

# POST HURRICANE TAX, SBA, AND OTHER RULES/STRATEGIES

Saturday, October 26, 2024  
11:00 AM to 12:00 PM EST  
(60 minutes)



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**GASSMAN CROTTY & DENICOLO, P.A.**  
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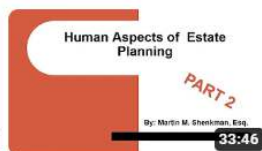
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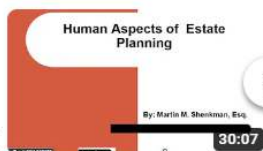
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Alan Gassman, JD, LL.M. (Taxation), AEP® (Distinguished)  
agassman@gassmanpa.com

GASSMAN CROTTY DENICOLA, P.A.  
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How to Handle Florida Hurricane Damage Issues |  
Saturday, October 26, 2024 |

# Dana Dallal – Law Clerk

Dana Dallal is a current law clerk at Gassman, Crotty & Denicolo, P.A. She is currently pursuing a JD at Stetson Law and obtained her undergraduate degree from the University of Toronto in philosophy and criminology.





# Rachel Dagit– Law Clerk

Rachel Dagit is a recent graduate from Florida State University with a degree in Finance. She is currently a Law Clerk at Gassman, Crotty & Denicolo, P.A.



# Peter Farrell, J.D.,LL.M. (University of Florida) Associate at Gassman, Crotty & Denicolo, P.A.

**Showed up Saturday to help with this webinar**



# TABLE OF CONTENTS

Section Heading	Slide Number
Suing Your Insurance Company: An American Sport	8
Deadlines	22
FEMA Information	36
SBA Information	47
EIDL Business Loans – Use of Loan Proceeds and Restrictions for Business Loans	59
Pinellas County Hurricane Property Damage and Property Tax Revaluation	97
Providing Assistance through Charitable Organizations and Qualified Disaster Relief Payments	110
Casualty Loss Deduction	159
IRS FAQs for Disaster Victims	173





# Suing Your Insurance Company: An American Sport



# \$107,000 Jury Verdict for Boca Raton Couple

- Damage sustained during Hurricane Irma
- Damage was sustained to the couple's roof which cause a leak in their home but the leak did not occur until 2019
- Insurance claimed that roof damage was a result of wear and tear
- Plaintiffs were awarded the damages that they asked for during trial: \$107,000
- 

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*Alyssa H. Lerner and Jeffrey C. Lerner v. Citizens Property Insurance Corporation*, No. 50-2019-CA-015621-XXXX-MB

<https://www.law.com/dailybusinessreview/2022/01/05/south-florida-homeowners-prevail-against-insurer-alleging-it-wrongly-denied-storm-damage-claim/>

<https://www.propertycasualty360.com/2022/01/07/south-florida-homeowners-prevail-against-insurer-alleging-it-wrongly-denied-storm-damage-claim-414-215681/?slreturn=20241024144640>

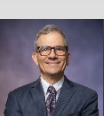


# \$9.2M Jury Verdict for Plaintiff

- Damage occurred during hurricane Irma
- Insurance initially denied a \$1.2M claim for roof replacements at an assisted living facility
- The insurer had initially denied the claim, alleging that the policyholder's property damage was either unrelated to the hurricane or not covered under the policy terms. Court of Appeals found the jury's verdict for \$9.2M in the trial court was based on sufficient evidence
- Damages to the roof worsened as the time went on due to moisture exposure and water permeating the walls. **The jury accounted for these worsening damages as a result of the insurers inaction.**
- The bad-faith finding led to a significant punitive award, with the insurer liable for a payout far exceeding the original claim amount.

*AM Grand Court Lakes LLC v. Rockhill Ins. Co.*, 68 F.4th 1354 (11th Cir. 2023)

<https://www.law.com/dailybusinessreview/2023/06/06/insurer-must-pay-9-2m-after-denying-1-2m-claim-for-hurricane-damage/>





# Making Insurance Claims

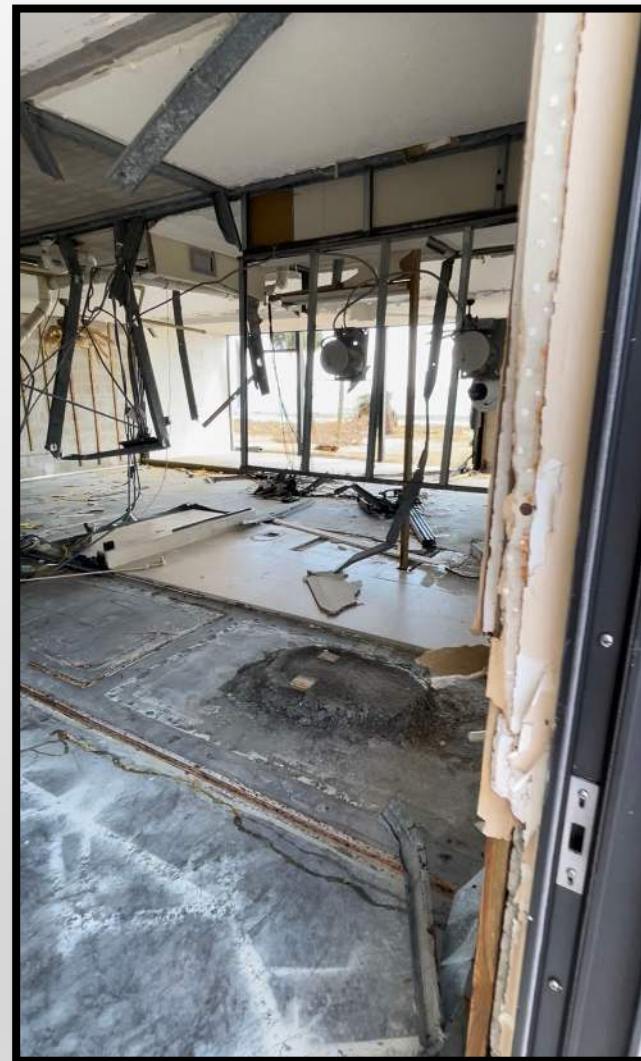
**What are some reasons that claims are denied or underpaid by insurance companies?**

Wear and Tear

Lack of Interior Damages

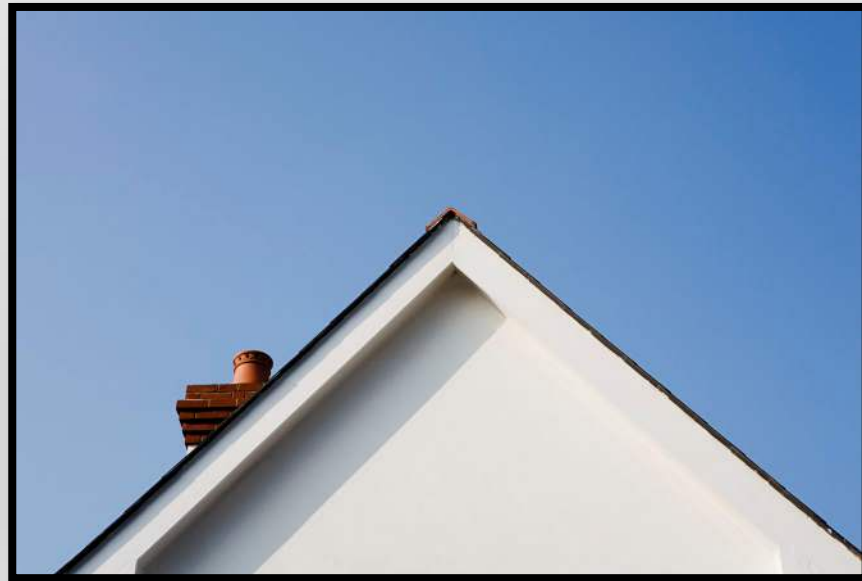
Prompt Notice

Flood Insurance vs. Windstorm/Hurricane Insurance



# What can I do to help my claim against these insurance defenses?

Wear and Tear - Shingle roofs have a life expectancy of approximately 15 years while tile roofs are expected to last closer to 30 and metal roofs are expected to last even longer. To prove that your roof was in good working order at the time of the storm and had years left before it required replacement, gather all reports, photographs, maintenance receipts, and repair invoices. A four-point inspection or wind mitigation report can be very persuasive to show that your roof had several years of life left. In addition, maintenance receipts and repair invoices provide support against arguments that your roof was in disrepair before the storm.



# What can I do to help my claim against these insurance defenses?

Interior Damage - Look around your property and document any water stains, cracks, loose tape lines, nail pops, baseboard separation, and anything that may look different from before the storm. In addition, make the interior of your property available to the insurance company when they visit and encourage them to inspect for damage beyond the roof. Do not keep them from inspecting any areas, even if you have not personally seen any damage in that room. If you have seen anything, please make sure you point it out to them and never indicate that there is “no interior damage” in a room unless you are absolutely sure.





# What can I do to help my claim against these insurance defenses?

Interior Damage - Please note that you may also need to retain experts to perform engineering studies, as well as potential mold and water remediation, to determine the full amount of repairs needed to return the home or property to its pre-loss condition. You do not have to rely solely on experts retained by the insurance company to determine whether interior damage exists.



# What can I do to help my claim against these insurance defenses?

Prompt Notice – To a lay person who is not trained, it may be difficult to see hurricane damage as it does not all look the way that you expect. For example, cracks, separations, and things that have pulled away from the property, electronics that no longer function, and indentations may be evidence of hurricane damage. In addition, lifted, loose or displaced roof tiles and shingles are very difficult to spot from the ground and sometimes you cannot even tell they exist without further exploration. In fact, there have been properties where a hurricane has lifted the entire roof and placed it right back in the same spot. As such, there was no visible damage until an expert looked at the trusses in the attic to see what had occurred.

For these reasons, many homeowners and property owners may not discover they have hurricane damage until much later when a bigger issue occurs, such as a significant water leak. Thus, you must be extremely diligent in determining whether wind, fallen trees or other phenomenon may have occurred that resulted in damage to your property that requires filing of an insurance claim. As soon as you notice anything that may be considered damage, please be sure to notify your insurance company right away and if you are not sure, please reach out to someone who can investigate for you.



# What can I do to help my claim against these insurance defenses?

Flood insurance vs. Windstorm/Hurricane Insurance – Storm surge and/or flooding usually leaves an interior water line that may be more difficult to see as time goes on, and water as high as 12 feet outside does not mean that water got up to 12 feet inside. As such, it is important to take photographs, make lists and document all damage above and below that line while you can still see it. This is also true for any personal and business property (contents). Please do not move any of these items until you are able to document where they were located. Keep in mind that whether a particular item was on level one or two of a property can make a significant difference in coverage when it comes to flood, so documentation is key.





# What can I do to help my claim against these insurance defenses?

Flood insurance vs. Windstorm/Hurricane Insurance – In addition, please do not personally decide whether your damage is covered under flood or windstorm/hurricane. If you have policies for both and experienced water inside your property, file claims under both and allow the insurance companies to determine who covers what damage. If you only have coverage for windstorm/hurricane, still file a claim with that carrier and allow them to determine whether the damage is covered. You can then deal with whatever they decide and determine your next steps accordingly. You pay insurance premiums for a reason and do not want to miss out on a covered claim because you were not sure.



# LETTER TO CLIENTS AND ADVISORS

## **Re: Insurance Claims for Hurricane and Property Damages**

Dear Clients and/or Their Advisors:

Following every large storm, there are thousands of damaged homes and corresponding insurance claims for property damage.

Insurance companies are understandably cautious in approaching claims that are made, with a view towards limiting payments to what is reasonable and necessary in view of insurance policy provisions and the circumstances of each claim.

While many insurance carriers and their in-house personnel will pay a great many claims at the full loss value without problem, this is not always the case, and the adjusters who work for the insurance carriers or the agencies that they hire, will often take a conservative, or sometimes unrealistic view of the situation, and attempt to deny coverage, or to offer much less than what is reasonable and appropriate.



This happens at a very high frequency for hurricane claims given the following factors:

1. Wear and Tear - Florida roofs wear out and can be damaged by small storms, hail and wind that occur over time before a hurricane. As such, insurance carriers may attempt to claim that a roof has already experienced significant “wear and tear” when taken down by the storm.
1. Interior Damage - Interior water damage that occurs as the result of a failed roof may be significantly more serious and require additional money to be paid by the insurance company. However, interior damage, including damage to insulation, ceilings, walls and other elements, may not be acknowledged or brought to light as the insurance company and/or roofers focus solely on the roof damage itself.
3. “Prompt” Notice - Damage due to a hurricane may not be immediately apparent. This results in what the insurance companies consider “late” or “delayed” claims.

