

Client Alert: Additional Help For Individuals From The Tax Code

8 Apr 2020

The COVID-19 pandemic was designated under the Stafford Act as a national emergency on March 13, 2020. By doing so, the federal government opened a new area for tax-free help to those impacted directly by the disease, or indirectly due to the shelter-in-place directives.

Section 139, enacted after 9/11, allows employers, or really anyone so inclined, to provide “qualified disaster relief payments” to individuals, including employees and independent contractors. These payments will not be classified as wages or payments for services. The monetary assistance is not taxable to the recipient. The payor does not report these payments on Form W-2 or Form 1099, and the payments are not subject to withholding, W-2 or 1099 reporting. The silver lining to the payor is that the qualified disaster relief payments are fully deductible as business expenses under existing provisions.

The types of expenses which meet the definition of “qualified disaster relief payments” include reimbursements for “reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster.” Because section 139 has not been used for a pandemic, there is little guidance regarding the types of expenses that qualify for reimbursement. However, reimbursements for childcare due to school and daycare closings are presumably the type of personal, family and living expenses intended to be covered by section 139. In addition, expenses incurred to enable an employee to work from home should qualify as reimbursable expenses. Expenses incurred for over-the-counter medications, additional cleaning supplies along with gloves and masks should also qualify as reimbursable expenses.

There are no double benefits, however. An individual in receipt of insurance proceeds for the same expenses would not qualify for the tax-free treatment. In addition, an individual may not deduct reimbursed expenses as casualty losses. Moreover, if an individual is reimbursed for home office expenses such as increased utilities, they could not deduct those same expenses for a [home office](#).

An employer providing disaster relief benefits to its workers does not need a written plan, nor is the employer required to collect receipts or substantiation from its employees to ensure the funds were used for permissible purposes. However, it is always a best practice to set forth the requirements and limits for the relief payments to employees. It is also a best practice to obtain the recipient’s signed statement that the proceeds will be used to reimburse that individual for “reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster.”

The payments must be reasonable reimbursements, and thus section 139 is not a vehicle for employers to provide tax-free bonuses to employees. It is also not tax-free to the individual if the payments were intended as wage-replacement, such as the emergency sick leave and family leave provisions that have recently been enacted in the [FAMILIES FIRST ACT](#) and the [CARES ACT](#). While the emergency sick leave and family leave provisions allow an employer to receive an advance [refundable credit](#) for the payments, there is no indication that employers can receive refundable credits for the section 139 payments.

If you have additional questions about this or other tax benefits, please do not hesitate to contact a member of the Jackson & Campbell [Tax Law Practice Group](#).

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TAGGED: Tax Law, COVID-19, Families First Act, CARES Act, Stafford Act, Section 139, reimbursements