



PIECES OF THE PUZZLE

October 2017

Tax Provisions for Businesses in the 2017 Disaster Tax Relief Bill

H.R. 3823, the "Disaster Tax Relief and Airport and Airway Extension Act of 2017."

On September 29, President Trump signed into law P.L. 115-63, the "Disaster Tax Relief and Airport and Airway Extension Act of 2017." The Act, which had been passed by Congress the day before, provides temporary tax relief to victims of Hurricanes Harvey, Irma, and Maria. Businesses that qualify for relief may claim a new "employee retention tax credit" of up to \$2,400 for qualified wages paid to eligible employees.

Employee Retention Tax Credit for Employers

New law. The Act provides a new "employee retention credit" for "eligible employers" affected by Hurricanes Harvey, Irma, and Maria. Eligible employers are generally defined as employers that conducted an active trade or business in a disaster area as of a specified date (for Hurricane Harvey, Aug. 23, 2017; Irma, Sept. 4, 2017; and Maria, Sept. 16, 2017), and the active trade or business of which was, on any day between the specified date and Jan. 1, 2018, rendered inoperable as a result of damage sustained by the hurricane.

In general, the credit is to be treated as a credit listed in Code Sec. 38(b), and equals 40% of up to \$6,000 of "qualified wages" with respect to each "eligible employee" of such employer for the tax year.

Qualified wages mean wages (as defined in Code Sec. 51(c)(1) but without regard to Code Sec. 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after the specified date (above) and before Jan. 1, 2018, which occurs during the period: (i) beginning on the date on which the employer's trade or business first became inoperable at the principal place of employment of the employee immediately before the respective hurricane, and (ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Qualified wages include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

Limitations. An employee cannot be taken into account more than one time for purposes of the employee retention tax credit. So, for instance, if an employee is an eligible employee of an employer with respect to Hurricane Harvey for purposes of the credit, the employee cannot also be an eligible employee with respect to Hurricane Irma or Hurricane Maria.

The Act also provides that rules similar to Code Sec. 51(i)(1) (which disallows the work opportunity tax credit, or WOTC, when the employee is considered "related" to the employer) and Code Sec. 52 (which provides rules for apportioning the WOTC among commonly controlled businesses) apply.

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