United States: Additional tax relief announced – this time for Hurricane Irma victims

September 20, 2017

In brief

The Internal Revenue Service (IRS) has again announced various forms of US federal tax relief – this time for victims of a second major hurricane that hit the United States named 'Irma'. Various IRS News Releases detail the relief, which includes the granting of an extension to file and pay taxes until January 31, 2018 for certain individuals and businesses located in all 67 counties in **Florida**, all 159 counties in **Georgia**, and certain US territories – the **US Virgin Islands** and certain municipalities of **Puerto Rico**. Additional locations will be added if designated by the Federal Emergency Management Agency (FEMA) as qualifying for disaster assistance. Various states have been announcing similar relief.

Parallel to relief provided for victims of Hurricane Harvey in Texas, the extension is granted automatically to those individuals that reside in the affected areas, and for those that live outside the affected areas, but have tax documents located within the affected areas. Other relief has been provided, including the ability to claim casualty losses on a federal income tax return for either the year in which the event occurred (2017), or the prior year (2016). In addition, employers in the affected area with payroll tax deposits due on or after September 4th, 5th, and 7th and before September 19th, 20th , and 22nd can have penalties abated as long as deposits are made by September 19th, 20th, or 22nd (date depends upon the location.)

This welcome relief should apply to US residents and non-residents, US citizens and non-US citizens, as well as their employers, assuming the taxpayer meets the requirements. Foreign national 'inbounds' working in Florida, Georgia, the US Virgin Islands, or Puerto Rico, or US citizen 'outbounds' that may be working abroad could benefit.

Mobility programs will need to closely review what payroll and individual relief may apply and how any resulting tax impact (e.g., from casualty losses) might affect hypothetical tax calculations.

For details about IRS relief provided to Hurricane Harvey victims in Texas, please see the previously published Global Mobility Insight.

In detail

Who can claim certain US federal tax relief?

The IRS announced that individuals may automatically claim certain filing and payment relief (described below) if they:

- reside or have a business in **Florida or Georgia**
- reside or have a business on the islands of St. Thomas, St. John, or St. Croix in the **US Virgin Islands**

- reside or have a business in the following municipalities of **Puerto Rico**: Adjuntas, Aguas Buenas, Barranquitas, Bayamón, Camuy, Canóvanas, Carolina, Cataño, Ciales, Comerío, Culebra, Guaynabo, Hatillo, Jayuya, Juncos, Las Piedras, Loiza, Luquillo, Orocovis, Patillas, Quebradillas, Salinas, San Juan, Utuado, Vega Baja, Vieques, and Yauco
- have records necessary to meet a tax filing or payment deadline (described below) in a covered disaster area, but are not there themselves
- are relief workers affiliated with a recognized government or philanthropic organization assisting in the relief activities in the covered disaster area
- are visiting the covered disaster area but who are killed or injured as a result of the disaster.

Applicable regulations specify that an affected taxpayer includes a person whose principal residence is located in a covered disaster area (including a principal residence that is not owned by the taxpayer). Relief also applies to the spouse of an affected taxpayer, solely with regard to a joint return of the husband or wife.

The IRS is expected to automatically identify and provide relief for taxpayers located in the covered disaster area. Affected taxpayers who reside or have a business located outside the covered disaster area may still be able to claim this tax relief but must call the IRS disaster hotline at +1 (866) 562-5227 to request it.

What tax relief is the IRS giving?

Extension for filing certain tax returns

Due date of the return is a critical fact

Affected taxpayers can postpone the time to file certain US federal tax returns until January 31, 2018 if they have either an original or extended due date occurring on or after:

- **September 4th** and before January 31, 2018 for those residing in **Florida**
- **September 5th** and before January 31, 2018 for those residing in certain municipalities in **Puerto Rico**, as well as the islands of St. Thomas, St. John, and St. Croix in the **US Virgin Islands**
- **September 7th** and before January 31, 2018 for those residing in **Georgia.**

For example, those individual taxpayers who had a valid extension to file their 2016 return that was due to run out on October 16, 2017 could qualify for this relief.

Tax returns that are covered

The IRS states that this relief is provided for US federal individual, corporate, estate and trust, partnership, S corporations, and trust returns, as well as estate, gift, and generation skipping transfer tax returns. Employment and excise tax returns are also covered.

It appears that all US federal individual income tax returns – whether Form 1040 or Form 1040NR – would be included in this relief. Those returns extended through, for example, Form 4868 (*Application for Automatic Extension of Time To File US Individual Income Tax Return*) or Form 2350 (*Application for Extension of Time To File US Income Tax Return For US Citizens and Resident Aliens Abroad Who Expect To Qualify for Special Tax Treatment*), appear to qualify provided the extended due date was September 4th, 5th or 7th, 2017 (depending on location) or later.

Note that the IRS announcement impacts only US federal tax returns filed with the IRS. Individuals may also need to file Puerto Rico or US Virgin Islands tax returns depending upon their residency and citizenship status. (See discussion below regarding relief provided by the government of Puerto Rico; see also IRS Publication 570.)

Payments of tax

Affected individual taxpayers can postpone payment of US federal taxes that were otherwise due on or after September 4th (by victims in Florida), September 5th (by victims in Puerto Rico and US Virgin Islands), and September 7th (by victims in Georgia) and before January 31, 2018. This would include quarterly estimated income tax payments, specifically those originally due on September 15, 2017 and January 16, 2018, as well as quarterly payroll and excise tax returns normally due on October 31, 2017.

