House taxwriters approve disaster-relief package

The House Ways and Means Committee approved legislation on November 2 that would temporarily relax various rules around the tax treatment of relief payments received by and casualty losses incurred by individuals who are victims of certain federally declared natural disasters.

Highlights of tax relief provisions

The Federal Disaster Tax Relief Act, 2023 (H.R. 5863) cleared the panel by a vote of 38-0. The legislation was originally sponsored by Ways and Means Committee Republican Greg Steube of Florida, but Chairman Jason Smith, R-Mo., noted in his opening statement that California Democratic taxwriters Mike Thompson and Jimmy Panetta also have played key roles in advancing the issue of disaster-related tax relief in the committee.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/AINS-to-H.R.-5863.pdf

The measure drew plaudits from taxwriters on both sides of the aisle at the mark-up, although Democrat Lloyd Doggett of Texas cautioned that until Congress is willing to address the larger issue of climate change, "there will come a time when even the massive resources of the federal government will be insufficient to provide complete relief to those who suffer from natural disasters made so much worse by unnatural causes."

Key provisions in the legislation are outlined below.

Deduction for disaster-related personal casualty losses: The measure would extend temporary taxpayer-favorable rules for deducting certain personal casualty losses related to major federally declared disasters that were last renewed in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and are now expired. Thus, individuals who incur uncompensated personal casualty losses in disasters declared during the period running from January 1, 2020, through 60 days after the date this legislation is signed into law would be allowed to deduct those losses (to the extent they exceed $500 per casualty) without regard to the requirement that net aggregate disaster-related losses exceed 10 percent of adjusted gross income. Nonitemizers who incur disaster-related personal casualty losses in this period would be permitted to deduct those losses in addition to claiming the standard deduction.
URL: https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf

This provision would be effective upon enactment.

Exclusion for certain wildfire relief payments: The measure would provide an exclusion from gross income for amounts received as qualified wildfire relief payments. These are defined as any amount received by or on behalf of an individual as compensation for losses, expenses, or damages—including compensation for additional living expenses, lost wages (other than compensation for lost wages paid by the employer which would have otherwise paid such wages), personal injury, death, or emotional distress—incurred as a result of a qualified wildfire disaster, but only to the extent the losses, expenses, or damages compensated by such payment are not compensated for by insurance or otherwise.

A qualified wildfire disaster means any federally declared disaster (as defined in section 165(i)(5)(A)) declared, after December 31, 2014, as a result of any forest or range fire. Qualified wildfire relief payments would not include payments for any expenses or losses compensated for by insurance or otherwise.

The legislation also would provide that no deduction or credit is allowed with respect to any expenditure to the extent of the amount excluded with respect to the expenditure. The basis of any property would not be increased by amounts excluded from gross income under the proposal.

This provision would apply to qualified wildfire relief payments received during taxable years beginning after December 31, 2019, and before January 1, 2026.

Treatment of East Palestine disaster relief payments: The bill would treat payments received by individuals incurring damages or losses related to the train derailment in East Palestine, Ohio, on February 3, 2023, as qualified disaster relief payments for purposes of section 139(b) and therefore excludable from gross income and subject to other present-law provisions—such as excludability from employment taxes and self-employment taxes (section 139(d)) and the prohibition on double benefits (section 139(h))—that are applicable to qualified disaster relief payments.

This provision defines an East Palestine train derailment payment as any amount received by or on behalf of an individual as compensation for loss, damages, expenses, loss in real property value, closing costs with respect to real property (including realtor commissions), or inconvenience (including access to real property) resulting from the East Palestine train derailment if the amount was provided by a federal, state, or local government agency; Norfolk Southern Railway; or a subsidiary, insurer, or agent of Norfolk Southern Railway or any related person.

This relief would apply to applies to amounts received on or after February 3, 2023.

No revenue raisers

The bill as approved does not include revenue-raising provisions to offset the cost of the proposed tax relief. The Joint Committee on Taxation staff estimates the measure would decrease federal receipts by just over $4.9 billion from 2024 through 2033.
URL: https://www.jct.gov/publications/2023/jcx-50-23/

Texas Democrat Lloyd Doggett criticized GOP members of the panel for not including offsets in the legislation, given the stated concerns within the House Republican Conference about the federal deficit.

With its nearly $5 billion price tag, the bill represents “an expenditure through the tax code that is every bit as real as if the Appropriations Committee approved the handing out of checks to those who’ve been victims of these disasters,” he said.

Doggett did not offer revenue offsets as amendments during the mark-up, however.

Next steps uncertain

Plans for moving the legislation to the House floor have not yet been announced.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP