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July 1, 2011

The Honorable Emily McMahon  
Acting Assistant Secretary  
(Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable William J. Wilkins  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Possible Tax Relief for Disaster-Related Efforts\*

Dear Ms. McMahon, Mr. Wilkins and Mr. Shulman:

It is an unfortunate reality that natural disasters such as earthquakes and hurricanes, and man-made catastrophic events such as terrorist attacks and other acts of violence, occur from time to time. Disasters, whether they occur in the United States or elsewhere in the world, may impact U.S. citizens and residents in various ways. One of the ways in which the U.S. government has responded to such events is by providing one or more forms of U.S. Federal tax relief to U.S. citizens and residents. From time to time, we have written to you suggesting that relief be provided with respect to a specific disaster. The purpose of this letter is to more broadly assist U.S. Department of the Treasury ("Treasury") and the Internal Revenue Service (the "IRS") in granting tax relief following future disasters by: (i) cataloging the various types of tax relief that have been provided following past disasters, (ii) discussing some possible additional forms of relief that could be granted in future disasters and (iii) addressing some of the procedural aspects of the process, in each case, in an effort to further the goals and policies that we believe have motivated Treasury and the IRS in this regard.

\* The principal author of this letter is Andrew L. Oringer. Significant contributions were made by Steven A. Dean, Gretchen Harders, Sarah I. Rubinfeld and Diana L. Wollman. Helpful comments were received from Kimberly S. Blanchard, Dale S. Collinson, Peter H. Connors, Michael S. Farber, Michael L. Schler, Jodi J. Schwartz and Richard R. Upton. This letter reflects solely the views of the Tax Section of the NYSBA and not those of the NYSBA Executive Committee or the House of Delegates. This letter may be cited as New York State Bar Association Tax Section, *Possible Tax Relief for Disaster-Related Efforts* (Report No. 1242, July 1, 2011).

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## The Types of Tax Relief That Have Been Granted Previously

A variety of types of tax relief have been granted over the years. Sometimes, relief has been to victims (and their relatives) who are U.S. taxpayers, and other times relief has been in the form of tax deductions to U.S. taxpayers who contribute money or other aid to victims (and their relatives).

This relief has come from various sources and in various forms. Sometimes, the relief has come from Congress in the form of new rules of general applicability or of new one-time rules.<sup>1</sup> Congress has sometimes added these new rules to the Internal Revenue Code of 1986, as amended (the “Code”),<sup>2</sup> and other times has enacted stand-alone statutory provisions.<sup>3</sup> In other cases, the President may designate a disaster as a “Federally declared disaster” and thereby trigger a set of pre-existing rules in the Code.<sup>4</sup> Relief may also come through administrative action taken by the Treasury or the IRS. Administrative action has sometimes been through designating a disaster as a “qualified disaster” and thereby triggering the pre-existing rules in Section 139,<sup>5</sup> and other times has been through the issuance of a Notice providing special administrative procedures.<sup>6</sup>

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<sup>1</sup> See, e.g., the Acceleration of Income Tax Benefits for Haiti Relief Act, Pub. L. No. 111-126; the Katrina Emergency Tax Relief Act, Pub. L. No. 109-73; the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134.

<sup>2</sup> Unless otherwise specified, all section references herein refer to sections of the Code.

<sup>3</sup> As an additional example, some treaties permit deductions under Section 170(c)(2)(A) for contributions made directly to foreign charitable organizations, although current law generally permits such deductions only for contributions made to domestic organizations. U.S. tax treaties with Canada, Mexico and Israel provide such an exception to the general rule. See, e.g., Convention for the Avoidance of Double Taxation, U.S.-Mex., Art. 22(2) (Sept. 18, 1992).

<sup>4</sup> The rules that apply in the event of a “Federally declared disaster” include Section 143 (modifying the mortgage revenue bond rules for residences located in Federally declared disaster areas), Section 165 (allowing net disaster-related losses to be deducted without a 10%-of-AGI limitation), Sections 5064(b)(3) and 5708 (relaxing the requirements for refund claims from taxes paid on goods later destroyed in a disaster) and Section 7508A(b) (granting discretion for the Commissioner to relax various filing deadlines for those affected by a Federally declared disaster).