Most insurance policies require “prompt” or “timely” notice of a claim. However, “prompt” and “timely” are not defined so the insurance companies utilize these terms as a reason to deny or reduce payment on a claim based upon the fault of an insured.

4. Flood insurance vs. Windstorm/Hurricane Insurance - Insurance companies will indicate that damage is not covered under your policy because it was due to flood (storm surge), not hurricane. This may also occur in the reverse with a flood carrier as pointing to another carrier is an easy way for insurance companies to get out of paying claims.



So now that the Hurricane has passed, what can you do to deal with these potential factors?

1. Wear and Tear – Shingle roofs have a life expectancy of approximately 15 years while tile roofs are expected to last closer to 30 and metal roofs are expected to last even longer. To prove that your roof was in good working order at the time of the storm and had years left before it required replacement, gather all reports, photographs, maintenance receipts, and repair invoices. A four-point inspection or wind mitigation report can be very persuasive to show that your roof had several years of life left. In addition, maintenance receipts and repair invoices provide support against arguments that your roof was in disrepair before the storm.
  
1. Interior Damage – Look around your property and document any water stains, cracks, loose tape lines, nail pops, baseboard separation, and anything that may look different from before the storm. In addition, make the interior of your property available to the insurance company when they visit and encourage them to inspect for damage beyond the roof. Do not keep them from inspecting any areas, even if you have not personally seen any damage in that room. Further, if you have seen anything, please make sure you point it out to them and never indicate that there is “no interior damage” unless you are sure.  
  

Please note that you may also need to retain experts to perform an engineering study, along with potential mold and water damage remediation, to determine the full amount of repairs needed to return the home or property to its pre-loss condition. You do not have to rely solely on experts retained by the insurance company.
  
3. “Prompt” Notice - To a lay person who is not trained, it may be difficult to see hurricane damage as it does not all look the way that you expect. For example, cracks, separations, land that has pulled away from the property, electronics that no longer function, and indentations may be evidence of hurricane damage.



In addition, lifted, loose or displaced roof tiles and shingles are very difficult to spot from the ground and sometimes you cannot even tell they exist without further exploration. In fact, there have been properties where a hurricane has lifted the entire roof and placed it right back in the same spot. As such, there was no visible damage until an expert looked at the trusses in the attic to see what had occurred.

For these reasons, many homeowners and property owners may not discover they have hurricane damage until much later when a bigger issue occurs, such as a significant water leak. Thus, you must be extremely diligent in determining whether wind, fallen trees or other phenomenon may have occurred that resulted in damage to your property that requires filing of an insurance claim. As soon as you notice anything that may be considered damage, please be sure to notify your insurance company right away and if you are not sure, please reach out to someone who can investigate for you.

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In addition, please do not personally decide whether your damage is covered under flood or windstorm/hurricane. If you have policies for both and experienced water inside your property, file claims under both and allow the insurance companies to determine who covers what damage.

If you only have coverage for windstorm/hurricane, still file a claim with that carrier and allow them to determine whether the damage is covered. You can then deal with whatever they decide and determine your next steps accordingly. You pay insurance premiums for a reason and do not want to miss out on a covered claim because you were not sure.



# Deadlines





# Important FEMA Deadlines

- **FEMA Public Assistance Grant Program for Nonprofits & Governments** (not less than 75% of the eligible costs)
  - October 28, 2024 – Hurricane Helene
  - November 11, 2024 – Hurricane Milton
  - Eligible cost is funding directly tied to eligible work which is classified into the following categories:
    - Emergency Work
      - Category A: Debris removal
      - Category B: Emergency protective measures
    - Permanent Work
      - Category C: Road and bridges
      - Category D: Water control facilities
      - Category E: Public buildings and contents
      - Category F: Public utilities
      - Category G: Parks, recreational, and other facilities
- **FEMA Individual Assistance** (up to \$42,500, no income threshold)
  - November 12, 2024 – Hurricane Debby
  - November 27, 2024 – Hurricane Helene
  - December 11, 2024 – Hurricane Milton



# SBA Van



## Clearwater Bar Association

Established 1930

The Florida SBDC Network's Mobile Disaster Recovery Unit will be in Downtown Clearwater **October 28-31** to provide business support to Pinellas County businesses affected by Hurricane Helene and Hurricane Milton.

Appointments are not required and walk-in visits are welcome. Business owners are encouraged to visit the mobile center to meet one-on-one with professionally certified consultants from the FSBDC and SBA to receive assistance and information about the following critical business recovery programs:

**SBA Economic Injury Disaster Loan (EIDL)**

**SBA Physical Disaster Loan**

**Florida Small Business Emergency Loan Bridge Program**

**Location:** Downtown Clearwater at Coachman Park, 100 N Osceola Ave, Clearwater, FL 33755

**Dates:** Monday, Oct. 28 to Thursday, Oct. 31

**Hours:** 10 a.m. - 3 p.m.

800 Drew Street, Clearwater, FL 33755

Phone: (727) 461-4869

Website: <https://www.clearwaterbar.org>



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# Important SBA Deadlines

- **SBA Disaster Assistance Loan** (up to \$500,000 for repair of the residence, up to \$100,000 for personal property, and up to \$2,000,000 for businesses at no more than 4% per annum, no payments the first year, may be interest only for 3 years (not sure of this 30 year term)).

For *Physical* Damage:

November 12 – Florida Hurricane Debby

November 27 – Florida Hurricane Helene

December 10 – Florida Hurricane Milton

- For *Economic* Damage:

May 12, 2025 – Florida Hurricane Debby

June 30, 2025 – Florida Hurricane Helene

July 11, 2025 – Florida Hurricane Milton

- **Florida Small Business Emergency Bridge Loan** (up to \$50,000, and up to \$150,000 for agriculture and aquaculture businesses)
  - Hurricane Helene Deadline: November 24, 2024
  - Hurricane Milton Deadline: December 4, 2024



# Important State Property Tax Deadline

- **Florida Property Tax Refund**

Section 197.319, Florida Statutes (F.S.), **provides a refund of property taxes paid for residential improved property rendered uninhabitable for at least 30 days due to a catastrophic event.**

To be eligible for refund, the property must be determined “uninhabitable,” that is the property could not be used or occupied for the purpose for which it was constructed for a period of at least 30 days due to damage to, destruction of, or a condition that compromises the structural integrity of the residential improvement which was caused by a catastrophic event.

The owner of the property must file a sworn application and supporting documentation with the property appraiser’s office **by March 1**, of the year immediately following the catastrophic event (March 1, 2025 deadline).



# Important State Tax Deadlines

- **Florida Corporate Income/Franchise Tax Return Extension**

Taxpayers in the following counties with original tax return due dates or extended due dates falling on or after **August 1, 2024**, and before May 16, 2025, will now have a due date of **May 16, 2025**: Your 2024 return will be due before your 2023 return.

Alachua	Gilchrist	Monroe
Bay	Glades	Nassau
Bradford	Gulf	Okaloosa
Brevard	Hardee	Okeechobee
Calhoun	Hendry	Orange
Charlotte	Hernando	Osceola
Citrus	Highlands	Pasco
Clay	Hillsborough	Pinellas
Collier	Holmes	Polk
DeSoto	Jackson	Putnam
Dixie	Lake	Sarasota
Duval	Lee	Seminole
Escambia	Levy	St. Johns
Flagler	Manatee	Sumter
Franklin	Marion	Union
Volusia	Walton	Washington



# Important Florida Tax Deadlines Cont.

- **Sales and Use Tax and Related Taxes Due Date Extension**

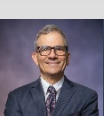
Due dates for returns, reports, and payments due for the September 2024 and October 2024 reporting periods for taxpayers in 24 Florida counties have been extended to **November 22, 2024**.

## Applicable Counties

Charlotte, Citrus, Collier, Dixie, Franklin, Glades, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lee, Levy, Madison, Manatee, Orange, Pasco, Pinellas, Polk, Sarasota, St. Lucie, Taylor, and Wakulla.

## Applicable Taxes (non-exhaustive list)

- Sales and use tax (including discretionary sales surtax)
- Reemployment tax
- Communications services tax
- Documentary stamp tax (unrecorded documents)
- Governmental leasehold intangible personal property tax
- Gross receipts tax on utility services





# Defining A Qualified Disaster (It is not your desk!)

## Disaster relief payments; Qualified disaster defined

- For purposes of this section, the term "qualified disaster" means-
- (1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),
- **(2) a federally declared disaster** (as defined by section 165(i)(5)(A)),
- (3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, **or**
- **(4) with respect to amounts described in subsection (b)(4) [paid by government... in connection with a qualified disaster to promote the general welfare], a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.**

26 U.S.C. §139(c).



# Defining Federally Declared Disasters

## Federally declared disasters

For purposes of this subsection— (A) In general The term “Federally declared disaster” means **any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.**

26 U.S.C. § 165(i)(5)(A).

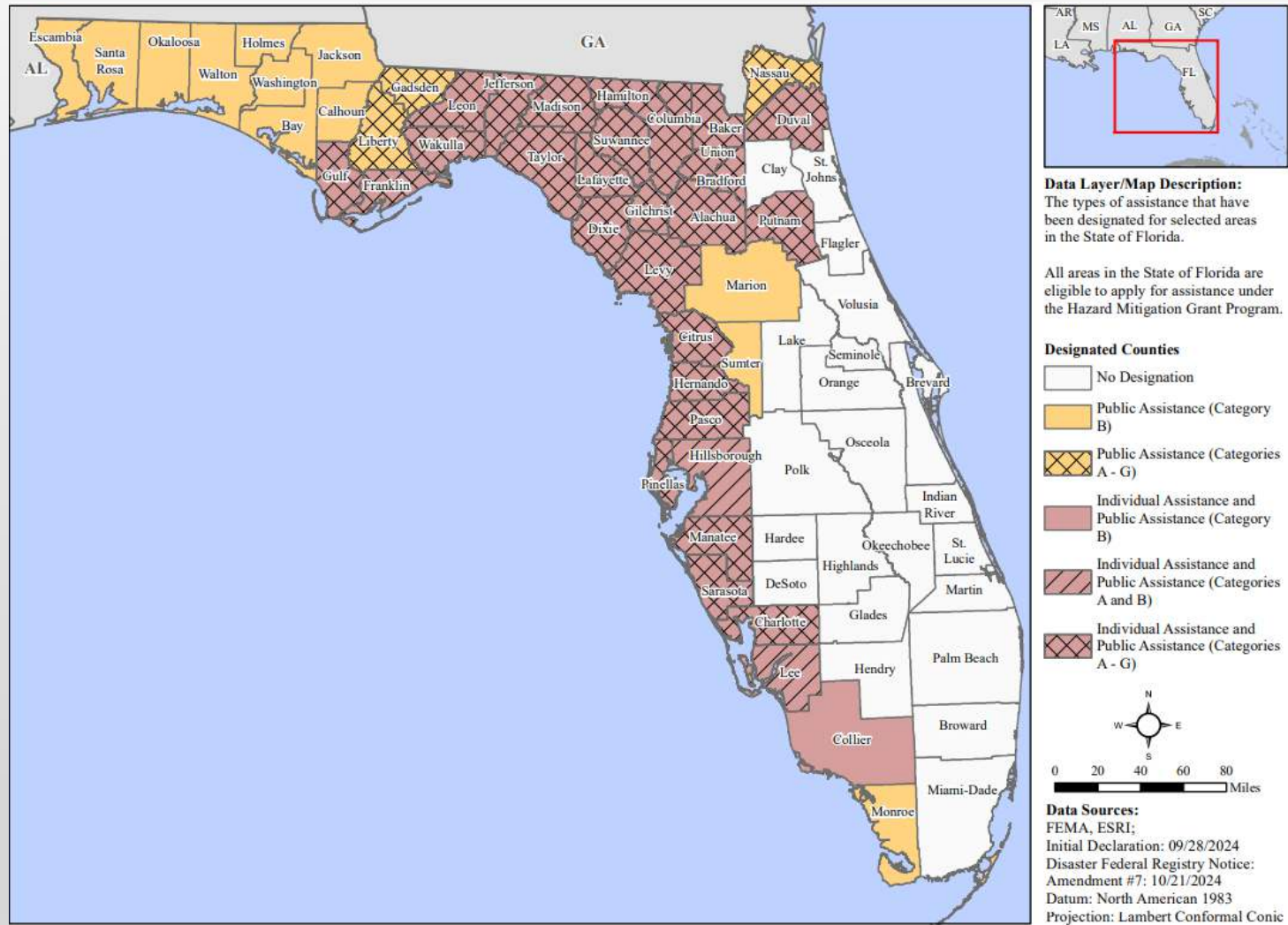


# Disasters in Florida: Hurricane Helene

- Hurricane Helene is a qualified disaster. The aid you receive may depend on your area.
  - President Biden had issued emergency declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.) for **Florida** and other states authorizing Public Assistance (PA) for emergency protective measures to support mass care, and Individual Assistance (IA) for Florida and other states. <https://crsreports.congress.gov/product/pdf/IN/IN12429>
  - A FEMA map will help determine how much assistance one is eligible for. All areas in Florida are eligible to apply for assistance under FEMA's Hazard Mitigation Grant Program. [https://gis.fema.gov/maps/dec\\_4828.pdf](https://gis.fema.gov/maps/dec_4828.pdf)



