

Disaster Questions and Answers
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Question	Answer
<p>I wonder how this relief will affect tax returns for taxpayers living outside the disaster area but who are affected from businesses located inside the disaster area. Specifically, if an individual in San Antonio is waiting for a K-1 from a business (partnership) located in the disaster area, is the individual return also given relief even though they live outside the disaster area. If a Houston-based partnership has until Jan 2018 to file its 2016 tax return, I wonder how this will impact the partner returns for those partners who live outside the designated area. Do you know how I should advise clients/firm members?</p>	<p>https://www.irs.gov/businesses/small-businesses-self-employed/faq-for-disaster-victims-affected-taxpayer-and-records-necessary-to-meet-a-deadline-for-filing-and-paying FAQ for Disaster Victims – Affected Taxpayer and Records Necessary to Meet a Deadline for Filing and Paying Definition of an Affected Taxpayer A taxpayer does not have to be located in a federally declared disaster area to be an “affected taxpayer.” Taxpayers are “affected” if records necessary to meet a filing or payment deadline postponed during the relief period are located in a covered disaster area. An affected taxpayer can be:</p> <ul style="list-style-type: none"> • An individual • Any business entity or sole proprietor • Any shareholder in an S Corporation <p>(10/11) Q: I own an interest in a partnership, or I am a shareholder in an S Corporation that is located in a federally declared disaster area. However, I do not live in the disaster area myself. I rely on information (Schedule K-1) from the partnership or S Corp to file my tax return. Do I qualify as an affected taxpayer for purposes of receiving filing and payment relief? Yes. If the affected partnership or S Corp cannot provide you the records necessary to file your return then you’re also an affected taxpayer. Your filing and payment deadlines are postponed until the end of the postponement period just like the affected partnership or S Corp.</p> <p>To get the postponement for filing or payment, you must:</p> <ul style="list-style-type: none"> • Call the Disaster Assistance Hotline at 1-866-562-5227 • Explain that your necessary records are located in a covered disaster area

	<ul style="list-style-type: none"> • Provide the <u>FEMA Disaster Number</u> of the county where the affected partnership or S Corp is located • See Treas. Reg. § 301.7508A-1 and Rev. Proc. 2007-56 for a list of taxpayer acts that may be postponed in response to a federally declared disaster.
<p>We have a client with a 2290 form due today. They are using their heavy vehicles to transport supplies down to Houston and have been unable to get the mileage information to me. I cannot find any filing deadline extensions available for those companies rendering aid versus being a victim. Can you assist?</p>	<p>The 7508A regs provide “(iii) Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area.” Also, look to Section 11 of Revenue Procedure 2007-56.</p>
<p>I have a client (taxed as a partnership) that has been collecting funds from third party sources and other employees, with the intent to match those contributions; then provide those funds to their affected employees. Is the client creating a tax liability for themselves by collecting the money and would the assistance payments to the flood victims be taxable compensation to them. Is there an established means to effectuate their intent with going through a 501(c)(3)?</p>	<p>The monies paid to the partnership would not qualify as a charitable contribution since they would not meet the rules under Code Section 170 for charitable contributions. The partnership could not furnish the statements required under Code Section 170 to the individuals making the contributions to allow them to deduct on their tax returns.</p>
<p>We are a privately owned company. We elected to pay our employees for the days we were closed due to Harvey. Are you aware of any programs that will reimburse privately owned companies a portion or all of this cost?</p>	<p>REV. RUL. 2003-12, 2003-3 I.R.B. 283 (1/21/2003) CERTAIN DISASTER RELIEF PAYMENTS ARE TAX-FREE WASHINGTON – The Internal Revenue Service today issued guidance holding that individuals who are disaster victims will generally not have to pay taxes on assistance payments they receive. <u><i>Taxpayers in a Presidentially declared disaster area who receive grants from state programs, charitable organizations or employers to cover medical, transportation, or temporary housing expenses do not include these grants in their income.</i></u> The Victims of Terrorism Tax Relief Act of 2001 added Section 139 to the Internal Revenue Code, excluding from income qualified disaster relief payments to individuals. Today's ruling explains how that and other tax law sections apply in hypothetical disaster situations.</p>