<sup>5</sup> See Notice 2001-69, 2001-2 C.B. 491 (September 11, 2001 terrorist attacks); Rev. Rul. 2003-12, 2003-1 C.B. 283 (floods); Notice 2005-23, 2005-1 C.B. 732 (Indian Ocean tsunamis); Notice 2005-68, 2005-2 C.B. 622 (Hurricane Katrina); Notice 2005-78, 2005-2 C.B. 952 (earthquake in southern Asia); Notice 2006-59, 2006-2 C.B. 60 (major disasters); Notice 2008-57, 2008-28 I.R.B. 80 (earthquake in China); Notice 2010-16, 2010-6 I.R.B. 396 (earthquake in Haiti); Notice 2010-26, 2010-14 I.R.B. 527 (earthquake in Chile); Notice 2011-32, 2011-18 I.R.B. 737 (earthquake and tsunami in Japan). But see Gulf Oil Spill: Questions and Answers (Feb. 3, 2011), at <http://www.irs.gov/newsroom/article/0,,id=224886,00.html> (providing with respect to the Gulf oil spill disaster that normal tax rules would generally apply to payments made to taxpayers affected by the spill).

<sup>6</sup> An example of special administrative procedures is the procedure now provided for requesting expedited review of an application for tax-exempt status. In 1992, the IRS allowed for the possibility of expedited review of applications for tax-exempt status for organizations formed to aid victims of Hurricane Andrew. It did the same following a number of other disasters. Eventually, this procedural relief was adopted into the formal annual Revenue Procedure for requesting tax-exempt status. Thus, under Revenue Procedure 2011-9, 2011-2 I.R.B. 283, expedited review may be requested (and will be granted in appropriate cases) when “[t]he purpose of the newly created organization is to provide disaster relief to victims of

One particular example of an effective combination of some of the above types of relief is the relief provided and the additional relief authorized to be provided by Section 7508A (postponing the deadlines for performing certain time-sensitive tax acts such as filing returns, filing Tax Court petitions and making elections). Pursuant to that authorization and to facilitate the granting of such additional relief, Treasury issued Revenue Procedure 2007-56<sup>7</sup> and now can trigger part or all of the relief set out in the Revenue Procedure by simply issuing a Notice.<sup>8</sup>

### The Relief-Granting Process

We are not aware of any publicly circulated comprehensive set of written principles or standards that guides Treasury and the IRS in determining which types of relief to provide for which disasters and how, if at all, decision-making by Treasury and the IRS is impacted by what Congress and the President have already done or not done in respect of the same disaster.<sup>9</sup> Given the importance of such relief to those affected, and given the significant public interests involved, we believe it may be appropriate for there to be a more uniform and transparent set of principles and processes guiding the decision-making and actual relief-granting and an avenue for the public to provide input and feedback. We believe that this approach would be consistent with (and further) the policies and goals that have motivated Treasury and the IRS to grant disaster relief in the past.

One alternative might be for Treasury and the IRS to issue a Revenue Procedure or Notice that (i) lists the types of tax relief that are possible (based upon past grants of relief and updated from time to time as appropriate), (ii) describes general criteria and factors that are among those that may be used in determining when a disaster qualifies for any of these types of relief and which types of relief the disaster qualifies for and (iii) provides guidance for how interested parties may submit comments or suggestions to Treasury and the IRS about these procedures, additional possible types of tax relief and a specific disaster that may be appropriate for relief and specifically for which type of relief.

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emergencies such as flood and hurricane.” This procedure is also helpfully described in the instructions to IRS Form 1023 (application for tax-exempt status).

<sup>7</sup> 2007-34 I.R.B. 388.

<sup>8</sup> In dealing with certain situations, including disasters, Treasury and the IRS have also issued guidance relaxing certain administrative rules where compliance would be difficult or impossible. See, e.g., Rev. Proc. 2007-54, 2007-31 I.R.B. 293 (establishing a procedure for temporary relief from the requirements under Section 42 for owners of low-income housing buildings and housing credit agencies located in Presidentially declared “major disaster” areas); Notice 2008-55, 27 I.R.B. 11 (also relating to such relief); see also Rev. Proc. 2008-28, 2008-23 I.R.B. 1054 (nonstatutory relief from certain administrative requirements granted to certain financial entities during the financial crisis in 2008, which relaxed administrative requirements for such entities where strict enforcement would have had adverse consequences that would be impossible to avoid).