# Hurricane Helene FEMA Map (DR-4828-FL)



<https://www.fema.gov/disaster/4828/designated-areas>





# The Milton Berle Show



Alan Gassman, JD, LL.M. (Taxation), AEP® (Distinguished)  
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**GASSMAN CROTTY & DENICOLA, P.A.**  
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How to Handle Florida Hurricane Damage Issues |  
Saturday, October 26, 2024 |

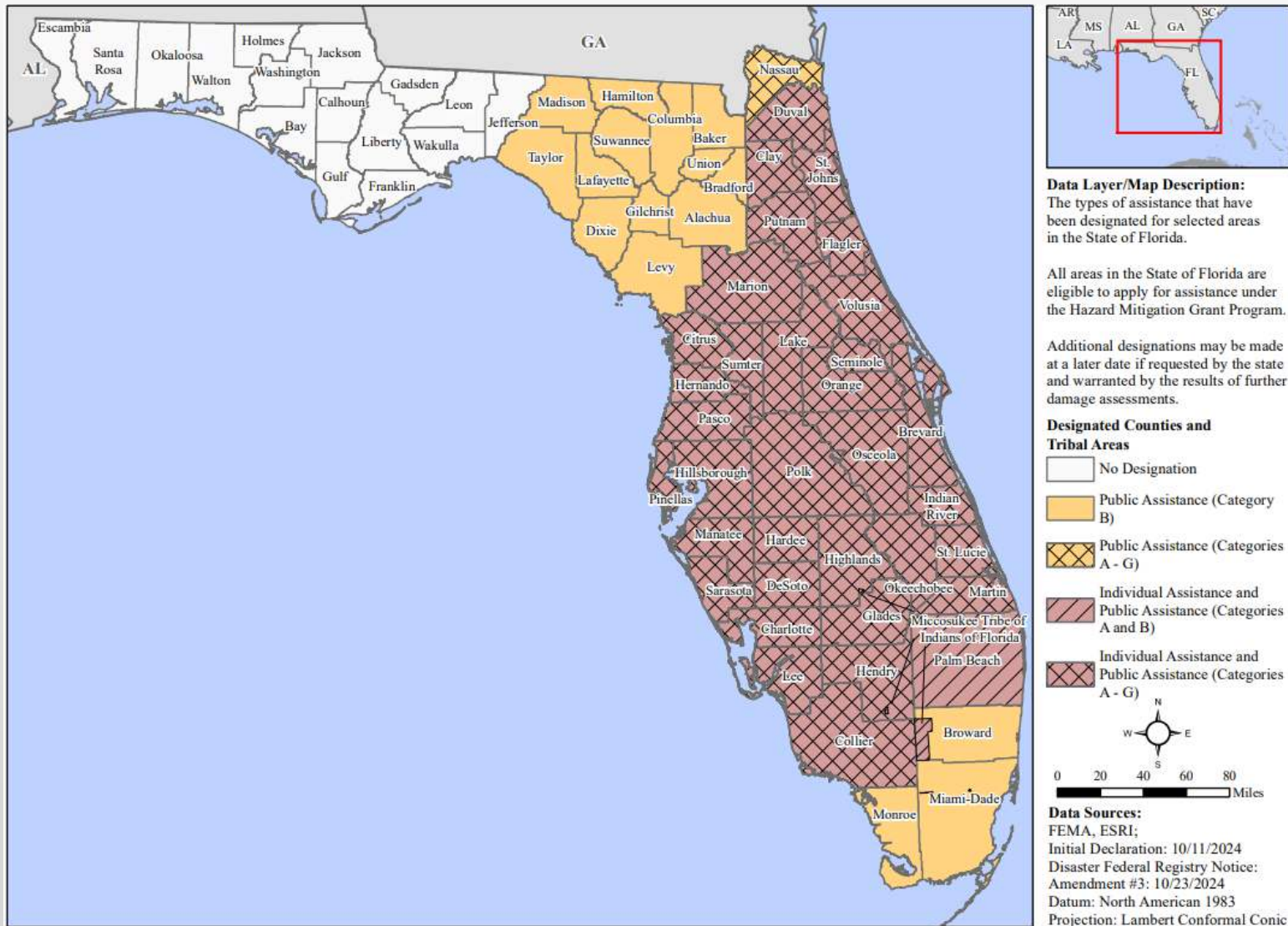
# Disasters in Florida: Hurricane Milton

- Hurricane Milton is a qualified disaster. The aid you receive may depend on your area.
  - President Biden had previously issued an emergency declaration for this storm on October 7, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.), authorizing Public Assistance (PA) for emergency protective measures put into action beginning October 5, 2024. On October 8, 2024, President Biden issued another emergency declaration authorizing federal assistance to Seminole Tribe of Florida. As of October 11, President Biden declared a major disaster for Hurricane Milton in Florida, authorizing PA, Individual Assistance, and Hazard Mitigation Assistance. <https://crsreports.congress.gov/product/pdf/IN/IN12438>
  - Again, a FEMA map will help determine how much assistance one is eligible for. All areas in Florida are eligible to apply for assistance under FEMA's Hazard Mitigation Grant Program. [https://gis.fema.gov/maps/dec\\_4834.pdf](https://gis.fema.gov/maps/dec_4834.pdf)





# Hurricane Milton FEMA Map (DR-4834-FL)



<https://www.fema.gov/disaster/4834/designated-areas>



# FEMA Information



# How the Federal Emergency Management Agency (“FEMA”) Can Help You After a Hurricane or Disaster

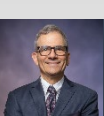
FEMA provides funds (up to \$42,500):

- Temporary housing while primary residences are uninhabitable, including rental assistance or reimbursement for hotel costs.
- Cost of repairs or replacement for privately owned access routes at the applicant’s primary residence, including driveways, roads, or bridges.
- Temporary housing units, if approved for the disaster, when rental assistance is unavailable due to lack of available housing.
- Hazard mitigation assistance for eligible homeowners to repair or rebuild more durable structures for primary residences.



# Other Disaster-Related Expenses Eligible for Funding

- Food, water, baby formula, and emergency supplies.
- Essential household items, including appliances, room furnishings, clothing, cleaning supplies, tools, work uniforms, educational materials, and accessibility items.
- Essential vehicles.
- Funeral or burial expenses.
- Child-care.
- Medical and dental expenses, including medical equipment, breast-feeding equipment, disability expenses, and expenses relating to the loss or injury of a service animal.
- Moving and storage expenses, including storage to prevent further damage of essential household goods, and moving or returning goods to the applicant's primary residence.

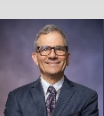


# Qualifying for FEMA Benefits

## General Conditions to receive FEMA benefits:

- **Citizenship Status** – Only United States citizens, non-citizen nationals, or qualified non-citizens are eligible to receive assistance. FEMA will verify citizenship.
- **Identity Verification** – Proof of identity is required with a valid social security number. FEMA will verify identity through public records, or ask the applicant for more information.
- **Ownership/Occupancy Verification** – For specific FEMA assistance, confirmation that the disaster-damaged home is the applicant's primary residence must be provided. Ownership of the residence at the time of the disaster must be confirmed for Home Repair or Replacement Assistance. FEMA will verify identity through public records, or ask the applicant for more information.
- **Unmet Needs After Insurance** – FEMA will not assist with disaster-related needs that have already been met by insurance or other programs.
  - Individual and Household Applicants can still qualify for FEMA even if they have insurance.
  - Applicants do not have to file an insurance claim prior to a FEMA application, however, they do have to provide proof of a settlement or denial letter before being considered eligible for some forms of assistance.

**Note:** FEMA does not assist small businesses with disaster relief loans. Small businesses impacted must apply to the U.S. Small Business Administration low-interest loans for compensation.





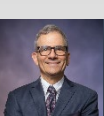
# Important Federal Tax Extension

- **Federal tax relief for victims of Hurricane Milton**

Affected taxpayers in all of Florida now have until **May 1, 2025**, to file various federal individual and business tax returns and make tax payments, including 2024 individual and business returns normally due during March and April 2025 and 2023 individual and corporate returns with valid extensions and quarterly estimated tax payments.

The May 1, 2025, filing deadline applies to:

- Any individual or business that has a 2024 return normally due during March or April 2025.
- Any individual, C corporation or tax-exempt organization that has a valid extension to file their calendar-year 2023 federal return. The IRS noted, however, that payments on these returns are not eligible for the extra time because they were due last spring before the hurricane occurred.
- 2024 quarterly estimated tax payments normally due on Jan. 15, 2025, and 2025 estimated tax payments normally due on April 15, 2025.
- Quarterly payroll and excise tax returns normally due on Oct. 31, 2024, Jan. 31, 2025, and April 30, 2025.



# Before Applying Checklist

- ☐ Take photos of damaged property and personal items for applicants' own records.
- ☐ Record a list of damaged or lost items to provide insurance or FEMA inspector with.
- ☐ If the applicant has insurance, including homeowners, flood, renters, auto, etc., it is recommended to file a claim with insurance as soon as possible.
- ☐ Have the following readily available when beginning the application:
  - ☐ Social Security number;
  - ☐ Annual household income;
  - ☐ Contact information;
    - ☐ Phone number, mailing address, email address, damaged home address;
  - ☐ Bank account information;
  - ☐ And insurance information;
    - ☐ Type of policy, insurance company name, etc.



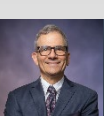
# FEMA Application Step 1

**Step 1:** If you believe you qualify for FEMA assistance through the general conditions, you can apply at [DisasterAssistance.gov](https://DisasterAssistance.gov).

- After applying applicants can create an online account on [DisasterAssistance.gov](https://DisasterAssistance.gov) allowing easier communication with FEMA about the status of the application.
- This website gives information on applying for assistance, checking the status of the application, locating local resources, and checking application deadlines.

## Upcoming Deadlines:

- November 12 – Florida Hurricane Debby
- November 27 – Florida Hurricane Helene
- December 11 – Florida Hurricane Milton
- Applications and additional resources are also available on the **FEMA Mobile App**, the **FEMA helpline at (800)-621-3362**, or by in-person **Disaster Recovery Centers**.
  - Disaster Recovery Centers can be located on [DisasterAssistance.gov](https://DisasterAssistance.gov), the FEMA Mobile APP, or the FEMA helpline.



# FEMA Application Step 2

## Step 2: Home Inspection.

After completing your application, FEMA may require an in-person or remote inspection of the damaged home or personal property to verify the damage.

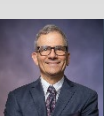
- FEMA inspectors do not decide if you will be approved for disaster assistance, they only inspect and report upon damage caused by a disaster.
- FEMA inspectors are different than insurance or other agencies' inspectors.
- A FEMA inspection must be done when the homeowner or renter is present. If they cannot be present, they can designate someone on their behalf to meet with the inspector and FEMA must receive a written copy of the designation. **BEFORE THE INSPECTION?**
  - <https://www.fema.gov/fact-sheet/third-party-written-consent-let-fema-know-who-talk-about-your-application>

## Scheduling the Inspection:

- FEMA inspectors will contact the applicant typically through an unknown or restricted phone number. They will only attempt to contact you over the phone three (3) times.
- During the phone call, write down the following: the inspector's name, date of call, date and time of appointment, the inspector's telephone number, and anything of importance that the inspector tells you.

Note: If FEMA is unable to contact the applicant to verify the damages, the applicant will be sent a letter of notice and the application will not move forward.

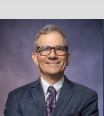
- The applicant must then call FEMA's hotline for assistance. Applicants should not re-submit or create a new application.
- The hotline number is **1 (800) 621-3362**.



