TaxNewsFlash

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

Companies affected by Hurricane Irma and its aftermath—particularly those in counties designated by the federal government as disaster areas—may benefit from a number of federal tax relief provisions. Set forth below is a brief description of some of the relief measures that may be available. KPMG has tax professionals throughout the affected areas and elsewhere ready to assist 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 are discussed in a **KPMG report** [PDF 70 KB].

Disaster areas

As of September 14, 2017, the following areas have been declared federal disaster areas:

- **Florida:** The counties of Brevard, Broward, Charlotte, Citrus, Clay, Collier, DeSoto, Duval, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, Sumter, St. Johns, St. Lucie, and Volusia

- **Puerto Rico:** The municipalities of Culebra, Vieques, Canóvanas, and Loíza

- **U.S. Virgin Islands:** The islands of St. John and St. Thomas

The most up-to-date list of counties designated as federal disaster areas as a result of Hurricane Irma is available on the IRS.gov disaster relief page and on the **FEMA website**.

Federal tax relief

Return filing dates

The IRS has granted taxpayers in the areas (listed above) until January 31, 2018, to file certain tax returns and to make certain tax payments that occurred starting on September 4, 2017, in Florida, and starting on September 5, 2017, in Puerto Rico and the Virgin Islands.

The relief parallels that granted last month to victims of Hurricane Harvey.

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 September 4, 2017 (for Florida) or September 5, 2017 (for Puerto Rico and the Virgin Islands), and before January 31, 2018. As a result, affected taxpayers will have until January 31, 2018, to file returns and pay any taxes that were originally due during this period.

This relief includes the September 15, 2017 and January 16, 2018 deadlines for making quarterly estimated tax payments, and the quarterly payroll and excise tax returns normally due on October 31, 2017. It also includes tax-exempt organizations that operate on a calendar-year basis and had an automatic extension due to run out on November 15, 2017.

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 September 4, 2017, and before September 19, 2017, will be abated as long as the deposits are made by September 19, 2017 (for Florida).

Late-deposit penalties on deposits due on or after September 5, 2017, and before September 20, 2017 for Puerto Rico and the Virgin Islands will be abated as long as the deposits are made by September 20, 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 Irma, 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 releases:

- Concerning relief for Florida taxpayers—**FL-2017-04**
- Concerning relief for Puerto Rico taxpayers—**PR-2017-01**
- Concerning relief for U.S. Virgin Islands taxpayers—**VI-2017-01**

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" (although an alternative computation using the costs of repairing damage is also available). 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 Economic and Valuation Services professionals located in the affected areas are keenly attuned to each of these factors in the areas affected by Hurricane Irma 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. These rules may be particularly important for casualty insurance proceeds that exceed the tax basis in the destroyed property, which would otherwise be taxable income. Taxpayers receiving insurance proceeds from business property destroyed by Hurricane Irma 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 Code section 1033. As a general rule, this requires reinvesting the insurance proceeds in similar property within two years of the date 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 so 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 Irma 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.

IRS news releases (dated September 8 and 12, and updated on September 14) report that a major disaster exists in Florida, Puerto Rico, and the Virgin Islands. Thus, a taxpayer that has sold relinquished property as part of a like-kind exchange qualifies for 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 not qualify for postponement.

Temporary diesel fuel penalty waiver

Due to shortages in the availability of undyed diesel fuel caused by Hurricane Irma, 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 **IR-2017-149**.

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 in Florida beginning September 6, 2017, and is effective through September 22, 2017. This relief from the diesel fuel penalty is available in the entire State of Florida.

State tax relief

Florida

The Florida Department of Revenue has indicated that it will follow the tax relief granted by the IRS regarding postponement of return due dates in federally declared disaster areas. Specifically, Florida corporate income / franchise tax returns originally due (or due on extension) between August 24, 2017, and January 1, 2018, are now due February 15, 2018, for disaster-affected taxpayers. The Department of Revenue stated it will work with affected taxpayers on a case-by-case basis.

Florida also provides nexus relief for certain out-of-state companies that are entering Florida to perform emergency-related infrastructure work whereby such companies will not be considered to have “established a level of presence that would require that business to register, file, and remit state or local taxes or fees.” Fla. Stat. § 213.055(3)(b).

KPMG observation

A number of other states have begun issuing guidance on the availability of filing and payment relief for taxpayers affected by Hurricane Irma. Certain 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 tax professionals in KPMG's Florida offices 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 tax professionals located in the affected areas, working in consultation with tax professionals of KPMG's Washington National Tax practice and KPMG tax professionals throughout the nation, are available to help companies identify and implement the relief measures available to help mitigate at least some of the devastation resulting from Hurricane Irma. To discuss the relief that may be available to your company, contact the following tax professionals.

For more information, contact your local KPMG tax professional, or any of the following for assistance:

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Return filing dates

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