	<p>In Addition:</p> <ul style="list-style-type: none"> • Revenue Ruling 131, IRB 1953-15,7 • Revenue Ruling 2003-12
A client was filling out a FEMA application and asked what is “Other Income” on the application?	I looked at the FEMA website and there is the term “Total Household Income.” There was no explanation available of the term on the web site. All the information on the process with telephone help numbers is available on www.FEMA.gov. You may call the FEMA help line 1-800-621-FEMA.
Because the Harvey area was declared a "federal disaster area" does the 10% of AGI rule apply when calculating a casualty loss deduction?	No. See the Disaster Relief and FAA Act of 2017. There is a new Form 4684 reflecting the changes from this legislation. Be sure to use the latest version of the form. Also, the Tax Cut and Jobs Act changed the treatment of casualty losses. This should be consulted in determining if you are able to deduct a casualty loss.
Are there any tax benefits to someone letting a flood victim live in their second home until the flood victim can find temporary housing or return home?	As of now, there are no provisions in the law for this.
Are you obligated to itemize your deductions if you take the disaster loss? I would think you do, since you have to report this on Schedule A, but I have heard you don't. I think that is mistaken information, I also have heard you can ignore the 10% rule. Which you clarified there has been no relief from.	The Tax Cut and Jobs Act changed the treatment of casualty losses. This should be consulted in determining if you are able to deduct a casualty loss.
We are located in Baton Rouge, but have clients all over the US. Are we allowed relief from late filing penalty for our out-of-state individual clients because our firm is located with the FEMA disaster area, and if so would that be only federal relief, or would we also have a claim for non-Louisiana state return filing, such as New York and/or California??	You would have to contact the individual states to request relief. It would be good to include a copy of the IRS News Release.
For client's without flood insurance, how do they calculate decrease in FMV of the property as result of the casualty? I have a client that didn't have flood insurance, but they had their insurance agent's adjuster come out. However, the adjuster's report came back with a \$0 loss because they weren't cover for flood damage.	The measurement is either the decrease in FMV or the cost of repairs as evidence of the decline in value.

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<p>You probably know that the Assessors have been busy re-assessing properties, and have been late getting the re-assessments to the Sheriff's, who in turn have been late getting the 2016 property tax bills out. I understand that most individuals are strictly cash-basis taxpayers, and that the deduction for the property tax payment is only allowed in the taxable year in which the payment is made, whether directly or on behalf of the taxpayer through escrowed funds.</p> <p>So, here's the wrinkle: I just received my property tax bills yesterday, 01/12/17. Somehow, my mortgage company was able to correctly ascertain the correct property tax amount ahead of time, and remitted this correct amount of property tax on my behalf from escrowed funds on 12/21/16. Do I get the deduction for 2016, even though the liability (the invoice) did not arise until 2017?</p> <p>I can appreciate that this is probably a theoretical question, in that the 2016 property tax will likely be reported on the 2016 Form 1098 issued to me from my mortgage company, and the IRS will likely never know exactly when the tax invoices were mailed.</p>	<p>Cash basis taxpayer gets the deduction when paid.</p>
<p>If you have a large loss from identity theft, can you claim it on your taxes?</p>	<p>Regulation, §1.165-1 (3) Any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers the loss (see § 1.165-8, relating to theft losses). However, if in the year of discovery there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained, for purposes of section 165, until the taxable year in which it can be ascertained with reasonable certainty whether or not such reimbursement will be received.</p>
<p>Could a real estate agent be a “competent” appraiser? Could an insurance adjuster be a “competent” appraiser?</p>	<p>See Robin Gail Torassa and Michael Sintef v. Commissioner., U.S. Tax Court, T.C. Summary Opinion 2010-174, (Dec. 20, 2010) and Howard Bruce Coates and Tandi A. Coates v. Commissioner., U.S. Tax Court, CCH Dec. 60,723(M), T.C. Memo. 2016-197, T.C. Memo. 112TCM470, (Oct. 31, 2016).</p>