<sup>9</sup> We note that the Internal Revenue Manual indicates that “The Disaster Relief Criteria and Level of Authority Guide is used to determine the appropriate disaster relief.” I.R.M. 25.16.1.2.1(4). However, this Guide does not appear to be publicly available. In any event, the guidance in the Internal Revenue Manual related to disaster relief appears to focus mainly upon the postponement of various deadlines for filing, paying or performing tax acts. See I.R.M. 25.16.1.3.1(1)(D)(6).

In furtherance of the foregoing, we thought it might be useful to you if we were to catalog various types of tax relief that have been granted from time to time by Treasury and the IRS, and we have done so below. We also discuss various forms of possible relief which have not yet been granted by Treasury and the IRS, but which we believe are within the authority of Treasury and the IRS to grant in response to a disaster, and various types of relief requiring Congressional or Presidential action that Treasury and the IRS may wish to encourage at appropriate times in response to a disaster. We do not comment, however, on what types of relief are appropriate for what type of disasters, as we believe determinations such as that are best left to Congress, Treasury and the IRS. We also hope that, even if Treasury and the IRS do not choose to establish generally applicable procedures of some kind, this letter proves helpful in facilitating governmental tax-based relief efforts from time to time.

## I. CERTAIN RELIEF PREVIOUSLY GRANTED BY TREASURY OR THE IRS

### A. "QUALIFIED DISASTER" RELIEF PAYMENTS

One of the options available to Treasury and the IRS is to declare a disaster a "qualified disaster" under Section 139. Historically, under a doctrine allowing for a "general welfare" exclusion from income, payments made to individuals by governments for the general welfare may be excluded from gross income otherwise taken into account under Section 61.<sup>10</sup> Section 139 codifies the exclusion from gross income of amounts paid by Federal, state or local governments to individuals to promote the general welfare in connection with "qualified disasters."<sup>11</sup>

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<sup>10</sup> See generally Joint Comm. on Tax., Tech. Expln. of the "Victims of Terrorism Relief Act of 2001" (JCX-93-01) (Dec. 21, 2001), p. 14 ("[V]arious types of disaster payments made to individuals have been excluded from gross income under a general welfare exception. The exception has been held to exclude from income payments made under legislatively provided social benefit programs for the promotion of the general welfare."). The IRS requires payments under the general welfare exclusion to be made to individuals from a governmental general welfare fund, for the promotion of the general welfare (which requires such payments to be need-based or otherwise not available to all) and not made as payment regarding services. See, e.g., ITA 200021036 (May 26, 2000).

<sup>11</sup> IRS guidance indicates that the general welfare exclusion has not been entirely superseded by Section 139 and may continue to apply to such payments (whether or not they are made in connection with a disaster). See Rev. Rul. 2003-12, 2033-1 C.B. 283 (excluding from gross income grants under a state program to individuals affected by a "Federally declared disaster" under both the general welfare exclusion and Section 139, payments from a charitable organization to individuals affected by a flood under Section 102, and payments to employees under an employer's program for unreimbursed reasonable and necessary expenses incurred as a result of a flood under Section 139). Although the exclusion is not limited to disaster relief payments, certain payments made by Federal, state and local governments for disaster relief may be excluded from the recipient's gross income using the general welfare exclusion. See, e.g., Rev. Rul. 76-144, 1976-1 C.B. 17 (excluding from gross income payments made under the Disaster Relief Act of 1974 to help individuals affected by a disaster meet extraordinary disaster-related necessary expenses); Rev. Rul. 98-19, 1998-1 C.B. 840 (excluding from gross income relocation payments made by a local government to an individual moving from a flood-damaged home to another residence); ITA 200016019 (Apr. 21, 2000) (excluding from gross income grants to reduce the debt burden of individuals to repair damage from disaster conditions); ITA 200022050 (June 2, 2000) (excluding from gross income payments to low-income homeowners for repair and replacement of homes damaged by a flood); Notice 2002-76, 2002-2 C.B. 917 (excluding from gross income under both Section 139 and the general welfare exclusion

A “qualified disaster” as defined by Section 139(c) is “(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)), (2) a Federally declared disaster (as defined by section 165(h)(3)(C)(i)), (3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or (4) with respect to amounts described in subsection (b)(4) [of Section 139], a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.”

