefits on the employer and the following:

- Qualified disaster relief payments are not subject to federal income or employment taxes, and are not subject to withholding and reporting requirements for such taxes
- Qualified disaster relief payments may be made in cash or in kind, and there is no dollar limit

Given the benefits of tax-free status for qualified disaster relief payments, employers that choose to provide such payments should consider adopting an administrative system that validates such payments meet Code Section 139 requirements. Such a system can include a short application form for assistance that validates the disaster for which relief is sought, contains an affirmative statement from the employee that the requested funds are necessary for expenses and repairs incurred as a result of the disaster, and confirms that such expenses are not reimbursable by insurance.

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