<p>In measuring a disaster/casualty loss using the decrease in FMV method, please provide examples of reasonable methods that have been used to support FMV before and after the casualty without an appraisal? This is in regard to real estate values and contents.</p> <p>How does a competent appraiser compare to a qualified appraiser?</p>	<p>Refer to the IRS FAQs and the 165 regs. See question 8 concerning appraiser.</p> <p>Also see Robin Gail Torassa and Michael Sintef v. Commissioner., U.S. Tax Court, T.C. Summary Opinion 2010-174, (Dec. 20, 2010) and Howard Bruce Coates and Tandi A. Coates v. Commissioner., U.S. Tax Court, CCH Dec. 60,723(M), T.C. Memo. 2016-197, T.C. Memo. 112TCM470, (Oct. 31, 2016)</p>
<p>Can monthly rental expenses, not being reimbursed by FEMA, be part of the loss calculation?</p>	<p>These would generally be considered personal expenses and not part of any loss calculation.</p>
<p>What is the best practice for estimating the loss of contents? All my receipts for purchases of furniture and household good are lost.</p>	<p>Use Publication 584 workbook. See https://www.irs.gov/government-entities/indian-tribal-governments/itg-faq-4-answer-what-if-my-records-are-lost-or-destroyed and https://www.irs.gov/uac/reconstructing-your-records</p>
<p>I have clients with disaster losses from the 2016 floods to their rental property in excess of \$25,000. They are not real estate professionals. My software is taking the entire loss on page 1 of the 1040, not subject to passive activity limitations. I thought these losses would need to go thru the 8582 to apply passive limitations, but can't find any definitive answer on the IRS website or any of my other tax research resources. Can anyone help with an answer?</p>	<p>See IRS Passive Activity Audit Technique Guide https://www.irs.gov/pub/irs-mssp/pal.pdf Page 7-9</p> <p>CASUALTY LOSSES Casualties Losses Even though an activity is passive, casualty losses are permitted if the casualty requirements in IRC § 165 are met. Reg. § 1.469-2(d)(2)(xi) states that a casualty as defined in IRC §165(c)(3) will not be treated as a passive deduction[25]. Losses not compensated by insurance[26] can be deducted only up to the amount allowable under IRC 165. While tax law permits a loss to the extent of FMV before and after the casualty, losses are limited to the taxpayer's adjusted basis. In some cases, there may actually be a taxable gain: insurance proceeds less adjusted basis = gain. A casualty loss (business or nonbusiness) is limited to the lesser of: • Difference between FMV before and after casualty; OR, • Adjusted basis (cost less depreciation)[27] A personal casualty is also subject to a \$100 floor AND 10 percent AGI limitation[28].</p>

<p>If the taxpayer received insurance funds to repair their home (or FEMA funds) and they instead purchase another home, how is that treated? The reason for the purchase is that they are awaiting determination on substantial damage by FEMA/local government or it has been determined to be substantially damaged. Some taxpayers are demolishing the structure rather than raising the structure.</p>	<p>Taxpayer would offset insurance proceeds against basis in residence. Any excess of insurance proceeds should be excluded under 121 if they meet the 121 residency requirements. They would have no basis in residence if this is done.</p>
<p>Many client obtained storage units or PODS after the flood to store any contents that were able to be salvaged. Is the cost of the rental of those units deductible as part of the casualty loss?</p>	<p>Yes.</p>
<p>A casualty loss is limited to the taxpayer's basis in the property. For a business office building that flooded, is the entire basis of the building considered, OR because the building was not completely 100% destroyed, do you have to consider some reduced portion, less than 100%, of the basis when calculating the basis limitation.</p>	<p>https://www.irs.gov/businesses/small-businesses-self-employed/tangible-property-final-regulations Restoration after casualty loss or event - A taxpayer owns an office building. The building is damaged by a hurricane. The taxpayer either deducts a casualty loss under section 165 as a result of the damage or receives insurance proceeds after the accident to compensate for the loss. The taxpayer properly reduces the basis of the building by the amount of the loss or by the amount of the insurance proceeds. Assuming that the reduction in basis is less than or equal to the taxpayer's adjusted basis in the building, amounts paid to restore the damage to the building must be treated as an improvement and must be capitalized. Note: If the amounts paid to restore the property exceed the adjusted basis of the property prior to the loss, the amount required to be capitalized may be limited. See § 1.263(a)-3(k)(4)(i) for application of this limitation.</p>
<p>I gave to Go Fund Me for a relative/co worker. Is this deductible on my tax return?</p>	<p>This would not meet the rules under Code Section 170 for contributions.</p>
<p>I gave clothes and food to a relative/co worker. Is this deductible on my tax return?</p>	<p>This would not meet the rules under Code Section 170 for contributions.</p>
<p>We have a client delinquent in 2013, 2014, 2015 return taxes and has a tax lien for estimated \$60,000. Sent in 9465 for \$500 month and received</p>	<p>Taxpayer Advocate would be your best course of action in this instance.</p>