Pursuant to Section 139, an individual may exclude from gross income amounts paid to or for the benefit of such individual, to the extent not otherwise compensated by insurance or otherwise, “(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, (2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster, (3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or (4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare.”<sup>12</sup>

The Secretary of the Treasury can declare a particular disaster a “qualified disaster” under Section 139(c)(3) even if the President has not declared the event a “Federally declared disaster” under Section 165. The IRS recently issued guidance designating the Japan earthquake and tsunami as a “qualified disaster” for the purposes of Section 139.<sup>13</sup> The IRS has also issued such determinations in the case of the 2005 tsunami and earthquake affecting southern Asia, the 2008 earthquake in China and the 2010 earthquakes in Haiti and Chile.<sup>14</sup>

## B. POSTPONEMENT OF FILING DEADLINES

Section 7508A allows the IRS to specify a postponement period of up to one year for deadlines for performing certain tax-related time-sensitive actions for taxpayers determined by Treasury and the IRS to be affected by a “Federally declared disaster” as defined in Section 165(h)(3)(C)(i) or a “terroristic or military action” as defined in Section 692(c)(2). Treasury and the IRS have frequently issued guidance allowing such postponements for the

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grants made to compensate individuals for unreimbursed reasonable and necessary expenses incurred as a result of the September 11 disaster); CCA 200910029 (Mar. 6, 2009) (excluding from gross income the value of a principal residence received under a state government program for housing victims of Hurricanes Katrina and Rita).

<sup>12</sup> § 139(b).

<sup>13</sup> Notice 2011-32.

<sup>14</sup> Notice 2005-23; Notice 2005-78; Notice 2008-57; Notice 2010-16; Notice 2010-26; see also Rev. Rul. 2003-12 (floods).

victims of natural disasters such as severe storms, tornadoes, and flooding, including, recently, for disasters in Alabama and Oklahoma.<sup>15</sup>

## II. LEAVE-RELATED PROGRAMS

Some employers may wish to institute leave-donation programs in order to permit employees to donate the value of their accrued leave time to charitable organizations providing assistance in the affected area or leave-sharing programs in order to permit employees to donate some of their leave-time to other employees with family members in the affected area. Programs of these types raise issues relating to whether any party to such transactions has taxable income, and the nature and availability of any deductions. The IRS has addressed these issues in several notices.

### A. LEAVE-DONATION PROGRAMS

Notice 2001-69 and Notice 2005-68 relate to leave-based donation programs established by employers to aid victims of the September 11 attacks and Hurricane Katrina, respectively. Under these programs, employees elect to forgo vacation, sick, or personal leave in exchange for their employer's making cash payments as charitable contributions. In these Notices, the IRS stated that, under certain conditions, it would not assert that (i) certain cash payments an employer makes in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees, (ii) the opportunity to make such an election results in constructive receipt to the employees or (iii) an employer is permitted to deduct these cash payments only as charitable contributions rather than as business expenses.<sup>16</sup> Certain reporting-related relief was also provided.