# FEMA Application Step 3

## Step 3: Receiving FEMA's Decision.

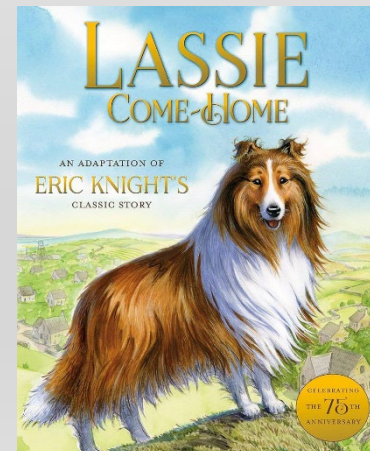
- Applicants may be approved for assistance based on the information provided, but it is typical that additional information is needed.
- If additional information is needed, FEMA will reach out to the applicant via phone call or letter asking for specific information.
- After being approved, the applicant will receive a decision letter from FEMA with the type of assistance they are approved for and any assistance they did not qualify for.
  - The letter will also include information on how to appeal FEMA's decision and the additional documentation the applicant will need to provide.
  - The appeal must be sent within 60 days of the date on the decision letter.
- If approved for assistance, the applicant may also receive a check from the U.S. Department of Treasury or direct deposit, based on the applicant's preference.



# FEMA Application Step 4

## Step 4: Returning Home.

- The final step in the FEMA disaster-related assistance process is rebuilding or repairing the damaged property and returning home.
- There has been considerable discussion regarding whether FEMA will pay for costs associated with returning home.
  - According to the FEMA “Other Needs Assistance,” the agency will not cover costs associated with returning home. (Transportation, travel needs, logistical issues)
- Lassie was not compensated for coming home.
- What a b\*tch.



# U.S. Small Business Administration “S.B.A. Benefits for Individuals” – Up to \$500,000 Loan

Homeowners: Can apply for disaster loans up to \$500,000 to repair or replace damaged or destroyed real estate.

Renters AND Homeowners: May borrow up to \$100,000 to repair or replace damaged or destroyed personal property. Including cars, appliances, furniture, and clothing.

- Secondary homes and vacation homes are not eligible for loans, however, rental properties may be eligible under the U.S. Small Business Administration’s business physical disaster loan program.
- Funds may not be used to upgrade homes or make additions unless required by the local building code.
- The SBA may be able to refinance all or part of a previous mortgage if the applicant does not have credit elsewhere and has suffered substantial damage.
- Applicants may be eligible for up to a 20% loan amount increase for mitigation improvements, as approved by the U.S. Small Business Administration.





# SBA Information



# U.S. Small Business Administration Benefits for Businesses

Business Owners: May be eligible for up to \$2,000,000 in disaster relief loans for physical and economic injury from business disruption.

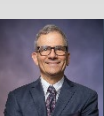
- The loan will cover disaster losses not covered by insurance.
- If insurance proceeds are required to go towards an outstanding mortgage on the damaged property, the amount can be included in the disaster loan application to be deducted from the eligible loan amount.
- Applicants may also be eligible for loan amount increases up to 20% of their physical damages for mitigation purposes, as verified by the U.S. Small Business Administration. Mitigation improvements can help prevent future damages and include:
  - Insulating pipes, walls, and attics;
  - Weather-stripping doors and windows;
  - And installing storm windows.



# U.S. Small Business Administration Benefits for Private Non-Profit Organizations

Private Non-Profit Organizations: As defined by the U.S. Small Business Administration, are tax-exempt entities that further a mission and are not organized for profit.

- Private Non-profit organizations can apply for loans up to \$2 million to repair or replace damaged or destroyed goods. Including:
  - Real Estate;
  - Machinery and equipment;
  - Inventory;
  - Other business assets.
- Most Private Non-Profit organizations, small businesses, and small agricultural cooperatives can also apply for Economic Injury Disaster Loans, to help meet working capital needs including ongoing operating expenses, regardless of suffering from any property damage.



# U.S. Small Business Administration Loan Terms and Maturity

- Interest rates are as low as 2.813% for both homeowners and renters.
- Interest rates are as low as 3.25% for Private Non-Profit organizations.
- Interest rates are as low as 4% for businesses.
- Terms for **all** U.S. Small Business Administration loans are up to 30 years with no pre-payment penalty or fees.
- Monthly payments and accrued interest on the loan will be deferred until 12 months from the date of the first disbursement.

For applicants able to obtain credit elsewhere:

- The interest rate will not exceed 8%.

For applicants unable to obtain credit elsewhere:

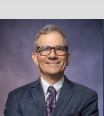
- The interest rate will not exceed 4%.
- The SBA will determine whether an applicant can obtain credit elsewhere.



# U.S. Small Business Administration Applications

**\*As of 10.15.24 funding for the disaster loan program has been exhausted after warnings that funding may run out after increased demand. Funding is set to resume upon Congress's appropriations and return on November 12<sup>th</sup> 2024.**

- The U.S. Small Business Administration is continuing to accept new applications for disaster loans from all 173 declarations while anticipating funding from Congress.
  - Applications will be queued and can receive loan offers after funding is available.
  - Disbursements will be processed in the order of the queue.
- 
- New loan offers may be made at this time if funds become available through loan cancellations.
  - Borrowers who have already received a loan offer will continue to get disbursements.
- 
- Applications can be completed online at <https://lending.sba.gov/search-disaster/>.



# U.S. Small Business Administration Application Statistics

The below is from a press release as of October 15<sup>th</sup>, 2024, from the U.S. Small Business Administration:

Hurricane Helene:

- 37,000 applications for relief.
- 700 loan offers totaling \$48 million.
  - Averaging \$68,572 per loan.

Hurricane Milton:

- Over 12,000 applications
- Currently, there is no information on the number of loan offers.





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**GASSMAN CROTTY & DENICOLO, P.A.**  
ATTORNEYS AT LAW

How to Handle Florida Hurricane Damage Issues |  
Saturday, October 26, 2024 |



# Pinellas County Prevention Regulations

Pinellas County alongside the National Flood Insurance Program has created prevention regulations for flood damage that can impact home improvements and construction guidelines this hurricane season.

- Homes or businesses that were damaged during the disasters are now required to be brought into compliance with the Pinellas County Floodplain Management Ordinance and Florida Building Code if it is:
  - Located in a mapped flood hazard area;
  - Not built to the current floodplain construction requirements;
  - **“Substantially damaged”** or **“substantially improved.”**
- These regulations typically apply to older buildings and structures that have sustained major damage.
- Compliance regulations include:
  - All electrical and mechanical equipment to be elevated above the 100-year flood elevation;
  - Below flood level, only parking, building access, and limited storage are allowed.



# Pinellas County Definition of Substantial Damage

Your home must be brought into compliance with the Pinellas County Floodplain Management Ordinance and Florida Building Code if it is **substantially damaged** in a hurricane or calamity.

**Substantial damage**, as defined by Pinellas County, occurs when “the cost of restoring the structure to the condition before the damage would equal or exceed 49% of the market value of the structure before the damage occurred.”

- Additionally, the cost of the repairs must include all expenses needed to fully repair the structure to its “before damage” condition, including the costs of labor.

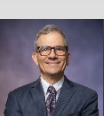


# Pinellas County Definition of Substantial Improvement

Your home must be brought into compliance with the Pinellas County Floodplain Management Ordinance and Florida Building Code if it is **substantially improved** after a hurricane or calamity.

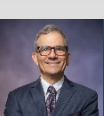
**Substantial improvement**, as defined by Pinellas County, is “any reconstruction, rehabilitation, addition or other improvement of a structure, for which the cost equals or exceeds 49% of the market value of the structure before the ‘start of construction’ of the first improvement.”

- This definition includes structures that have incurred substantial damage, despite the actual repair work performed. However, it excludes:
  - (1) a project for improvement of a structure to correct existing code violations that have been identified by the local code enforcement official and that are the minimum necessary for safe living conditions;
  - and (2) any alterations of a “**historical structure**” as long as the alteration does not impact the structure’s classification as a historical structure.
- Florida Building Code Ch. 12 defines a **Historical Structure** as “a building, bridge, lighthouse, monument, pier, vessel or other construction that is designated or that is deemed eligible for such designation by a local, regional or national jurisdiction as having historical, architectural or cultural significance.”



# Pinellas County Mapped Flood Hazard Area

The following map can be located on Pinellas County website:  
[floodmaps.Pinellas.gov](https://floodmaps.Pinellas.gov)

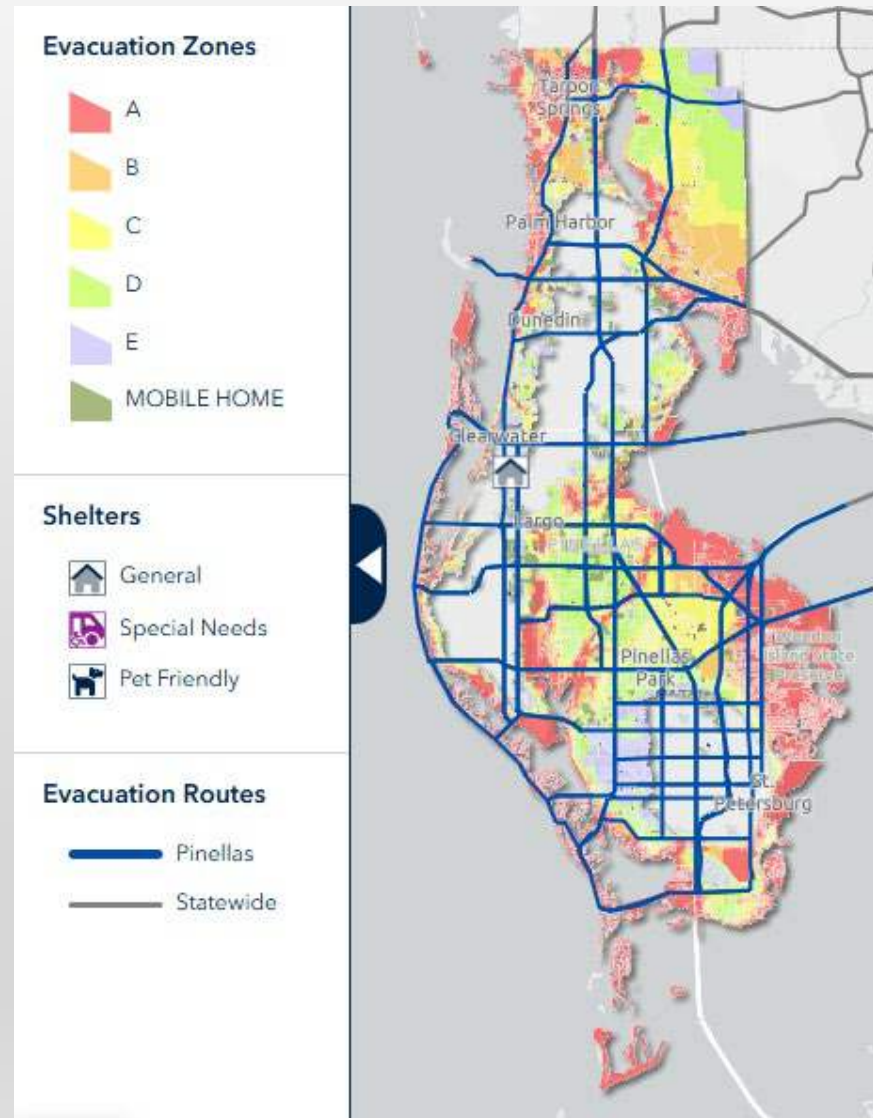


# Pinellas County Hurricane Evacuation Zone

This map is provided for context only to illustrate the Flood Hazard Area more clearly. The colored evacuation areas equate roughly to the Flood Hazard Area.

The following map can be located on the Pinellas County website:

[Pinellas.gov/find-your-evacuation-zone](https://pinellas.gov/find-your-evacuation-zone)



# **EIDL Business Loans – Use of Loan Proceeds and Restrictions for Business Loans**



# What Can EIDL Loan Proceeds Be Used For?

From the CARES Act:

May be used for any allowable purpose for a loan made under Section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)), including:

- (A) providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
- (B) maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- (C) meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
- (D) making rent or mortgage payments; and
- (E) repaying obligations that cannot be met due to revenue losses.





# What Can EIDL Loan Proceeds Be Used For?

The SBA has been extremely vague in its guidance on *what the EIDL loan proceeds can be spent on*. The SBA released a PowerPoint detailing how loan proceeds can be used on June 25<sup>th</sup> which provides that EIDL loans can be used for the following:

- Fixed debts (rent, etc.)
- Payroll
- Accounts payable
- Some bills that could have been paid had the disaster not occurred



# What Can EIDL Loan Proceeds Be Used For? – *Cont'd*

The same PowerPoint indicates that the following are **“ineligible uses of loan”**:

- Dividends and bonuses
- Disbursements to owners, unless for performance of services
- Repayment of stockholder/principal loans (with exceptions)
- Expansion of facilities or acquisition of fixed assets
- Repair or replacement of physical damages
- Refinancing long term debt



# What Can EIDL Loan Proceeds Be Used For?

The EIDL Loan documents provide guidance on how the loan can be spent.

