PIECES OF THE PUZZLE

October 2017

Tax Provisions 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. Relief for individuals includes, among other things, loosened restrictions for claiming personal casualty losses, tax-favored withdrawals from retirement plans, and the option of using current or prior year's income for purposes of claiming the earned income and child tax credits.

Eased Casualty Loss Rules

New Law. The Act provides relief in a number of ways to taxpayers that suffer a "net disaster loss" (below) for any tax year.

"Net disaster loss." The Act defines a net disaster loss as the excess of "qualified disaster-related personal casualty losses" over personal casualty gains, as defined in Code Sec. 165(h)(3)(A). Qualified disaster-related personal casualty losses, in turn, are losses described in Code Sec. 165(c)(3) which arise:

> ... in the Hurricane Harvey disaster area (see below for the distinction between "areas" and "zones") on or after Aug. 23, 2017, and which are attributable to Hurricane Harvey;
>
> ... in the Hurricane Irma disaster area on or after Sept. 4, 2017, and which are attributable to Hurricane Irma; or
>
> … in the Hurricane Maria disaster area on or after Sept. 16, 2017, and which are attributable to Hurricane Maria.

For purposes of the Act, a disaster "zone" means the portion of the disaster area determined by the President to warrant individual or individual and publish assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of the disaster. A disaster "area" means an area with respect to which a major disaster has been declared by the President by reason of the disaster.

10% limitation removed. For taxpayers claiming a net disaster loss, the Act eliminates the current law requirement that personal casualty losses must exceed 10% of AGI to qualify for a deduction.

Relief available to non-itemizers. The Act also eliminates the current law requirement that taxpayers must itemize deductions to access this tax relief for losses-it does so by increasing an individual taxpayer's standard deduction under Code Sec. 63(c) by the net disaster loss.

Eased Access to Retirement Funds

New law. The Act eases a number of rules to allow victims to make "qualified hurricane distributions" (below) from their retirement plans of up to $100,000 (less any prior withdrawals treated as "qualified hurricane distributions");

"Qualified hurricane distribution." The Act defines a "qualified hurricane distribution" as any distribution from an eligible retirement plan, as defined in Code Sec. 402(c)(8)(B) (which includes IRAs), made:

> … on or after Aug. 23, 2017, and before Jan. 1, 2019, to an individual whose principal place of abode on Aug. 23, 2017, is located in the Hurricane Harvey disaster area and who has sustained an economic loss by reason of Hurricane Harvey;
>
> … on or after Sept. 4, 2017, and before Jan. 1, 2019, to an individual whose principal place of abode on Sept. 4, 2017, is located in the Hurricane Irma disaster area and who has sustained an economic loss by reason of Hurricane Irma; and
>
> … on or after Sept. 16, 2017, and before Jan. 1, 2019, to an individual whose principal place of abode on Sept. 16, 2017, is located in the Hurricane Maria disaster area and who has sustained an economic loss by reason of Hurricane Maria.

Penalty relief. Significantly, the Act excepts qualified hurricane distributions from the 10% early retirement plan withdrawal penalty. (Act Sec. 502(a)(1))

Eased inclusion rules. The Act allows taxpayers to spread out any income inclusion resulting from such withdrawals over a 3-year period, beginning with the year that any amount is required to be included (or elect out).

Favorable recontribution rule. The Act also allows the amount distributed to be re-contributed at any time over a 3-year period beginning on the day after the distribution was received. If re-contributed to a eligible retirement plan other than an IRA, the taxpayer is treated as having received the qualified hurricane distribution in an eligible rollover distribution (as defined in Code Sec. 402(c)(4)) and as having transferred the amount to an eligible retirement plan in a direct, trustee-to-trustee transfer within 60 days of the distribution. If recontributed to an IRA, the qualified hurricane distribution is treated as a Code Sec. 408(d)(3) distribution that is transferred to an eligible retirement plan in a direct trustee to trustee distribution within 60 days of the distribution.

Charitable Deduction Limitations Suspended

New law. For qualifying charitable contributions associated with qualified hurricane relief, the Act:

> … temporarily suspends the majority of the limitations on charitable contributions in Code Sec. 170(b) ;

… provides that such contributions will not be taken into account for purposes of applying Code Sec. 170(b) and Code Sec. 170(d) to other contributions;

… provides eased rules governing the treatment of excess contributions; and

… provides an exception from the overall limitation on itemized deductions for certain qualified contributions.

"Qualified contributions" must be paid during the period beginning on Aug. 23, 2017, and ending on Dec. 31, 2017, in cash to an organization described in Code Sec. 170(b)(1)(A) , for relief efforts in the Hurricane Harvey, Irma, or Maria disaster areas. Qualified contributions must also be substantiated, with a contemporaneous written acknowledge that the contribution was or is to be used for relief efforts, and the taxpayer must make an election for Act. Sec. 504(a) to apply. For partnerships and S corporations, the election is made separately by each partner or shareholder.

Howard & Company

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

4745 Sutton Park Court, Ste 102

Jacksonville, Florida 32224

Phone: (904) 421-0690 Fax: (904-421-0691)