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<sup>15</sup> See, e.g., Notice 2010-48, 2010-27 I.R.B. 9 (June 21, 2010); IRS News Rel. WVA-2010-24 (June 28, 2010, rev. July 9, 2010); IRS News Rel. IN-10-91 (July 26, 2010, rev. Aug. 5, 2010); IRS News Rel. HOU-10-115 (Aug. 4, 2010, rev. Aug. 9, 2010); IRS News Rel. MIL-2010-15-IA (Aug. 16, 2010, rev. Oct. 15, 2010); IRS News Rel. IL-2010-34 (Aug. 20, 2010); IRS News Rel. MIL-2010-18-WI (Sept. 20, 2010); IRS News Rel. NC-2010-76 (Oct. 15, 2010, rev. Oct. 20, 2010); IRS News Rel. NC-2011-20 (Apr. 20, 2011, rev. Apr. 22, 2011, May 9, 2011); IRS News Rel. OK-2011-07 (Apr. 25, 2011); IRS News Rel. AL/TN-2011-26AL (Apr. 29, 2011, rev. May 2, 2011, May 3, 2011, May 4, 2011, May 5, 2011, May 9, 2011, June 3, 2011); IRS News Rel. AL/TN-2011-27TN (May 2, 2011, rev. May 5, 2011, May 31, 2011, June 3, 2011); IRS News Rel. LA/MS-2011-19 (May 2, 2011, rev. May 10, 2011); IRS News Rel. ATL-2011-36 (May 2, 2011, rev. May 3, 2011, May 4, 2011); IRS News Rel. OK-2011-08 (May 3, 2011, rev. May 9, 2011, May 10, 2011, May 17, 2011, May 31, 2011, June 21, 2011, June 23, 2011); IRS News Rel. AL/TN-2011-30TN (May 10, 2011, rev. May 27, 2011, June 2, 2011); IRS News Rel. KS/MO 2011-18 (May 10, 2011, rev. May 23, 2011, May 31, 2011, June 14, 2011); IRS News Rel. LA/MS-2011-23 (May 12, 2011); IRS News Rel. IN-2011-10 (May 20, 2011, rev. May 27, 2011, June 13, 2011, June 21, 2011); IRS News Rel. KS/MO 2011-21 (May 25, 2011); IRS News Rel. IL 2011-29 (June 8, 2011); IRS News Rel. MA-2011-30 (June 16, 2011); IRS News Rel. VT-2011-28 (June 16, 2011).

<sup>16</sup> We note that the IRS did not analyze possible constructive-receipt issues, but instead stated that it would not assert that making an election to forgo leave in exchange for payments made by an employee to a charitable organization resulted in constructive receipt of wages or income to the employee.

Notice 2001-69 and Notice 2005-68 were issued under the general provisions of Section 61, but the relief granted was only available for a limited time. We encourage Treasury and the IRS to reconsider whether relief of this type should be made more generally available.<sup>17</sup>

## B. LEAVE-SHARING PROGRAMS

Notice 2006-59 provides tax relief in the case of certain leave-sharing plans that permit employees to deposit accrued leave time in an employer-sponsored leave bank for use by other employees who have been adversely affected by a “major disaster,” as determined pursuant to statute and Presidential declaration. Under Notice 2006-59, the IRS generally will not assert that a leave donor who deposits leave in an employer-sponsored leave bank under a disaster leave-sharing plan described in the Notice realizes income or has wages or compensation with respect to the deposited leave.

Notice 2006-59 refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (the “Stafford Act”), under which the President may declare an event a “major disaster” and determine whether it warrants individual assistance or individual and public assistance from the Federal government, and to Pub. L. No. 105-18, which provides that the President may direct the Office of Personnel Management to establish a leave-sharing plan for Federal employees who are adversely affected by a major disaster or emergency as declared by the President. The relief in Notice 2006-59 is for events that are “major disasters” as declared by the President under either the Stafford Act or Pub. L. No. 105-18.

While any given disaster may not rise to the level of a “major disaster,” relief may nevertheless be warranted. For example, a particular disaster may involve relatively intense efforts by Americans to travel and otherwise participate in efforts overseas, and, in such cases, it may be appropriate to consider all possible leave-related avenues of relief. Notwithstanding the references in Notice 2006-59 to the Stafford Act and to Pub. L. No. 105-18, Notice 2006-59 appears (similarly to Notices 2001-69 and 2005-68) ultimately to proceed based on Treasury’s and the IRS’s general authority under Section 61. We believe, therefore, that the ability of Treasury and the IRS to provide leave-sharing relief is not necessarily limited to situations involving events that have been declared a “major disaster” by the President. The IRS and Treasury may wish to limit such extension for example, to events that have been declared “qualified disasters” pursuant to Section 139.<sup>18</sup>

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<sup>17</sup> Notice 2001-69 contained a request for comments from the public on whether the regulations under Section 61 should be amended to except leave-based donation programs from the assignment of income doctrine more generally. Treasury and the IRS declined to amend the regulations under Section 61 in Notice 2003-1, 2003-1 C.B. 257, after reviewing the comments received at that time. Notice 2003-1 also modified and superseded Notice 2001-69 to provide that relief under the Notice would not apply to payments made on or after January 1, 2003.

