

Summary of Section 139 (Disaster Relief Payments)

Tax Free Payment Provisions

The IRS delayed the extended due date for filing of returns and payment of taxes that would be due on April 15, 2020 to July 15, 2020 based upon President Trump's emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. As a result, there is a position that Section 139 of the Internal Revenue Code applies with the IRS clarifying in Notice 2020-18 that the president's actions make the pandemic a federally declared disaster. As clarified by Revenue Ruling 2003-12, Section 139 permits employers to make "qualified disaster relief payments" to employees to assist them with a "qualified disaster", which should include the Coronavirus crisis.

Section 139 is an exception to the general rule that treats most payments by an employer to an employee as taxable compensation. A qualified disaster relief payment under this section is defined to include any amount paid to reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred as a result of a qualified disaster. The employer may deduct these payments and the employee is not subject to tax on the amount received. This provision would not apply to continuation of wage payments, family and medical leave or sick payments, or to amounts meant to replace lost income, nor does it apply to amounts reimbursed by insurance or other means. Examples of expenses that could be considered in a qualified disaster payment to the employee as incurred as a result of the pandemic may include:

1. Medical expenses not compensated by insurance
2. Over the counter medications and hand sanitizer
3. Funeral costs of an employee or member of an employee's family
4. Additional costs incurred to enable an employee to work from home – additional equipment, supplies and increased utility costs as applicable
5. Cost of employee's child care incurred as a result of their child not being permitted to attend school

The pandemic is an unusual situation in that past presidentially declared disasters with the exception of the 9/11 attacks have often been the result of natural disasters such as hurricanes, floods, tornadoes, etc. that impact a limited area of the country or population. As a result, there may be some uncertainty regarding the applicability of Section 139 to the current pandemic. However, current existing tax law does seem to indicate that grants made to employees of a qualified disaster relief payment should also apply to anyone incurring additional costs as a result of the pandemic.

Revenue Ruling 2003-12 indicated that the IRS recognizes the difficulty in quantifying the amount of costs an employee incurs as a result of a disaster that can be reimbursed or paid by the employer through a qualified disaster relief payment. The ruling states:

Because "of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the [§ 139] exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred." Joint Committee on Taxation Staff, Technical Explanation of the "Victims of Terrorism Tax Relief Act of 2001," as Passed by the House and Senate on December 20, 2001, 107th Cong., 1st Sess. 16 (2001). As under § 139, the Service will not require individuals to account for actual disaster-related expenses for governmental payments to qualify under the administrative general welfare exclusion if the amount of the payments is reasonably expected to be commensurate with the expenses incurred.