In addition, penalties on payroll and excise tax *deposits* due on or after September 4, 2017 (by victims in Florida), September 5, 2017 (by victims in Puerto Rico and US Virgin Islands), and September 7, 2017 (for victims in Georgia) and before September 19th, 20th, and 22nd, respectively, will be abated provided the deposits are made by the latter dates.

Penalty relief

Affected taxpayers can avoid late filing or late payment penalties if the original or extended filing or payment due date falls within the postponement period as long as such filings or payments are made on or before January 31, 2018. If a taxpayer receives such a penalty notice, they must call the telephone number on the notice to have the IRS abate the penalty.

No late payment penalty relief applies for taxes related to the 2016 tax year, even if the 2016 return may have been extended through October 16th. The payment due date for such returns was April 18, 2017, and is not impacted by the above extensions of time to file returns.

Other time-sensitive actions

The IRS also refers to specific regulations and Rev. Proc. 2007-56 for other time-sensitive actions that may be eligible for a postponement. These include, for example, contributions to a qualified retirement plan and making certain retirement plan distributions. The filing of a claim for credit or refund of any tax (e.g., via Form 1040-X) may also be postponed under this relief.

Expansion of casualty loss claims

As a general rule, taxpayers may deduct personal property losses (in excess of a floor amount) that are not covered by insurance or other reimbursements. However, the IRS will allow taxpayers in a declared disaster area to either claim the disaster-related casualty loss on their federal income tax return for the year of the event, or the prior year. Thus, mobile employees may wish to claim losses on either their 2016 or 2017 income tax returns.

The IRS has also agreed to expedite the processing of refunds relating to such casualty loss claims. To be eligible, the taxpayer must put the respective header the top of the form, e.g., Texas, Hurricane Harvey; US Virgin Islands, Hurricane Irma; Florida, Hurricane Irma; Puerto Rico, Hurricane Irma; Georgia, Hurricane Irma.

What relief is FinCEN giving?

FinCEN recently announced that certain victims of either Hurricane Harvey or Irma do not have to file the FinCEN Report 114 (referred to as FBAR, Report of Foreign Bank and Financial Accounts) for the 2016 calendar year until January 31, 2018. This relief is offered to an FBAR filer living in any area designated by FEMA as qualifying for individual assistance, which currently includes all counties in Florida, Georgia, the US Virgin Islands, and certain municipalities of Puerto Rico. As with federal tax relief, additional areas may qualify if designated by FEMA as qualifying for individual assistance.

In addition, those FBAR filers who live outside the disaster area but whose records required to meet the deadline are located in the affected area are also eligible for this relief. Other impacted filers seeking relief should contact FinCEN for assistance.

Note that the FBAR filing is not a tax return and is not filed with the IRS, although its due dates generally mirror the individual income tax system and can be extended until October 16th. The FBAR is commonly filed when globally mobile individuals are working in the United States or when US citizens are working abroad.

Are US states also providing relief?

Various states are announcing tax filing and payment relief for victims of both hurricanes. Neither Texas nor Florida impose individual income tax, however, states such as California, Connecticut, Delaware, Georgia, Idaho, New Jersey, Oklahoma, Virginia, and Wisconsin are allowing for additional time for taxpayers impacted by the hurricanes similar to the IRS relief provided above.

As an example, relief may apply to individuals residing in a disaster area who have filing requirements in other states (e.g., nonresident returns due to earning income in those other states.) In addition, relief may be granted where the taxpayer is unable to meet filing obligations because the financial books and records they need to file their taxes are unavailable due to damage or power outages attributable to the hurricanes.

Available relief will depend on the specific state and will be changing frequently as more states make announcements. Each state at issue must be reviewed individually.

What relief is Puerto Rico providing?

The Puerto Rico Treasury Department provided an extension for various income tax returns, payroll tax forms and deposits that were due on September 10 or September 15, 2017. Most of the extensions were granted until September 22 or September 29, 2017.

Also, with the passing of Hurricane Maria, the Puerto Rico Treasury Department provided an extension for payroll tax forms and deposits that are due on September 20 or September 22, 2017 until September 27, 2017.

The takeaway

Welcome news for certain inbound and outbound employees and employers alike

The relief granted by the IRS is welcome news for individuals impacted by this terrible tragedy in Florida, Georgia, the US Virgin Islands, and Puerto Rico. Most notably, those mobile individuals such as foreign nationals that live in the affected areas can postpone individual income tax filings and payments until 2018.

Individuals that do not reside in the affected areas currently may still qualify under the automatic relief for filing deadlines and tax payments if (1) needed records for their tax return were in the covered disaster area, or (2) their principal residence (which can include a rental) is located in the covered disaster area.

Mobile employees either working abroad or living in the affected areas may have homes that were damaged or destroyed by Hurricane Irma but for which no insurance or other reimbursement will be provided. Both may be able to claim a casualty loss for the 2016 tax year, which will likely be a helpful financial benefit.

Close review needed of mobile populations

Mobility program professionals should closely review how this relief may impact their mobile populations. This may unfortunately require reviewing the situation for specific employees. Special attention should also be paid to how items such as casualty losses could impact an employee's hypothetical tax calculation.

Other issues may arise, such as if employers provide disaster relief payments and whether those payments are taxable income to the employee.

Consideration should also be given to whether or how mobility programs should communicate this IRS relief to mobile populations.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your regular Global Mobility Services engagement team or one of the following team members:

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