<sup>18</sup> Private Letter Ruling 200720017 (Feb. 9, 2007) disallowed income exclusion for a modified leave-sharing policy because, in part, it allowed for leave-sharing in situations broader than those contemplated by Notice 2006-59, and thus could not rely upon Notice 2006-59 as authority. The ruling did not specify that the IRS could not have provided for broader leave-sharing relief in its discretion. See also New York State Bar Association Tax Section, Possible Tax Relief for Haiti Relief Efforts (Report No. 1200) (Jan. 18, 2010), n.3.

### III. ADDITIONAL POTENTIAL RELIEF FOR CERTAIN TRAVEL-RELATED EXPENSES

Disasters may disrupt the ability of Americans to travel. For example, in connection with the recent events in Japan, many individuals have encountered and continue to encounter significant difficulties in traveling to and from Japan. If an individual employee travels for purposes of his employer's business, the individual's "reasonable and necessary" travel expenses usually may be reimbursed by the employer without taxable income to the employee. Section 132(a)(3) provides for these reimbursements to be excludable (as a working-condition fringe) if the expenses could be taken as itemized deductions by the employee under Section 162.

Under Section 62(a)(2)(A), the ability to claim such expenses as an itemized deduction under Section 162 requires that the exemptions be incurred under an "accountable plan" within the meaning of Treas. Reg. § 1.62-2(c)(2), which means (i) the expense must be connected to the business, (ii) the expense must be adequately substantiated and (iii) any reimbursement must be returned if the expense is not substantiated within a reasonable period of time. The business-connection requirement is met if the expense is incurred in connection with the performance of services as an employee of the employer. For travel expenses, a key to meeting this requirement is that the travel expenses be primarily related to the taxpayer's trade or business. This test is a facts-and-circumstances test and may depend on the length of time spent for business purposes and for personal purposes.

Given the significant disruption to travel to and from disaster areas that may occur as a result of a disaster, it may be appropriate, particularly where employees are traveling frequently in connection with a disaster, to allow for relief from certain of the more stringent accountable-plan requirements, so as to facilitate nontaxable employer reimbursement for business travel to and from the disaster area. In some situations, the travel in question will clearly relate to the business activities of the employer. In other situations, the employer may have a business interest in the travel but the travel may have mixed purposes, with the employee also having personal reasons for the trip. Examples of disaster-related travel for which employers may wish to reimburse employees could include when (i) an employee travels to or from a disaster area to provide support and coordination to an affected headquarters, branch or affiliate within the employer's business, (ii) an employee travels to or from a disaster area to help locate or aid employees and clients of the employer who have been displaced by the disaster and (iii) an employee travels to or from a disaster area both to locate or aid employees and to locate or aid personal friends and family who have been affected by the disaster. It is noted that travel-related concerns may be further exacerbated in the case of extreme disasters, where, for example, the disaster may extend to a broad geographic area, or where there is significant disruption in business and other travel to and from affected areas or regions.

We believe that an employer could have legitimate business reasons for reimbursing the expenses of an employee in each of these situations. In the examples in clauses (i) and (ii), the business connection is clear. In the clause (iii) example, the business connection is partially clear, and imposing detailed obligations to attempt to allocate particular purposes to particular expenses may be unnecessarily burdensome. We note that an employee may have a legitimate



business interest in generally securing uninterrupted services from employees, bolstering employees' mental health, minimizing distractions and fostering a supportive work environment.

With respect to those payments or reimbursements for which Section 139 (or other) relief is not otherwise available, Treasury and the IRS may want to consider travel-related relief in a variety of circumstances, depending on the effect on the U.S. workforce of any particular disaster. One approach could be to institute a rebuttable presumption that the travel expenses are reasonable and necessary in the conduct of the business and primarily related to the taxpayer's trade or business if the employer can demonstrate that a principal purpose of the trip is (i) business travel to and from a "qualified disaster" area and (ii) the expenses are incurred no later than the close of the taxable year of the disaster, or, if later, six months after the occurrence of the disaster.

#### IV. PRESIDENTIALLY DECLARED DISASTERS AND SPECIAL LEGISLATIVE RELIEF

As shown above, Treasury and the IRS may grant many forms of disaster relief using their administrative powers. However, some forms of relief require action by either the President or both Congress and the President. Various Code provisions only become available to the victims of a disaster after the disaster has been declared a "Federally declared disaster" under Section 165. These provisions include Section 143 (modifying the mortgage revenue bond rules for residences located in Federally declared disaster areas), Section 165 (allowing net disaster-related losses to be deducted without regard to the potentially otherwise applicable limitation of 10% of adjusted gross income), Sections 5064(b)(3) and 5708 (relaxing the requirements for refund claims from taxes paid on goods later destroyed in a disaster) and Section 7508A(b) (discussed above).<sup>19</sup>

In addition, Congress has authorized special emergency tax relief in the wake of some recent disasters, most notably Hurricane Katrina and September 11. For example, the Katrina Emergency Tax Relief Act, Pub. L. No. 109-73, (i) amended Section 170 to allow any taxpayer to claim an enhanced deduction for the contribution of "apparently wholesome food" to charity and allowed for charitable contributions to be fully deductible without the 50% limitation, even if the taxpayer did not itemize deductions, (ii) allowed a one-time additional personal exemption for persons displaced by the hurricane, (iii) suspended limitations on casualty loss deductions for Katrina-related losses, (iv) excluded from gross income all cancellation-of-indebtedness income due to Hurricane Katrina, (v) allowed for an additional deduction for housing a "Hurricane Katrina displaced individual," (vi) removed the limitation on deductions for charitable contributions made through the end of 2006, (vii) allowed a taxpayer whose principal residence was in the core disaster area, or whose principal residence was in the general disaster area and who was displaced, to use his or her 2004 income for the purposes of calculating the earned

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<sup>19</sup> In addition, some IRS administrative rules only apply to those affected by "major disasters." For example, Notice 2006-59, discussed above, only allows relief for certain leave-sharing programs established for victims of "major disasters." As an additional example, Revenue Procedure 2007-54, discussed above, establishes a procedure for temporary relief from the requirements under Section 42 for owners of low-income housing buildings and housing credit agencies located in Presidentially declared "major disaster" areas.

income tax credit and the child tax credit for 2005 and (viii) allowed victims of Hurricane Katrina to withdraw funds from their eligible retirement accounts and take larger-than-usual loans from such accounts without penalty and with a relaxed schedule for replacement contributions.

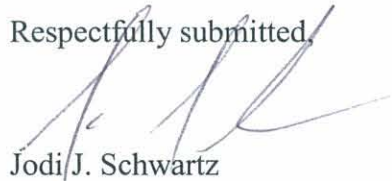
The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, among other relief, (i) excluded from gross income certain cancellation-of-indebtedness income related to the September 11 terrorist attacks and (ii) provided that payments made by charitable organizations to individuals “by reason of the death, injury or wounding of an individual” in the September 11 attacks would be considered related to the charities’ exempt purposes so long as they were made in good faith and using objective standards. This latter provision allowed charities to extend help to individuals and their families in a timely and efficient manner without undue administrative burden. More recently, taxpayers were allowed to claim a charitable contribution deduction in 2009 for donations made in the first three months of 2010 for the relief of victims of the Haiti earthquakes.<sup>20</sup> These are examples of tax-related relief provisions that could be provided to U.S. taxpayers in special disaster-related legislation.

We encourage Treasury and the IRS to consult, when appropriate, with Congress and the President in furtherance of providing such additional avenues of relief, whether it be for a specific disaster or be it more generally.

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We hope that you find this letter and these suggestions helpful. We believe that providing tax relief following certain disasters is commendable and we encourage you to use your authority to do so in the event of future disasters. We appreciate your consideration of our comments. Please let us know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,



Jodi J. Schwartz  
Chair

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<sup>20</sup> Acceleration of Income Tax Benefits for Haiti Relief Act, Pub. L. No. 111-126.

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