<p>IRS notice rejecting agreement. We send in 433-A two weeks prior to Texas -Hurricane Harvey. The client lives in Rockport, Texas. He had purchased his home in June 2017. Damage to home \$250,000 content \$204,000 He is self employed in Landscaping and Maintenance and lost Equipment \$244,000 which was collateral for the loan for the down payment of house. I have prepare his 1040 for 2016 where his only owes self employment tax and has a loss carryback of \$521,027. I have prepared his 1045 with a refund of \$65, 000. He has an opportunity to get a loan from SBA for \$250,000 for the repair of his home and purchase equipment to continue his livelihood but the lien has to be removed for him to get that loan. Question: How can I get this expedited. Is there a particular number I should call.</p>	
<p>It looks like there is some relief pertaining to the 45-day exchange period for like-kind exchanges and the deadline has been extended under the disaster relief provisions. If so, what it is the length of the extended period or the final date to identify the exchange property? Can you add any more details about this subject? What about if the property is in the affected area, but the taxpayer is not?</p>	<p>See Section 17 of Revenue Procedure 2008-58. In addition, there are many articles on this subject on the internet.</p>
<p>Do the postponed filing dates cover Forms 8938 & 8621 which are filled by inclusion in extended Forms 1065 & 1041?</p>	<p>From IRS. Both of the instructions for the Forms 8938 and 8621 indicate that they should be attached to the return and filed by the due date (including extensions) for that return. They will not be listed in the RP since the time to file the forms would be extended along with the returns.</p>
<p>Car flooded - can a casualty loss be calculated for the car loss? I have clients who have been given a lump sum for their car and this isn't enough to replace the car. Is any deduction available?</p>	<p>Yes. File on Form 4684.</p>
<p>Appraisal Does a price for buy-out constitute an appraisal? My client has decided he will not repair his house and an investor company has made him an offer to buy-out the house, as is. Or, does it need to be an appraisal from a certified appraiser?</p>	<p>The term in the regs is “competent appraisal.”Also see Robin Gail Torassa and Michael Sintef v. Commissioner., U.S. Tax Court, T.C. Summary Opinion 2010-174, (Dec. 20, 2010) and Howard Bruce Coates and Tandi A. Coates v. Commissioner., U.S. Tax Court, CCH</p>

