KPMG

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KPMG report: Tax relief available for businesses affected by Hurricane Harvey

Companies affected by Hurricane Harvey and its aftermath—particularly those in counties designated by the federal government as disaster areas—may benefit from a number of federal and state tax relief provisions. Set forth below is a brief description of some of the relief measures that may be available. KPMG has tax professionals in Houston and elsewhere ready to assist affected companies understand and implement these provisions.

In addition to the items discussed below, additional tax benefits are available for companies in their efforts to assist employees through leave banks, employee loans, and other forms of assistance. Application of the federal employment tax rules to these company-sponsored efforts is discussed separately in ***TaxNewsFlash***.

As of September 1, 2017, the following Texas counties have been declared federal disaster areas by the IRS: Aransas, Bee, Brazoria, Calhoun, Chambers, Colorado, Fayette, Fort Bend, Galveston, Goliad, Hardin, Harris, Jackson, Jasper, Jefferson, Kleberg, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Refugio, Sabine, San Jacinto, San Patricio, Victoria, Waller, and Wharton.

KPMG is monitoring for the potential designation of additional counties in Texas or parishes in Louisiana to this list. The most up-to-date list of counties designated as federal disaster areas as a result of Hurricane Harvey is available on the **FEMA website**.

Federal tax relief

Return filing dates

The IRS has granted businesses in the Texas counties listed above until January 31, 2018, to file certain business tax returns and to make certain tax payments. This automatic postponement applies to affected taxpayers filing most federal tax returns (including among others, corporate, partnership, S corporation, and employment and certain excise tax returns) that have either an original or extended due date occurring on or after August 23, 2017, and before January 31, 2018.

Affected taxpayers having an estimated income tax payment originally due on or after August 23, 2017, and before January 31, 2018, will not be subject to penalties for failure to pay estimated tax installments as long as such payments are paid on or before January 31, 2018. The deadline for other specific time-sensitive actions that are due to be performed on or after August 23, 2017, and before January 31, 2018, are postponed as well.

The postponement generally will not apply, however, to certain other forms, including information returns in the W-2, 1094, 1095, 1097, 1098, or 1099 series, or to employment and excise tax deposits. However, late-deposit penalties on deposits due on or after August 23, 2017, and before September 7, 2017, will be abated as long as the deposits are made by September 7, 2017.

The IRS automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area. As a result, taxpayers need not contact the IRS to get this relief. Taxpayers outside the federally declared disaster area having books and records affected by Hurricane Harvey, however, are directed to contact the IRS at (866) 562-5227.

If a taxpayer's tax professional is located in an affected area, the taxpayer can qualify for relief. See IRM 20.1.3.1.6.2.1(4)(A) which specifically includes a taxpayer's "responsible tax professional" being located in the disaster area. This would be especially true if the responsible tax professional possesses the relevant books and records required for preparing a return or a filing. Read the **IRS release**.

Accelerated casualty loss claims

Businesses that suffered uninsured and unreimbursed disaster-related losses can choose to deduct those losses on either the return for the year the loss occurred (in this instance, the 2017 return normally filed next year) or the return for the prior year (2016). Companies that have already filed their 2016 federal tax return need to consider filing an amended return in order to accelerate the relief available through what in many cases will be substantial casualty loss deductions. Rev. Proc. 2016-53 discusses this option in greater detail.

Special rules are available for deducting casualty losses of inventory, including items held for sale to customers.

KPMG observation

The tax law generally requires a casualty loss to be substantiated with a "competent appraisal." The accuracy of the appraisal depends, in part, upon the appraiser's familiarity with the taxpayer's property before and after the casualty; the appraiser's knowledge of sales of comparable property in the area; the appraiser's knowledge of conditions in the area of the casualty; and the appraiser's method of appraisal.

KPMG's Houston-based Economic and Valuation Services professionals are keenly attuned to each of these factors in the areas affected by Hurricane Harvey and are available to assist in determining and substantiating the company's casualty loss deduction.

Charitable contributions

In addition to the normally available deduction for charitable contributions, the tax law also provides an enhanced deduction for the donation of inventory—including food inventory—to charitable organizations for use by the ill, needy, or infants. Although charitable contributions of inventory or other "ordinary income" property normally are limited to the donor's basis in the property, if the donation is made to assist the ill, needy, or infants, the deduction instead equals the lesser of: (1) the basis of the contributed inventory plus one-half of the ordinary income that would have been recognized if the property were sold for its fair market value; or (2) twice the basis of the property.

The rules governing charitable contributions can be complex. KPMG tax professionals can assist companies navigate these requirements.

Involuntary conversions

The tax law provides special rules applicable to business property "involuntarily converted" within a federally declared disaster area. Taxpayers receiving insurance proceeds from business property destroyed by Hurricane Harvey and the resulting floods may be entitled to invest those proceeds in other tangible property to be held for productive use in a trade or business by complying with the procedural requirements of section 1033 of the tax code. As a general rule, this requires reinvesting the insurance proceeds in similar property within two years of the date when the taxpayer receives the insurance proceeds.

