

AN ALERT FROM THE BDO CREDITS & INCENTIVES PRACTICE

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SUBJECT

DISASTER TAX RELIEF LAW CREATES EMPLOYEE RETENTION TAX CREDIT FOR CERTAIN EMPLOYERS AFFECTED BY HURRICANE HARVEY, IRMA, OR MARIA

SUMMARY

Certain employers that were rendered inoperable by Hurricane Harvey, Irma, or Maria and are located in a federally-declared disaster zone may be eligible to claim an employee retention credit equal to the lesser of \$2,400 or forty percent of the wages paid to each affected employee during the applicable relief period:

- ▶ Hurricane Harvey Disaster Zone (August 23, 2017 – December 31, 2017)
- ▶ Hurricane Irma Disaster Zone (September 4, 2017 – December 31, 2017)
- ▶ Hurricane Maria Disaster Zone (September 16, 2017 – December 31, 2017)

DETAILS

Background

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 by Hurricane Harvey, Irma, or Maria (the HDZ Employee Retention Credit). To be eligible for the tax credit, the employer must have been actively conducting a trade or business on the hurricane date (August 23, 2017 for Harvey; 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.

The HDZ Employee Retention Credit is based on **qualified wages** paid by an eligible employer to an **eligible employee**. For this purpose, an "eligible employee" is an employee whose principal place of employment on the applicable hurricane date was in a designated disaster zone; and "qualified wages" are wages paid to an eligible employee during the relief period in which the business first became inoperable until it resumed significant operations.

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Qualified wages include wages paid without regard to whether the employee performs any services, performs services at a different location from his or her principal place of employment, or performs services at the principal place of employment before significant operations have resumed.

The credit amount is equal to forty percent (40%) of the qualified wages paid to each eligible employee, up to \$6,000 (making the maximum credit \$2,400 per eligible employee). Notably, the HDZ Employee Retention Credit cannot be claimed for an employee for any payroll period in which the employer may claim the Work Opportunity Tax Credit (WOTC) for such individual. The following example illustrates the interaction of the HDZ Employee Retention Credit and the WOTC:

Calendar year employer hired a veteran on January 1, 2017 at a salary of \$2,400 per month. As a veteran, the employee is a member of a targeted group for which the employer may claim a WOTC equal to the lesser of \$9,600 or 40% of the employee's first year wages, provided the employee works over 400 hours for that year. The employer is located in the Hurricane Irma disaster zone and was rendered inoperable by the disaster on September 4, 2017. Significant operations did not resume before January 1, 2018. Is the employer entitled to claim both the WOTC and the HDZ Employee Retention Credit with respect to the employee on its 2017 return?

The employer cannot claim the HDZ Employee Retention Credit to the extent the WOTC is available to the employer. Where the employee worked 400 hours and earned \$24,000 by October 31, 2017, the employer may claim the maximum WOTC of \$9,600 ($\$24,000 \times 40\%$) for services rendered during the period January 1, 2017 through October 31, 2017. The employer may claim the HDZ Employee Retention Credit for wages paid during the period beginning on November 1, 2017 and ending on December 31, 2017.

BDO INSIGHTS

- ▶ The credit of up to \$2,400 per eligible employee will assist employers retain essential staff during the recovery period.
- ▶ Pending IRS guidance, we anticipate the credit will be claimed on Form 5884-A, which is filed with the employer's tax return – similar to the relief provided for Hurricane Katrina in 2005 and other natural disasters.
- ▶ Taxpayers affected by any of the hurricanes listed above should consult with their financial statement auditor and tax advisor to evaluate and determine the potential financial statement implications under ASC 740, including the impact on current and deferred taxes, uncertain tax benefits, and disclosures.

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