



Federal Disaster Relief and California Wildfires: Employer-Provided Assistance Tax Alert

Overview

On January 8, 2025, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Emergency Declaration") in response to California wildfires and straight-line winds.

Under [section 139](#), qualified disaster relief payments may be made by employers, as well as other parties, to an individual on a tax-free basis in the event of a qualified disaster. To qualify under section 139, a two-prong test must be met. First, a "qualified disaster" must have occurred, and second, the payments must be considered "qualified disaster relief payments." Whether employer-provided reimbursements, grants, or other assistance are excludible under section 139 depends on the factual situation, and it is recommended that employers review existing section 139 guidance.

Qualified Disaster Relief Payments Under Section 139

Qualified disaster relief payments, including payments from an employer to an employee, are not treated as taxable income for federal tax purposes or wages for purposes of the Federal Insurance Contributions Act (FICA). As a result, if an employer makes qualified disaster relief payments, then there is no employer reporting or withholding required. A qualified disaster relief payment made by an employer is deductible for federal tax purposes.

California generally conforms to section 139 of the federal Internal Revenue Code for income tax purposes. Thus, qualified disaster relief payments under section 139 will also be considered nontaxable for California income tax purposes. However, the wage definition for California's unemployment insurance (UI), employment training tax (ETT), and state disability insurance (SDI) withholding, respectively, is different. To the extent that qualified disaster relief payments are considered remuneration for services and are subject to UI, ETT, and SDI, qualified disaster relief payments under section 139 are taxable in California.

For purposes of section 139, a "qualified disaster" includes, among other things, a federally declared disaster (as defined by [section 165\(i\)\(5\)\(A\)](#)). Under section 165(i)(5)(A), the term "federally declared disaster" means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Based on the January 8, 2025, Emergency Declaration, a federally declared disaster has occurred, and therefore, the first prong of section 139 (that is, that a qualified disaster has occurred) has been satisfied.

A "qualified disaster relief payment" within the meaning of section 139 includes payments received (regardless of the source) for the following expenses:

- Reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- Reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence due to a qualified disaster (a personal residence can be rented or owned), and,
- Reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster.

Payments by a federal, state, or local government, or their agencies or instrumentalities, to persons affected by a qualified disaster to promote general welfare are also considered to be qualified disaster relief payments.

Qualified disaster relief payments do not include:

- Payments for expenses otherwise paid for by insurance or other reimbursements, or,
- Income replacement payments, such as payments of lost wages, lost business income, or unemployment compensation.

To the extent any person or entity makes payments to any individual, including payments made by an employer to an employee, in connection with the California wildfires and straight-line winds that are the subject of the federal disaster declaration, it should consider whether the payments are to reimburse or pay reasonable and necessary personal, family, living or funeral expenses. Any assistance provided to employees as a wage replacement, such as lost wages, or amounts covered by insurance or other reimbursements, does not qualify under section 139. If an employer provides payments to employees that are intended to be section 139 payments, it is recommended that the employer retains documentation to support their position that the payments are excludible as qualified disaster relief payments.



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30 Rockefeller Plaza
New York, NY 10112-0015
United States

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