	Dec. 60,723(M), T.C. Memo. 2016-197, T.C. Memo. 112TCM470, (Oct. 31, 2016)
Taxpayer died April 2017. Is 706 filing covered by filing relief?	Yes. Form 706 is covered by IRS filing relief.
Personal casualty loss-difference between filing in 2016 or 2017?	Filing on 2016 return is a Code Section 165(i) election. You should see which year offers the greatest tax benefit.
Are deductions limited to economic loss?	Deductions would generally be limited to what the taxpayer is out of pocket.
Is retention credit available to non profits?	Yes.
Disaster hotline?	866-562-5227
Can a business file under 165(i)?	
Is 165(i) a credit or deduction?	165(i) is an election allowing the taxpayer to deduct their casualty loss on the preceding year return.
Is there a 10% of AGI limitation for Hurricane Irma?	No.
IRS "O" freeze on accounts?	See Internal Revenue Manual 21.5.6.4.30 (10-01-2016)
I found my electric provider offered to match donations for Harvey through Baker Ripley, a Harris County assistance organization. Is there a way to confirm that match was made? Would this be worth sharing if it can be leveraged to help more?	You would have to receive substantiation from the electric provider. I do not think the contribution deduction would be available to the customer, but rather the electric company.
If a business did not sustain physical damages but was closed because the employees could not get there or were taking care of personal losses, is that business eligible for the retention credit for wages paid to employees while they were not working.	Yes. The definitions are very broad.
Would the Grant received from FEMA is taxable?	No. See Code Section 139.
What website are these white paper letter on?	https://www.tscpa.org/docs/default-source/communications/2017-news/harvey/update/hurricane-harvey-questions-and-answers.pdf?sfvrsn=2
So am I correct that the business must offer this qualified disaster relief to all employees and not just some in order to be able to take this deduction and not include it in an employee's compensation?	The revenue rulings do not answer this question. I would assume yes.
What about businesses that have incurred rehabilitation expenses for business buildings? I have a client who was not covered by flood insurance and incurred a large amount of damage. They have received	The grant money is considered a reimbursement like insurance and would reduce the loss.

some community grant money. Can that grant money be excluded or does it reduce their loss?	
Are FEMA funds paid to individuals "qualified payments" not included in income?	Yes. See Code Section 139.
Casualty loss: How do you determine the portion of decrease in FMV that is attributable to a non-permanent "buyer resistance?" If the decline in FMV is greater than the repair cost for a personal residential property, how do you determine the amount of the allowable casualty loss?	IRS does not recognize "buyer resistance." See Finkbohner <i>United States Tax Cases (1913-1999)</i>, [86-1 USTC ¶9393], <i>George W. Finkbohner, Jr. and Beverly R. Finkbohner, Plaintiffs-Appellees v. United States of America, Defendant-Appellant</i>, Casualty loss deduction: Flood damage to property: Temporary buyer resistance factor: Fair market value, (May 06, 1986), U.S. Court of Appeals, Eleventh Circuit, (May 6, 1986)
With regards to the tax credit of 40% of wages paid by a disaster affected employer to each employee from a core disaster area, would this tax credit be claimed on form 941 or 1120, 1120S, 1065? If the employer is a tax - exempt group, which form would they use to claim the tax credit?	Credit is claimed on Form 5884-A.
Will the casualty loss be subject to the 3% scale down related to itemized deducts?	No, per Disaster Relief and FAA Act of 2017.
Would this disaster relief be made retroactive for FEMA declared storms from 2016?	Please clarify.
I have already filed an electronic return taking the Harvey casualty loss on a 2016 return, and the return was accepted and the refund was issued to the taxpayer. I had to override the 10% as my tax software was not up to date, but it was successful.	OK.
If a taxpayer did not sustain a physical loss to his home, but his home declined in value because it was in an area that did have losses is this a deductible loss.	No.
Given suspension of limits on charitable contributions: So, there is NO CAP any more on itemized deductions for 2017?	Have to see how software computes return and takes this into consideration.
For 2016, how do we let the IRS know that our client was in a disaster area and they qualify for any additional extension to file their tax return.	Call Disaster Hotline and self identify.

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With regards to the tax credit of 40% of wages paid by a disaster affected employer to each employee, if the employer is a tax -exempt group, would they receive a refund as a result of the tax credit as they don't have any tax liability	Yes.
So am I correct that an employee retention credit on a partnership or S corp will pass thru on the K	Yes.
Can you provide quidance on how to calculate FMV prior and post for personal casualty loss.	See Revenue Procedure 2018-8 and 2018-9.
What will be the effective date of the new Disaster Relief and FAA Act? Will the new provisions also apply retroactively to 2016 tax returns that have already been filed, therefore enabling an amended 2016 tax return	The act defines the effective dates of the legislation.
Is temporary housing such as hotels deductible - I found sources that said no. We have a lot of clients who had to stay at a hotel while their home was repaired.	No. Considered personal living expense.
Can you take an employee retention credit with a Schedule C business?	Yes, if you meet the criteria.