Special rules also are available for businesses that due to floods or other weather-related conditions sell livestock (other than poultry) in excess of the number that would have been sold under usual business practices. The proceeds from such sales may be eligible to be treated as gains from an involuntary conversion, and not taxed currently as long as they are reinvested in similar property within four years (for taxpayers within federally declared disaster areas).

Like-kind exchange relief

Taxpayers affected by Hurricane Harvey may have sold property (the relinquished property) and intended to reinvest the proceeds in a like-kind exchange under section

1031, which would require that replacement property be identified within 45 days and received within 180 days of the sale of the relinquished property.

Section 7805A and the regulations thereunder contain a list of time-sensitive acts that the IRS may postpone for taxpayers affected by a federally declared disaster. Rev. Proc. 2007-56 supplements that list and includes the time periods related to a like-kind exchange under section 1031. Thus, the IRS may postpone the 45-day identification period and the 180-day exchange period for deferred exchanges (and certain time periods under Rev. Proc. 2000-37 for reverse exchanges). Taxpayers are only entitled to postponement if the IRS publishes a notice or issues other guidance (including an IRS news release) providing relief.

A **news release** (dated August 29 and updated August 30, 2017) reports that a major disaster exists in the State of Texas. Thus, a taxpayer that has sold relinquished property as part of a like-kind exchange qualifies for a postponement under the general rule if: (1) the relinquished property was transferred **on or before the date of the federally declared disaster** (or in a transaction governed by Rev. Proc. 2000-37, qualified indicia of ownership were transferred to the exchange accommodation titleholder on or before that date); and (2) the taxpayer is an “affected taxpayer” (as defined in the IRS news release) or has difficulty meeting the 45-day identification or 180-day exchange deadlines for certain reasons articulated in Rev. Proc. 2007-56. Presumably, a taxpayer that has transferred the relinquished property on or before the last day of the disaster would qualify for postponement.

Temporary diesel fuel penalty waiver

Due to shortages in the availability of undyed diesel fuel caused by Hurricane Harvey, the IRS will not impose a penalty when dyed diesel fuel is sold for use or used on the highway. The penalty relief is available to any person that sells or uses dyed fuel for highway use. In the case of an operator of a vehicle in which the dyed fuel is used, the relief is available only if the operator or the person selling the fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use. Read the **IRS release**.

Ordinarily, dyed diesel fuel is not taxed because it is sold for uses exempt from excise tax—such as for off-highway business use (for business use other than in a highway vehicle registered or required to be registered for highway use), on a farm for farming purposes, for home heating use, and use in certain buses.

The relief applies beginning August 25, 2017, and is effective through September 15, 2017. This relief from the diesel fuel penalty is available in the following areas and counties:

- The Houston-Galveston-Brazoria area (the counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller)

- The Beaumont-Port Arthur area (the counties of Hardin, Jefferson, and Orange)

- The Dallas-Fort Worth area (the counties of Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, and Rockwall)

- The counties of Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood

The IRS has indicated it is closely monitoring the situation, and will provide additional relief as needed.

State tax relief

Texas

The Texas Comptroller has set up a process whereby affected Texas taxpayers may request a 90-day extension for the filing of various Texas tax returns and making required monthly and quarterly tax remittances.

The Texas Comptroller also has announced that the rental of rooms in hotels and motels by evacuees and relief workers will be exempt from the Texas state and local hotel occupancy tax.

Other relief includes the following.

- Labor charges related to the repair or restoration of nonresidential real property damaged due to a declared disaster are exempt from tax. There is no state tax on labor charges related to residential real property.

- Labor charges related to the repair or restoration of tangible personal property damaged by a declared disaster are exempt from tax.

Texas and other states offer certain other disaster-related relief in parallel with those offered for federal tax purposes (e.g., food donations). Read more about Texas-specific relief on the Comptroller's **website**.

The State of Texas also supports the IRS penalty waivers for the use of dyed fuel for highway purposes. The Comptroller will not impose the state fuel tax on dyed fuel used on-road exclusively for hurricane relief efforts through September 15, 2017. Also, clear diesel fuel used off-road for relief efforts is exempt (refund available) through September 15, 2017.

KPMG observation

A number of other states have begun issuing guidance on the availability of filing and payment relief for taxpayers affected by Hurricane Harvey. A number of these state tax postponements will key off the IRS relief (described above), but there will be variations from state to state.

Tax professionals with KPMG's Washington National Tax are monitoring these developments and will be working closely with the KPMG Houston tax team in helping clients identify and qualify for all available state tax relief measures.

Read more about tax relief on KPMG's **webpage dedicated to disaster relief**.

KPMG observation

KPMG's Houston tax team, working in consultation with tax professionals of KPMG's Washington National Tax practice and KPMG tax professionals throughout the nation, is available to help companies identify and implement the relief measures available to help mitigate at least some of the devastation resulting from Hurricane Harvey. To discuss the relief that may be available to your company, contact the following tax professionals.

For more information, contact a KPMG tax professional in the Houston office:

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