TAX RELIEF FOR RELOCATION EXCEPTIONS

APRIL 20, 2020

IRS Code Section 139 allows employers to assist employees during a federally declared disaster with "qualified disaster relief payments" that are tax-free to the employee and fully deductible to the employer. In response to the ongoing pandemic, President Trump declared COVID-19 a national disaster on March 13, 2020 and as a result, qualified disaster payments can be made to employees without tax gross up. That's good news given the many extenuating circumstances associated with shelter in place and COVID-19 travel restrictions that disrupted employees on assignment or in the process of relocating when the pandemic struck.

Take for instance, you pay for additional temporary living because a family had to "shelter in place" instead of proceeding to their final destination. These costs could be excluded from income and no tax gross up would be paid. The rule of thumb often used for estimating tax gross up is a factor of 60% (your tax gross up formula may be different). So, on a $1,000 reimbursement designated a qualified disaster payment, you could avoid $600 in tax gross up. That's material cost avoidance.

Under IRS code 139 there is no federal reporting or disclosure, so such payments are not reported on Form W-2 or 1099 and are not subject to federal income or payroll tax withholding.

TECHNICAL DEFINITION

The IRS has not issued any guidance specific to COVID-19 and thus it is not entirely clear what types of expenses during this time will be considered "qualified disaster relief payments." Historically they included payments made by an employer to an employee or paid on their behalf (benefits in kind) that are (not covered by insurance) and are reasonably expected by the employer to:

- Reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; and
- 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.

Other reasonable and necessary expenses likely to be covered include:

- Dependent care expenses, such as childcare or tutoring expenses for an employee's dependent due to school closures; remote learning or home-schooling expenses, such as home internet, computer for use by a dependent, educational materials, subscriptions to online educational resources, etc.;
- Expenses associated with working from home, including home office set-up costs, computer, internet, printer, and cell phone costs, and even increased utility costs on account of the home office;
- Transportation expenses due to work relocation including costs associated with taking a taxi or ride-sharing app service from home due to mass public transport closures;
- Critical care and funeral expenses of an employee or a member of the employee's family, who dies from a COVID-19 infection; and
- Other living expenses due to an employee's known exposure to COVID-19 such as hand sanitizers and home disinfectant supplies.

The payments should not include non-essential, luxury, or decorative items or services.

TYPICAL RELOCATION EXCEPTIONS

Although not specifically included in the list above we think qualified expenses might include the following:

- Additional travel expenses incurred to repatriate (not otherwise covered under the home leave policy);
- Travel, food and lodging for employees whose relocation was suspended during the emergency but they had already vacated their previous home;

- Extended temporary living expenses caused by shelter in place, travel restrictions or because they couldn't move into their new home; and
- Additional storage in transit expenses, furniture rental or other expenses because of household goods delivery delays.

It's unclear if expenses associated with home loss on sale would be considered a qualified disaster payment, but if there is strong evidence of pre- Covid-19 home value and a subsequent appraisal illustrating a change in value that would be considered material in the judgment of a qualified appraiser or broker price opinion, then that incremental loss on sale amount may be considered a qualified disaster payment.

RECORD KEEPING

Although technically employers aren't required to have a written plan or policy governing COVID-19 reimbursement, having such a policy is recommended to further establish its defensibility both internally for colleague consideration and externally for applicable tax authority review. The plan or addendum to policy should include a description of who is eligible, what expenses will be reimbursed and articulate any documentation that would be required to support the payment. This provides evidence that related payments go beyond the normal relocation policy (and differentiate them from relocation expenses that would be treated as income).

We also recommend that these expenses be tagged and tracked for future reporting and analysis as "COVID -19" exceptions. To assist, Weichert has established a process and General Ledger code to track designated expenses.

CAVEATS

Generally, state treatment for income tax withholding purposes will mirror the federal treatment of qualified disaster relief payments. That is, states generally exclude qualified disaster relief payments from the definition of wages for state income tax withholding purposes, either expressly or by applying the federal definition of "wages" for state income tax withholding purposes. However, qualified disaster relief payments may still be considered "wages" for purposes of state unemployment insurance tax. Employers should determine on a state-by-state basis whether certain income tax withholding and/or unemployment insurance tax contribution obligations may arise in connection with such payments.

Although this information has been reviewed by Tax, Legal and Advisory Services to ensure accuracy, please consult with your legal and tax providers for specific interpretation and applicability. For additional information refer to this BDO explanation or the Worldwide ERC® article written by Pete Scott Tax Counsel.

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