

TAX ALERT

CASH RELIEF FOR EMPLOYERS IN HURRICANES' AFTERMATH: REFUNDABLE TAX CREDIT FOR EMPLOYEE RETENTION

(UPDATED TAX ALERT FROM MARCH 2018 - ISSUE 66
CONSIDERING ISSUANCE OF CIRCULAR LETTER 18-11)

SUMMARY

Certain PR employers that were rendered inoperable by Hurricane Irma and/or Maria and are located in a federally-declared disaster zone within PR may be eligible to claim an employee retention credit. Puerto Rico's Treasury Department (PRTD) published Circular Letter 18-11 establishing the guidance to claim the refundable credit. The credit varies depending on the employer's 2017 taxable income. Namely, the credit is limited to the lesser of \$1,560 or 26% (for employers with 2017 Taxable Net Income more than \$10 million) or the lesser of \$1,920 or 32% (for employers with 2017 Taxable Net Income less than \$10 million) of the wages paid to each affected employee during the applicable relief period:

- Hurricane Irma Disaster Zone (September 4, 2017 – December 31, 2017)
- Hurricane Maria Disaster Zone (September 16, 2017 – December 31, 2017)

"LEGAL BASIS"

On September 29, 2017, the Disaster Tax Relief and Airport and Airway Extension Act of 2017 was signed into law, creating an employee retention credit for employers affected, in the case of PR, by Hurricane Irma and/or Maria. To be eligible for the refundable credit, the employer must have been actively conducting a trade or business on the hurricane date (September 4, 2017 for Irma; and September 16, 2017 for Maria) within the designated disaster zone and became inoperable during the applicable relief period, as a result of hurricane damage. Note that the determination of whether or not a business (the entire operation or just a location) was rendered "inoperable" for these purposes will rest on each employer and will be subject to audit by PRTD and/or the Internal Revenue Service.

"ELIGIBLE EMPLOYER" AND "ELIGIBLE EMPLOYEE"

The Employee Retention Credit is based on qualified wages paid by an eligible employer to an eligible employee. For this purpose, an "eligible employer" is any employer which conducted an active trade or business which was inoperable as a result of damage sustained by reason of Hurricane Irma and/or Maria; and an "eligible employee" is an employee whose principal place of employment with an eligible employer on the applicable hurricane date was in a designated disaster zone caused by Hurricanes Irma and/or Maria. Employees hired after the applicable hurricane date (, September 4th or September 16th) are not eligible employees.

"QUALIFIED WAGES"

Qualified wages are those paid by an eligible employer to an eligible employee after the hurricane date and before January 1, 2018, in which the business first became inoperable until it resumed significant operations. Qualified wages include wages paid without regard to whether the employee performed any services, performed services at a different location from his or her principal place of employment, or performed services at the principal place of employment before significant operations had resumed.

OUR EXPERTS

Gabriel Hernández, CPA

Partner
Tax Advisory Services
gaby@bdo.com.pr

Patricia Wangen, CPA, Esq.

Partner
Tax Compliance Services
patricia@bdo.com.pr

Tax Exempt payments, like disaster assistance payments to employees, are not considered qualified wages. For the purpose of this credit, qualified wages paid by a third-party payer (including employee leasing company, a professional employer organization, or a Certified Employer Organization) to eligible employees of an eligible employer are considered qualified wages paid by an eligible employer. In the case an employer qualifies for a credit under both hurricanes, the employer cannot claim the credit for Hurricane Irma and María with respect to the same wages to an employee for the same period.

“COMPUTATION REFUNDABLE CREDIT”

The refundable credit amount is equal to 26% (when the employer’s Taxable Net Income is more than \$10 million) or 32% (when the employer’s Taxable Net Income is less than \$10 million) of the qualified wages paid to each eligible employee, up to \$6,000 (making the maximum refundable credit of \$1,560 or \$1,920 per eligible employee depending on the employer’s 2017 taxable net income). The refundable credit is not considered taxable income for the employer. PRTD established an online platform for claiming and distributing the funds. In order to claim the credit, the employers need to file a form online along with a declaration of wages. Not-for-profit organizations are not eligible to claim the credit. Any employer that claims the credit in the United States is not eligible to claim the credit in Puerto Rico.

“GETTING READY TO CLAIM”

Employers must gather the following information:

- Facts to support the date business first became inoperable and date business resumed significant operations.

Things to consider in such determination: physical damage to location, loss of inventory, inability to purchase inventory, inability for clients or employees to access the business location, lack of power or water from public utility, lack of telecommunications, among others, that affected 80% or more of the business’ activity.

- Employer Identification Number
- List of affected employees (name and social security number) and amount of eligible wages per employee.
- Active sales and use tax Merchant Registration Certificate that includes the inoperable business location.
- Copy of the electronically filed Forms 499R-2/W-2PR year 2017
- Copy of Department of Labor Quarterly Unemployment and Disability Insurance Tax Return for the 3rd and 4th quarters of 2017 including the quarterly report of wages paid to each employee. Employers should ensure the names and social security numbers in these reports tie to the information to be included in the list of affected employees.
- Bank account information (Refundable credit will only be paid via direct deposit)

In case of qualified wages paid by third-party payers, the PRTD will need to provide guidance regarding the documents required to evidence wages paid to each employee.

The refundable credit application must be submitted before December 31, 2018. Any submitted application is final; there is no opportunity to amend submitted applications.

The material discussed in this publication is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs. This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained herein without obtaining specific professional advice.

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Tel. (787)754-3999 • Fax (787)754-4493 • 1302 Ponce León Avenue Suite 101, San Juan, PR 00907
www.bdopr.com