"Borrower will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31, 2020 and continuing thereafter and for loans of more than \$25,000 to pay Uniform Commercial Code (UCC) lien filing fees and a third-party UCC handling charge of \$100 which will be deducted from the Loan amount stated above."

"Borrower will not, without the prior written consent of SBA, make any distribution of Borrower's assets, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus, or otherwise, to any owner or partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Borrower, or any other company."

The SBA does not explicitly define "working capital." Under Generally Accepted Accounting Principles, "working capital" is simply defined as the sum of current assets over current liabilities. Other SBA 7(a) loan experts say "working capital" is the amount of capital available for the day-to-day operations of a business and is typically used to pay for regular expenses, such as utility bills, employee payroll, rent, inventory, and marketing costs.



# EIDL Loan Documents - Collateral

- *For loan amounts of greater than \$25,000, Borrower hereby grants to SBA, the secured party hereunder, a continuing security interest in and to any and all “Collateral” as described herein to secure payment and performance of all debts, liabilities and obligations of Borrower to SBA hereunder without limitation, including but not limited to all interest, other fees and expenses (all hereinafter called “Obligations”). The Collateral includes the following property that Borrower now owns or shall acquire or create immediately upon the acquisition or creation thereof: all tangible and intangible personal property, including, but not limited to: (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles and software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest Borrower grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto.*
- *For loan amounts of \$25,000 or less, SBA is not taking a security interest in any collateral. For individual Borrowers, See 11<sup>th</sup> Circuit Court of Appeals case of Kearney Construction Company, LLC v. Travelers Casualty and Surety Company of America, 2019 WL 5957361 (Fla. 11<sup>th</sup> Cir. Nov. 13, 2019) - Blanket UCC disqualified IRAs from creditor protection.*



# EIDL Loan Documents - Use of Loan Proceeds

- Borrower will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31, 2020 and continuing thereafter and to pay Uniform Commercial Code (UCC) lien filing fees and a third-party UCC handling charge of \$100 which will be deducted from the Loan amount stated above.*



	<u>Economic Injury Disaster Loan (EIDL)</u>	<u>Paycheck Protection Program (PPP)</u>
<b>Who is Eligible?</b>	<p>Small businesses, including independent contractors and sole proprietors, with less than 500 employees that have <u>suffered substantial economic injury</u> as a result of a declared disaster</p> <p><b><u>From SBA 2011 Regulation:</u></b></p> <p>(a) If your business is located in a declared disaster area, and suffered <u>substantial economic injury</u> as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.</p> <p>(1) <u>Substantial economic injury</u> is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.</p> <p>(2) Loss of anticipated profits or a drop in sales is not considered <u>substantial economic injury</u> for this purpose.</p>	<p>Small businesses, including independent contractors and sole proprietors, with less than 500 employees (or otherwise qualifies as a small business under SBA published size guidelines), and the <u>uncertainty of the current economic conditions make the loan necessary to support the ongoing operations of the business.</u></p> <p><b><u>Rubio Tweet</u></b> - “Any company with revenue to cover operations isn’t eligible.”</p> <p><b><u>From SBA Issued FAQ 46, May 13, 2020:</u></b></p> <p>“Any borrower that . . . received PPP loans . . . of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.”</p> <p><b><u>Also From SBA Issued FAQ 46, May 13, 2020:</u></b></p> <p>“If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment . . . and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies . . . .”</p>





	<u>Economic Injury Disaster Loan (EIDL)</u>	<u>Paycheck Protection Program (PPP)</u>
<b>Application Process</b>	Available now at <a href="https://covid19relief.sba.gov/#/">https://covid19relief.sba.gov/#/</a>	Applications will be provided by SBA approved lenders.  Sample application available at: <a href="https://www.sba.gov/document/sba-form--paycheck-protection-program-ppp-sample-application-form">https://www.sba.gov/document/sba-form--paycheck-protection-program-ppp-sample-application-form</a>
<b>Maximum Loan</b>	Up to \$2,000,000	<p>Lesser of:</p> <ol style="list-style-type: none"> <li>1. 2.5 times average monthly payroll costs for employees for the prior 12 months (SBA regulations say this will not include payments to independent contractors); or</li> <li>2. \$10,000,000</li> </ol> <p>Proposed PPP Act 2 would allow for a second round up to \$2 Million for borrowers with at least a 50% (maybe 35%) drop in revenue.</p>
<b>Application Deadline</b>	December 31, 2020	June 30, 2020 extended to August 8, 2020





	<u>Economic Injury Disaster Loan (EIDL)</u>	<u>Paycheck Protection Program (PPP)</u>
<b>Treatment of Payments to Independent Contractors</b>	Permitted if considered a payment of an obligation that cannot be met due to revenue losses	Not permitted, except for fishing boat owners (See June 25 <sup>th</sup> Interim Final Rule for guidance provided to fishing boat owners)
<b>Business Operation Requirement</b>	Must be in business prior to January 30, 2020	Must be in business prior to February 15, 2020
<b>Is Business Required to be Unable to Obtain Credit Elsewhere?</b>	Maybe - See "Who Is Eligible" above	No
<b>Max Interest Rate</b>	3.75%	1% per Interim Final Rules published by SBA (max of 4% under the statute)
<b>Payment Deferral</b>	For amounts received over \$10,000 grant, no payments are due until one year after loan origination, but interest is accrued.	Principal and interest payments are deferred until SBA issues decision on loan forgiveness, but interest is accrued per Interim Final Rules published by SBA.
<b>Term of Loan</b>	Amortized over 30 years!!	Remaining balance after forgiveness will have a 2 or 5 year term.



	<u>Economic Injury Disaster Loan (EIDL)</u>	<u>Paycheck Protection Program (PPP)</u>
<b>Collateral Requirement</b>	Assets of business required as collateral for loans over \$25,000  <b>Individual UCC may disqualify the Borrower's IRAs!</b>	None
<b>Personal Guarantee</b>	Only for loans over \$200,000 Loan cannot be secured by real estate of guarantor.  [ Has anyone seen a Personal Guarantee? ]	None
<b>Where to get the loan</b>	SBA	Sponsoring Bank
<b>Income Tax Treatment of Loan Forgiveness</b>	Like any other non-governmental loan?  No official guidance received.	Tax Free but forgivable expenses not deductible
<b>Compensation to Lender (Paid from Government)</b>	N/A	5% on of loaned amount up to \$350,000 3% - \$350,000 - \$2,000,000 1% - \$2,000,000+



# Permitted Use of Funds

**Note that funds cannot be used for duplicative purposes**

<u>HHS Provider Relief Funds</u>	<u>Economic Injury Disaster Loan (EIDL)</u>	<u>Paycheck Protection Program (PPP)</u>
<p>To prevent, prepare for, and respond to coronavirus, and shall reimburse the provider only for health care related expenses <i>or lost revenues</i> attributable to coronavirus.</p> <p><b><u>The Funds cannot be used for the following:</u></b></p> <ol style="list-style-type: none"> <li>1. Reimbursement for expenses or losses that have been reimbursed from other sources.</li> <li>2. Executive pay exceeding a rate in excess of Executive Level II.</li> <li>3. Lobbying</li> <li>4. Abortions</li> <li>5. Confidentiality/Non-Disclosure Agreements</li> <li>6. Unpaid Federal Taxes</li> <li>7. See other materials for additional items.</li> </ol>	<ol style="list-style-type: none"> <li>1. Payroll costs during business disruptions or substantial slowdowns</li> <li>2. Providing paid sick leave to employees unable to work due to the direct effect of COVID-19</li> <li>3. Mortgage payments</li> <li>4. Rent</li> <li>5. Meeting increased costs to obtain materials unavailable from the applicants original source due to interrupted supply chains</li> <li>6. Repaying obligations other than those listed above that cannot be met due to revenue losses</li> </ol>	<ol style="list-style-type: none"> <li>1. Payroll costs including health care benefits, medical, or family leave, and retirement benefits</li> <li>2. Providing paid sick leave for any illness</li> <li>3. Mortgage interest payments, but not principal</li> <li>4. Rent</li> <li>5. Interest on other debt but not principal</li> <li>6. Utilities</li> </ol>



## ECONOMIC INJURY DISASTER LOANS (EIDL)

	STATUTORY LANGUAGE	2011 SBA REGULATION	LOAN AGREEMENT	EMAIL TO KEVIN FROM SBA (See pg. 64)
Substantial Economic Injury	To make such loans as the Administration may determine to be necessary or appropriate to any small business concern if the Administration determines that the concern has <u>suffered a substantial economic injury as a result of such disaster.</u>	Substantial Economic Injury is such that business is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.  Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose	NO GUIDANCE AVAILABLE	NO GUIDANCE AVAILABLE
Use of Funds	<ol style="list-style-type: none"> <li>1. providing paid sick leave to employees unable to work due to the direct effect of COVID-19</li> <li>2. Maintaining payroll to retain employees during business disruptions or substantial slowdowns</li> <li>3. Meeting increased costs to obtain materials unavailability from the applicant's original source due to interrupted supply chains</li> <li>4. Making rent or mortgage payments</li> <li>5. Repaying obligations that cannot be met due to revenue losses.</li> </ol>	NO GUIDANCE AVAILABLE	Borrower will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31, 2020 and continuing thereafter and to pay Uniform Commercial Code (UCC) lien filing fees and a third-party UCC handling charge of \$100 which will be deducted from the Loan amount stated above.	<ol style="list-style-type: none"> <li>1. Fixed Debts</li> <li>2. Payroll</li> <li>3. Accounts Payable</li> <li>4. Bills that could have been paid had the disaster not occurred.</li> </ol>



## ECONOMIC INJURY DISASTER LOANS (EIDL)

	STATUTORY LANGUAGE	2011 SBA REGULATION	LOAN AGREEMENT	EMAIL TO KEVIN FROM SBA (See pg. 64)
Ineligible Uses of Funds	SILENT	NO GUIDANCE AVAILABLE	<p>1) Anti-Distribution Rule - Borrower will not, without the prior written consent of SBA, make any distribution of Borrower's assets, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus, or otherwise, to any owner or partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Borrower, or any other company.</p> <p>2) Relocation Expenses</p> <p>3) Purchase of Non-American made Equipment to extent feasible</p>	<p>1. Dividends and bonuses</p> <p>2. Disbursements to owners, unless for performance of services</p> <p>3. Repayment of stockhold loans</p> <p>4. Expansion of facilities or acquisition of fixed assets</p> <p>5. Repair or replacement of physical damages</p> <p>6. Refinancing long term debt.</p> <p>SBA representative stated that Anti Distribution Rule "does not apply to normal business operations, including distributions of net income in accordance with bylaws or operating agreement of the company."</p>





# EIDL – What is Substantial Economic Injury?



# What is “Substantial Economic Injury” for Purposes of EIDL Qualification?

SBA EIDL website and the application for EIDLs provide the following guidance on the words “substantial economic injury”:

*The Applicant must establish that the claimed economic injury is substantial and is a direct result of the declared disaster.*

*Substantial economic injury generally means a decrease in income from operations or working capital with the result that the business is unable to meet its obligations and pay ordinary and necessary operating expenses in the normal course of business.*





# What is “Substantial Economic Injury” for Purposes of EIDL Qualification?

13 C.F.R. § 123.300

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

Effective: November 28, 2011

**(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.**

**(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.**

**(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.**



# EIDL Loan Documents - Books and Records, *Cont'd*

- *Upon written request of SBA, Borrower will accompany such statements with an 'Accountant's Review Report' prepared by an independent public accountant at Borrower's expense.*
- *Borrower authorizes all Federal, State and municipal authorities to furnish reports of examination, records and other information relating to the conditions and affairs of Borrower and any desired information from such reports, returns, files, and records of such authorities upon request of SBA.*



# EIDL Loan Documents - Limits on Distribution of Assets

- Borrower will not, without the prior written consent of SBA, make any distribution of Borrower's assets, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus, or otherwise, to any owner or partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Borrower, or any other company.



# EIDL Loan Documents - Equal Opportunity Requirement

- If Borrower has or intends to have employees, Borrower will post SBA Form 722, Equal Opportunity Poster (copy attached), in Borrower's place of business where it will be clearly visible to employees, applicants for employment, and the general public.



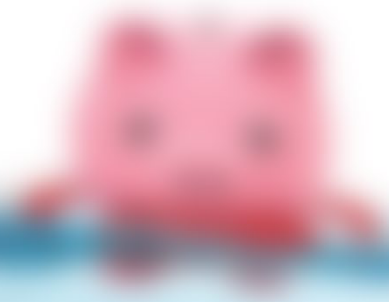
# Many EIDL Loans Will Cause Disaster For Unassuming Borrowers



**Alan Gassman** Contributor ⓘ

Retirement

*I write about tax, estate and legal strategies and opportunities.*



Separate and apart from the Paycheck Protection Program (“PPP”) is the Economic Injury Disaster Loan (“EIDL”) program. Initially enacted **many years ago** to provide loans to businesses that have suffered from major storms, droughts, and other federally-declared disasters, the SBA has already advanced over \$150 billion in EIDL money to borrowers who have verified that they have suffered “substantial economic injury” due to the effects of COVID-19.

The maximum EIDL loan amount is \$2 million, and the deadline to apply for these loans is December 31, 2020. Applicants previously could accept an “advance” of up to \$10,000 that is considered a “grant” and does not need to be repaid. However, the SBA announced on July 11th that the EIDL advance program has been discontinued and the website provides the following:

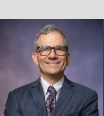
- All available funds for the EIDL Advance program have been allocated. By law, SBA is not able to issue EIDL Advances once program funding has been obligated and is no longer available. EIDL loan applications will still be processed even though the Advance is no longer available.



EIDL loans bear interest at 3.75% and come with significant loan program requirements that very few borrowers are aware of or have thought about. Many such borrowers are already in default of their EIDL loans or inadvertently broke the law in applying for and receiving them. This will become more evident in months to come.

Many banks are already taking steps to get businesses of certain sizes and nature off of their books, especially if there is an issue with a borrower's PPP loan status, and whistleblowing employees and others may receive bounties for turning in unassuming employer borrowers who might not even be aware of the issues at hand.

We will be discussing these and other issues in a free webinar on Saturday, August 1st at 10:00 a.m. (EDT). Please e-mail [info@gassmanpa.com](mailto:info@gassmanpa.com) with the subject "Saturday" for a link to join this 30-minute presentation by myself, Brandon Ketron CPA, JD, LL.M. and Kevin Cameron, CPA. We will also describe how the first \$10,000 of any EIDL loan is actually considered to be a grant that does not have to be repaid, except to the extent of amounts borrowed from the PPP program.





While a great many borrowers consider it to be a duty or an entitlement to borrow under the EIDL program, the standard of need appears to be much higher than the treacherous “necessity” standard that applies for PPP loans (as discussed in my article dated May 4, 2020) and while an EIDL loan is outstanding there can be no dividends or personal expenses paid by the business entity for its owners, as discussed below.

Further, EIDL loan proceeds cannot be spent on any expenses that were already funded and paid for by PPP loan proceeds or medical practice relief loan payments, and must be spent only on the following:

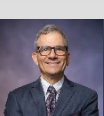
1. Payroll costs during business disruptions or substantial slowdowns;
2. Providing paid sick leave to employees unable to work due to the direct effect of COVID-19;
3. Mortgage payments;
4. Rent;
5. Meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains; and
6. Repaying obligations other than those listed above that cannot be met due to revenue losses.



Further, SBA presentations and a Standard Operating Procedure document from 2018 provide the following to enumerate the ineligible uses of EIDL loan money:

EIDL proceeds may not be used for:

- 1.** Payment of any dividends or bonuses;
- 2.** Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services for the benefit of the applicant;
- 3.** Repayment of stockholder/principal loans, except when the funds were injected on an interim basis as a result of the disaster and non-repayment would cause undue hardship to the stockholder/principal;
- 4.** Expansion of facilities or acquisition of fixed assets;
- 5.** Repair or replacement of physical damages;



7. Paying down (including regular installment payments) or paying off loans provided, or owned by another Federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act. Federal Deposit Insurance Corporation (FDIC) is not considered a Federal agency for this purpose;

8. Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations.

- If a direct Federal debt is delinquent, your recommendation must be based on independent documentation from the appropriate Federal agency explaining how the delinquency will be cured.
- If a direct Federal debt is delinquent because of the disaster, we should make arrangements with that Federal creditor to have payments deferred or a similar action taken to bring the delinquency current prior to approval of an EIDL. If the Federal creditor cannot or will not cooperate, the likely result will be a decline of the EIDL request. However, if the applicant has other resources or recoveries, we should generally allow (and perhaps require) those resources to be applied first to ineligible needs, such as the payment of direct Federal debt.



- When processing during the injury period, it is generally appropriate for you to negotiate with Federal creditors to defer payments (or take similar action) until the end of the injury period. You must document why this was or was not imposed.

**9.** Pay any penalty resulting from noncompliance with a law, regulation or order of a Federal, state, regional, or local agency;

**10.** Contractor malfeasance; and

**11.** Relocation.

In summary, a very high percentage of EIDL borrowers are in violation of civil and criminal statutes and loan provisions because of one or more of the following:

1. They did not have the degree of Substantial Injury as the law requires when they applied and received the loans.
2. They have spent loan monies on prohibited expenses.
3. They have paid dividends or personal expenses for their owners.



**Here is more detail on these requirements, but borrowers should seek counsel from their lawyers under the attorney client privilege and not rely upon any one article or commentator in deciding what to do with respect to their situation.**

**Businesses that received an EIDL loan are unable to pay dividends, even if these come from earnings having nothing to do with EIDL loan monies.**

Borrowers often do not realize that the law and the loan agreement prevents them from taking dividends out of their company until the entirety of the loan is paid back. EIDL loans are 30-year loans with an interest rate of 3.75%. This means that theoretically, businesses will not be able to take out dividends for over 30 years if they received an EIDL loan and do not repay it in full.



Most small businesses have elected to be taxed as S corporations. If these businesses pay wage to their owners they are required to pay employment taxes. If an S corporation pays out dividends, however, they are not required to pay employment taxes on these, although the law does require that reasonable wages be paid to owners. It is a typical practice for many small businesses to take out dividends, but now it is illegal for those who have received EIDL loans.

Further, S corporation shareholders will be unable to make distributions, either directly or indirectly, to themselves or others without written consent from the SBA. The agreement also broadly defines what is considered a “distribution,” including any advances, loans or bonuses, but remains vague in describing how this consent is to be obtained. As it is now the SBA is almost unreachable by phone, meaning that this consent requirement for any and all distributions is likely to be broken by many without intention.

If lenders who have conventional loans owed by EIDL borrowers see that they are in default of their EIDL loan covenants, they may have to declare the commercial loans to be in default, which can cause a great calamity.



The agreement also requires that any borrower may not relocate his or her business without prior written permission from the SBA and if the borrower receives any funds from non-EIDL sources to help with Coronavirus-related injuries then those funds must be turned over to the SBA. These sources include but are not limited to insurance proceeds, claims for civil liabilities, and grants from other governmental agencies or private entities.

### **Record Retention and Casualty Insurance Requirements.**

The SBA requires businesses to keep records of how the EIDL loan is spent, and provide the SBA with this information by 90 days after the loan is repaid. This means that for businesses that repay the loan on time, they will have to keep financial statements for over 30 years.

In addition, the EIDL loan agreement requires the borrower to maintain hazard insurance based upon 80% of all insurable assets of the borrower. This coverage must be acquired within 12 months of obtaining the loan.





## What is “Substantial Economic Injury” for purposes of EIDL Qualification?

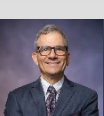
This is probably the biggest criminal exposure for EIDL borrowers. When applying for an EIDL loan, borrowers had to state that the reason the loan was needed was due to a “substantial economic injury.” As set forth in longstanding SBA regulations, and as stated in the EIDL application [**SEE APPLICATION**], “substantial economic injury generally means a decrease in income from operations or working capital with the result that the business is unable to meet its obligations and pay ordinary and necessary operating expenses in the normal course of business.” Substantial economic injury is also defined in the US Code of Federal Regulations at Book 13, Code of Federal Regulations, Section 123.300, which states the following:



**(a)** If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

1. Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.
2. Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

The entire United States is considered a declared disaster area because of COVID-19, but proving that the business suffered “substantial economic injury” to the point of being “unable to meet its obligations, or pay its ordinary and necessary operating expenses” may be hard to do for many businesses that have cash on hand from PPP loans that will be forgiven, as well as from other sources. This is why it is important for businesses to consult with an attorney to better understand if their loan was legitimate, and if not, repay the loan as soon as possible.



It is certainly of interest that the lower “necessity” standard that applies for PPP loans has been the subject of governmental and Trump administration pronouncements that borrowers are “in big trouble” if they did not satisfy the requirement, while nothing seems to have been said about this much higher EIDL loan hurdle. A great many EIDL loan borrowers will be well advised to return their EIDL loans, with interest at 3.75%, before whistleblowers become active, or governmental agents come knocking.

There are insurance carriers that are actually writing policies for PPP borrowers to pay for government investigations and fines that may be imposed if a PPP loan was not “necessary” but we are not aware of any such policies for EIDL loans.

### **Collateral Requirements for EIDL loans.**

Many EIDL borrowers forgot or were unaware that there was a collateral agreement in the application for loan amounts greater than \$25,000. This differs from PPP loans that have no collateral requirements.



The collateral agreement for an EIDL loan is vigorous and will generally prevent the borrower from pledging collateral to any other lender, and may cause existing lenders to declare their loans to be in default if provisions of the existing loans prevent given collateral status to any other lender.

The Collateral includes the following tangible and intangible personal property that Borrower now owns or shall acquire or create immediately upon the acquisition or creation thereof, including but not limited to:

- Inventory;
- Equipment;
- Instruments, including promissory notes;
- Chattel paper, including tangible chattel paper and electronic chattel paper;
- Documents;
- Letter of credit rights;



- Accounts, including healthcare insurance receivables and credit card receivables;
- Deposit accounts;
- Commercial tort claims;
- General intangibles, including payment intangibles and software; and
- As-extracted collateral as such terms may time to time be defined in the Uniform Commercial Code.

The Collateral section of the loan agreement also indicates that a borrower will not sell or transfer any of the collateral without written consent from the SBA, unless the collateral is inventory sold in the normal course of business. Additionally, borrowers may not seek any advances on superior liens on the EIDL loan collateral without the written consent of the SBA. These provisions greatly restrict a business owner's independence in making day-to-day decisions on behalf of the business.



Borrowers who received an EIDL payment should be well aware of the rules and regulations related to them. For answers to specific questions, borrowers should speak with a qualified CPA and Attorney to best understand the short and long-term requirements for receiving these loans, and may want to start with an attorney who can hire the CPA to keep communications under the attorney client privilege.

The best path forward for many EIDL borrowers will be to pre-pay the loan once it is clear that it is probably not needed, to allow the business to “meet its obligations as they mature, or to pay its ordinary and necessary operating expenses.”

### **Lack of Privacy.**

Further, all EIDL borrowers will find that their private details are available in the public records because of the Freedom of Information Act, enumerated at 5 U.S.C. § 552. This law does not require disclosure of financial statements, marketing strategies, or loan applications. Further, personal home email addresses, telephone numbers, social security numbers, and birth records will remain protected. The information that is generally disclosed by the SBA includes the names of the officers and directors of the borrower, SBA awarded contracts, and the types and amounts of SBA loans.



## Concluding Thoughts.

It is important to discuss all loan options with a bank or other lending authority to ensure that obtaining a Coronavirus-related SBA loan will not in any way affect other outstanding loan covenants. In many situations, violating an outstanding loan covenant can increase the interest rate on that loan or even cause the loan to be considered in default.

Kevin Cameron, a knowledgeable CPA whose advice has been imperative in drafting this article, remains unsure whether he will recommend this loan to those not in a financial emergency. “Even then,” he added, “I’d recommend strictly following the terms so [borrowers] can try to avoid the civil and potentially criminal penalties.” He ends by stressing that “the civil penalty alone can be 150% of the loan amount.”

It is important for borrowers to consult with their CPA, attorney, and banker, and to read the loan agreement carefully prior to applying. While





It is important for borrowers to consult with their CPA, attorney, and banker, and to read the loan agreement carefully prior to applying. While the simplistic process of obtaining SBA loans has made it easy for the average citizen to receive financial assistance, it has also reduced the likelihood of these citizens reading the agreements they are signing and doing research beforehand. As noted above, many of the provisions that have been released restrict the independence of business owners and, if one is not too careful, may allow the SBA to essentially become a “partner” of the business.



# Pinellas County Hurricane Property Damage and Property Tax Revaluation



# The County may provide a partial refund for 2024 real estate taxes, and a reduction in 2025 taxes to reflect reduced value resulting from hurricane damages

- You can contact Pinellas County Property Appraiser to discuss a hurricane or calamity and the effect on future assessment with your Area Appraiser.
  - Access and complete the storm damage form to report structural damage to your home and improvements (NOT downed fences or trees).
  - The Form/Survey Available at: <https://www.surveymonkey.com/r/3FFVMMZ>
- Provide Documents to help with the claim:
  - Photos and videos of damage—be as thorough as possible;
  - Insurance adjusters' reports;
  - Repair receipts;
  - Other related damage to structural damage of home + Improvement.



# Appraiser Documentation of Property Condition and Field Visit

- County Appraisers will document property condition and return for a field visit at the end of year to determine if repairs/rebuild have been complete.
  - If repairs/rebuild not completed by Jan 1 after damage occurred, appraisers will reduce your market and capped values accordingly as of January 1 for the new tax year.
  - In turn, the reduced value will affect the property tax bill you receive next November.
  - Homestead exemption may continue so long as no new homestead exemption on different home during original home rebuild (FLA STAT. § 193.155 4(b)).
- Example (See timeline following slide):
  - **Aug. 2024: Property was damaged by Hurricane.**
  - **Feb. 2025: Repairs to property are complete.**
  - Your Nov. 2024 tax bill will not include property tax reductions.
    - Property Tax reduction will appear on your Nov. 2025 tax bill.
  - Value of repaired/replaced property won't be taxed until Nov. 2026.



# Property Tax Revaluation Once Rebuild or Repairs are Complete

- Homeowners may retain their homestead exemption if they repair or rebuild a damaged property, provided they:
  - Move back in within **3 years** from **January 1 of the year following the hurricane**.
  - **Notify** the Property Appraiser of plans to repair or rebuild the primary residence.

## • Scenarios:

### 1. Elect Not to Rebuild:

1. If the owner chooses not to rebuild, the homestead exemption will be removed as of **January 1 of the year following the hurricane**.
2. The property owner has a **3-tax year window** to "port" or transfer the homestead assessment differential to a new homestead. (*Fla. Stat. § 193.155*)

### 2. Repair Only:

1. When necessary repairs are made, and the owner reoccupies the home, there will be **no impact on the assessed value cap**. The property continues to benefit from the Save Our Homes cap.

### 3. Elevation (for Flood-Prone Properties):

1. If the homeowner elevates the property by lifting the lowest floor above the base flood elevation:
  1. Newly added ground-level areas will be **added to the assessed value cap** only if they exceed **110% of the original square footage or 1,500 square feet**, whichever is greater.



# Examples of Property Revaluation

## 1. Elect Not to Rebuild:

1. Example: After Hurricane Ian, the owner of a Fort Myers beach property decides not to rebuild.
2. Impact: Homestead exemption is removed January 1 of the following year.
3. Portability Option: The owner has 3 tax years to transfer the homestead assessment differential to a new Florida homestead property. (Fla. Stat. § 193.155)

## 2. Repair Only:

1. Example: A Miami homeowner makes repairs to restore their home after hurricane damage without expanding the structure.
2. Impact: Homestead exemption and Save Our Homes cap remain intact. The assessed value increase is capped at 3% or CPI, whichever is lower, maintaining tax stability.

## 3. Elevation (for Flood-Prone Properties):

1. Example: A St. Augustine homeowner elevates the house above the base flood elevation to mitigate future flood risks.
2. Impact: Ground-level areas added under the home are included in the assessed value only if they exceed 110% of the original size or 1,500 sq. ft., whichever is greater.



# Property Tax Increases The Normal 10% Cap on Non Homestead Property Rule

- Florida Law limits annual increase in assessed value of property due to the Save Our Homes cap.
  - There is a limit of a 3% increase or the Consumer Price Index (CPI), whichever is lower.
- The assessed value increase limit does **not apply to school board property taxes**.
- Florida law allows school districts to calculate taxes based on the property's full assessed value without SOH limitations.
- As a result, school board taxes may increase beyond the 3% cap or CPI rate applied to other property tax components.
- The school board portion of property taxes can increase based on the full post-rebuild assessed value of the property.





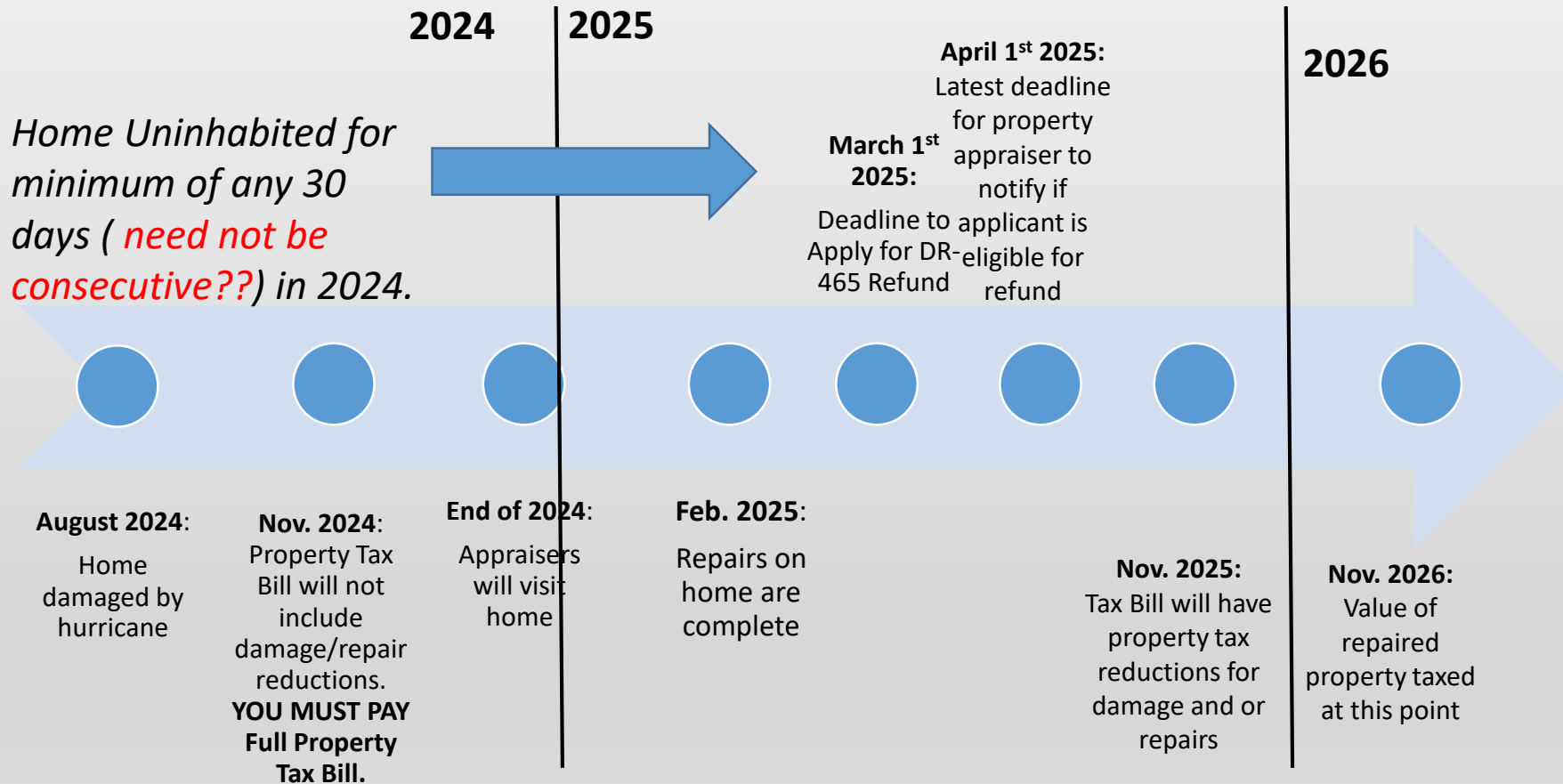
# Hurricanes Debby, Helene, Milton: Will my 2024 tax bill be reduced due to damage?

- Residential property is eligible for partial property tax refund **only if**:
  - The property was rendered **uninhabitable for a minimum of 30 days**;
    - “Uninhabitable” means the loss of use and occupancy of a residential improvement for the purpose for which it was constructed resulting from damage to or destruction of, or from a condition that compromises the structural integrity of, the residential improvement which was caused by a catastrophic event. FLA. STAT. § 197.319
  - Owner completes DR-465 Application for Catastrophic Event Tax Refund;
    - Form must be accompanied by supporting documentation, showing property was uninhabitable to include utility bills, insurance claims, contractors statements, permit applications, or certificates of occupancy.
  - Deadline to file: **March 1<sup>st</sup>** of the year immediately following the hurricane.
    - For Hurricanes Debby, Helene, and Milton: **March, 1<sup>st</sup> 2025.**
  - The taxpayer is still responsible for paying property taxes owed.



# Timeline of Events – Repairs or Damage After Hurricane

(Property taxes are paid in arrears—on November 1<sup>st</sup> 2024 most property owners pay the taxes for 2024 to get maximum discounts. The tax is due March 1<sup>st</sup>).





# Application for Catastrophic Event Tax Refund

Section 197.319, Florida Statutes

DR-465  
R. 11/23  
Rule 12D-16.002  
F.A.C.  
Effective 11/23  
Page 1 of 2

This completed application, must be filed with the county property appraiser on or before March 1 of the year immediately following the catastrophic event.

COMPLETED BY APPLICANT			
Applicant name		County	Select County
Mailing address		Property address (if different from mailing)	
Phone		Parcel identification number, if available	
1. Date the catastrophic event occurred in your county			
2. Number of days property was uninhabitable during the calendar year that the catastrophic event occurred (must be uninhabitable for at least 30 days):			
3. Describe the catastrophic event			
4. Has the property been restored to a habitable condition? Yes <input type="checkbox"/> No <input type="checkbox"/> If so, when was the property habitable? _____			
Florida law requires property appraisers to determine if you are entitled to a refund of taxes. Supporting documentation is required for purposes of determining the conditions of uninhabitability, such as utility bills, insurance information, contractors' statements, building permit applications, or building inspection certificates of occupancy.			
Under penalties of perjury, I declare that I have read this application and that the facts stated in it are true to the best of my knowledge and belief.			
Signature of property owner		Date	
Complete and provide to the county property appraiser.			
COMPLETED BY PROPERTY APPRAISER			
1. Just value of residential parcel as of January 1 of the year the catastrophic event occurred:			
2. Number of days property was uninhabitable (must be uninhabitable for at least 30 days):			
3. Postcatastrophic event just value:			
4. Percent change in value:		0.00%	
The property appraiser has determined that the applicant's entitlement to the refund is based on the above factors.			
Signature, property appraiser or designee		Date	
Provide a copy to the property owner.			
For approved applications, forward to the county tax collector on or before April 1.			

<https://floridarevenue.com/property/Documents/dr465.pdf>

### Instructions

Section 197.319, Florida Statutes (F.S.), provides a refund of property taxes paid for residential improved property rendered uninhabitable for at least 30 days due to a catastrophic event. To be eligible for refund, the property must be determined "uninhabitable," that is the property could not be used or occupied for the purpose for which it was constructed for a period of at least 30 days due to damage to, destruction of, or a condition that compromises the structural integrity of the residential improvement which was caused by a catastrophic event. The owner of the property must file a sworn application and supporting documentation with the property appraiser's office by **March 1**, of the year immediately following the catastrophic event.

#### Completed by Applicant:

- If available, provide the parcel identification number for the damaged or destroyed property.
- Supporting documentation is required. Attach any documentation supporting the claim that the property was uninhabitable during the specified period. Supporting documentation includes utility bills, insurance information, contractors' statements, building permit applications, or building inspection certificates of occupancy.
- Submit the signed, dated, and completed application with the supporting documentation to the property appraiser's office in the county where the property is located.
- If approved, the county tax collector will issue a refund to the applicant.

The property appraiser will notify the property owner of the determination no later than April 1 of the year following the date on which the catastrophic event occurred. If your application for tax refund under section 197.319, F.S., is not determined satisfactorily, the Florida Property Taxpayer's Bill of Rights recognizes your right to an informal conference with the local property appraiser. You may also file a petition with the value adjustment board clerk, pursuant to section 194.011(3), Florida Statutes, on or before the 30<sup>th</sup> day following issuance of notice by the property appraiser. Regardless of a scheduled informal conference with the property appraiser, petitions involving determinations on refund of taxes for catastrophic event may be submitted to the value adjustment board. Complete and file Form DR-486, *Petition to the Value Adjustment Board – Request for Hearing*, with the value adjustment board clerk (Form DR-486 is incorporated by reference in Rule 12D-16.002, F.A.C.).

#### Completed by Property Appraiser:

- The property appraiser must review the application and any supporting documentation submitted by the applicant to determine if the applicant is entitled to a refund of taxes.
- If the applicant is eligible for the refund and the application was timely filed, complete, sign, and date the application. Forward a copy of the application and an official written statement of determination to the tax collector and the applicant within 30 days after the determination and no later than April 1, of the year following the date on which the catastrophic event occurred, providing:
  - The just value of the residential improved property as of January 1 of the year the catastrophic event occurred
  - The total number of days the residential improved property was uninhabitable
  - The postcatastrophic event just value
  - The percent change in value applicable to the residential improved property
- If the applicant is ineligible for the refund, provide a copy of this application, and include an official written statement of the property appraiser's determination no later than April 1 to the applicant.

<https://floridarevenue.com/property/Documents/dr4>

65.pdf

# Will my property's assessed value increase if I repair or rebuild my home after damage or flooding?

- Destroyed or repaired property may retain homestead exemption. The homeowner must move back in within \_\_\_\_ years?
  - Property Appraiser must be notified that repairs or rebuilds will occur to primary residence.
- Scenarios:
  - Elect to not rebuild;
    - Exemption will be removed January 1<sup>st</sup> of the year following the hurricane (????2025) and property owner will have the 3-tax year statutory window to port (transfer) all or part of homestead assessment differential to a new homestead. FLA. STAT. § 193.155.
      - <https://floridarevenue.com/property/Documents/pt112.pdf>
  - Repair;
    - If owner makes necessary repairs and reoccupies the property, no impact in assessed value cap.
  - Elevate (flooded properties);
    - If able to rebuild and lift lowest level of home above base elevation, newly added subareas at grade level will be added above the assessed value cap.
      - Will remain under cap so long as not over 110% original structure or 1,500 SF, whichever greater.
      - 3 years from January 1<sup>st</sup> to commence changes, additions or improvements (5 years as of Jan. 1<sup>st</sup> 2025). WHAT DOES THIS MEAN—SAME RULE AGAIN?



# Will my property's assessed value increase if I repair or rebuild my home after damage or flooding? (2)

- Scenarios:

- Rebuild;

- If rebuild chosen (not exceeding 110% of original improvement or 1,500 SF, whichever greater), the Save Our Homes cap or non-homestead cap will continue upon completion of the new building as if no damage occurred.
      - If no rebuild after telling Property Appraiser of intention to rebuild, the Save Our Homes cap will be severely reduced.
    - Homestead exemption remains on vacant land during construction.
    - Remember 3 year (5 year, as of Jan. 2025) Statute of Limitation to start changes, additions, or improvements, and permits must be obtained before such changes, additions or improvements begin.
    - More details regarding how valuations are calculated, with examples, are available at:
      - <https://www.pcpao.gov/how-do-i/report-property-damage>



# Additional Resources

- Although revaluation of home is the last thing on a person's mind during a disaster, the County property appraiser should be notified as soon as possible so they can help.
- State of Florida and Dept. of Revenue have published two informative guides:
  - Florida Homeowner's Guide: Catastrophic Event Property Damage;
    - [https://floridarevenue.com/property/Documents/homeowner%27s\\_guide\\_property\\_damage.pdf](https://floridarevenue.com/property/Documents/homeowner%27s_guide_property_damage.pdf)
  - Florida Homeowner's Guide: Property Tax Relief for Catastrophic Events in 2023.
    - [https://floridarevenue.com/property/Documents/2023\\_guide\\_catastrophic\\_events.pdf](https://floridarevenue.com/property/Documents/2023_guide_catastrophic_events.pdf)
- Damaged Property Repairs or Rebuilding Rules within the Special Flood Hazard Areas
  - FEMA 50% Rule (Review Fact sheet to understand substantial damage).
  - Pinellas County Substantial Damage and Substantial Improvement information and definitions(Unincorporated County 49% Rule).
  - Check with municipalities building department for questions regarding:
    - FEMA 50% Rule Substantial Damage and Substantial Improvement Determination;
      - <https://www.fema.gov/press-release/20230502/fact-sheet-what-does-substantial-damage-mean>
      - <https://pinellas.gov/substantial-damage-substantial-improvement/>
    - Permitting;
    - Grandfathering of Non-conforming uses.





# Providing Assistance through Charitable Organizations and Qualified Disaster Relief Payments



# IRS Publication 3833 (Rev. 12-2014), Disaster Relief: Providing Assistance Through Charitable Organizations

- This IRS Publication provides an overview of the ways charitable organizations can be used to assist disaster victims and the tax implications of such charitable efforts.
- The majority of the publication is reproduced on the following slides.





Tax Exempt and Government Entities

EXEMPT ORGANIZATIONS

# DISASTER *Relief*

PROVIDING  
ASSISTANCE  
THROUGH  
CHARITABLE  
ORGANIZATIONS



This publication is for people interested in assisting victims of disasters or those in emergency hardship situations through tax-exempt charities. Charitable organizations have traditionally been involved in assisting victims of disasters such as floods, fires, riots, storms or similar large-scale events. Charities also play an important role in helping those in need because of a sudden illness, death, accident, violent crime or other emergency hardship. This publication includes:

- advice about helping to provide relief through an existing charitable organization,
- information about establishing a new charitable organization,
- guidance about how charitable organizations can help victims,
- documentation and reporting requirements,
- guidance about employer-sponsored assistance programs,
- information about tax treatment of disaster relief payments,
- information about gifts and charitable contribution rules, and
- reference materials and taxpayer assistance resources.

By using this publication as you begin to plan your relief efforts, you will be able to ensure that your program will assist victims in ways that are consistent with the federal tax rules that apply to charities.



Providing aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form. Charitable organizations, including churches, are frequently able to administer relief programs more efficiently than individuals acting on their own. Charitable organizations can continue to offer assistance over long periods. Even if the charity later dissolves, its remaining assets are permanently dedicated to accomplishing charitable purposes and cannot be divided among the organization's members, directors or employees.

Of course, there are tax advantages when a tax-exempt charitable organization provides relief. If an organization is exempt from federal income tax, it can use more of its resources to further its mission. Contributors to qualified charitable organizations may be eligible to claim tax deductions for their donations, and the value of these contributions is not subject to gift tax, regardless of the amount. Also, individuals receiving assistance are not generally subject to federal tax on the value of assistance they receive from a charity to meet their personal needs.



## HELPING THROUGH AN EXISTING CHARITABLE ORGANIZATION

When a tragic event occurs there is often an overwhelming desire on the part of the community to come to the aid of the victims. In the immediate aftermath of a disaster or emergency, those who wish to provide help may overlook existing charities and spend precious time and resources establishing a new charitable organization and applying for tax-exempt status.

As an alternative, it may be more practical to combine resources with an existing charity to provide immediate relief, or see whether an existing charity operating in a related area may be interested in establishing a special program to address a particular disaster or emergency hardship situation. For instance, a community fund like the United Way, a religious organization like the Salvation Army, or a relief organization like the Red Cross are all existing organizations which have provided targeted disaster relief and emergency hardship assistance in response to natural and civil disasters and other unforeseen emergencies. Community-based organizations and charities with a local presence often know best what assistance is needed and understand the social and cultural context of a disaster. Working with and supporting these existing organizations may prove to be a more efficient use of disaster relief resources.

Furthermore, even if a charity was not specifically organized to provide disaster relief and such activities were not specified in its application for exemption, an existing recognized charity may engage in disaster relief activities without obtaining prior permission from the IRS. However, it must report this new activity on its annual return and may wish to report a change in its activities to the IRS Exempt Organizations Determinations Office.





## FEDERAL TAX LAW

Under federal law, an existing qualified charity generally must be given full control and authority over the use of donated funds, and contributors may not earmark funds for the benefit of a particular individual or family. Contributions to qualified charities may, however, be earmarked for flood relief, hurricane relief or other disaster relief.

## STATE LAW CONSIDERATIONS

Some contributors are reluctant to contribute to an existing umbrella organization with many programs. They are concerned that their donations will not be spent directly to serve the victims of the particular emergency they wish to help, and instead, will be applied to other organizational expenses.

To address these concerns, many state and local authorities that regulate charitable solicitation rules have imposed regulations that provide that, if a charity represents that funds will be used for the relief of the victims of a particular disaster, the funds may not be used for other programs of the organization. Charitable organizations and contributors should be aware of the solicitation rules that may apply in their particular jurisdiction.





## EXPEDITED PROCESSING OF APPLICATIONS FOR EXEMPTION

Normally, a Form 1023 is processed in order based upon the date it is received; however, a new disaster relief or emergency hardship organization may request expedited handling of its application. An organization should only request expedited handling of its application if there is a compelling reason for the IRS to approve such a request. An application will not be expedited simply because the organization may serve disaster victims. The organization must demonstrate that it is meeting an immediate need of disaster relief or emergency hardship victims and that its ability to provide immediate assistance to such victims will be adversely impacted in a material way if the application is not reviewed expeditiously. Requests for expedited handling are infrequently approved, and even if consideration of the application is expedited, there is no guarantee that tax-exempt status will be granted.

The request for expedited processing should accompany the application and user fee, and should include:

- a compelling reason to process the application ahead of others,
- a brief description of the disaster and details of how the organization will provide relief,
- an explanation of the immediate need for the specific disaster relief services the organization provides,



- a description of any pending grants, including information about the grantor and the amount or property to be received,
- an explanation of how the loss of the grant(s) might impact the organization's ability to operate and provide relief,
- a description of any significant business emergency (such as an impending deadline imposed by a court or government agency) demonstrating that the business emergency will significantly impact the applicant's ability to operate and explaining how expediting the application will enable the applicant to avoid the emergency,
- a statement explaining any other anticipated consequences should the expedited processing be denied, and
- the date an exemption letter is required, if applicable.

The following examples demonstrate the types of situations in which a request for the expeditious handling of an application for exemption would be appropriate or inappropriate.

#### EXAMPLE

An organization has a matching grant pending that would double the funds it has available to provide immediate counseling for children directly affected by an earthquake. The organization can only receive the funds if it can prove that it is exempt under section 501(c)(3). Expediting the processing of the application under these circumstances is appropriate because the organization would otherwise lose this significant grant money that is to be used to provide counseling to children at a time when they most need it.

#### EXAMPLE

An organization plans to raise funds to be used to erect a monument to victims of a plane crash. Certain businesses and members of the general public have expressed interest in contributing to the project; however, there are no firm commitments for funding. While the organization intends to honor disaster victims, it is not providing disaster relief. Furthermore, there is no evidence that there are any significant grants pending or any other business reason to expedite consideration of the application. Expedited treatment of the application would not be appropriate.



# HOW CHARITABLE ORGANIZATIONS HELP VICTIMS

Charitable organizations can serve disaster victims and those facing emergency hardship situations in a variety of ways.

## AID TO INDIVIDUALS

Organizations may provide assistance in the form of funds, services, or goods to ensure that victims have the basic necessities, such as food, clothing, housing (including repairs), transportation, and medical assistance (including psychological counseling). The type of aid that is appropriate depends on the individual's needs and resources. Disaster relief organizations are generally in the best position to determine the type of assistance that is appropriate.

For example, immediately following a devastating flood, a family may be in need of food, clothing, and shelter, regardless of their financial resources. However, they may not require long-term assistance if they have adequate financial resources. Individuals who are financially needy or otherwise distressed are appropriate recipients of charity. Financial need and/or distress may arise through a variety of circumstances. Examples include individuals who are:

- temporarily in need of food or shelter when stranded, injured, or lost because of a disaster;
- temporarily unable to be self-sufficient as a result of a sudden and severe personal or family crisis, such as victims of violent crimes or physical abuse;
- in need of long-term assistance with housing, childcare, or educational expenses because of a disaster; and
- in need of counseling because of trauma experienced as a result of a disaster or a violent crime.





## AID TO BUSINESSES

Disaster assistance may also be provided to businesses to achieve the following charitable purposes:

- to aid individual business owners who are financially needy or otherwise distressed,
- to combat community deterioration, and
- to lessen the burdens of government.

An exempt charity can accomplish a charitable purpose by providing disaster assistance to a business if:

- the assistance is a reasonable means of accomplishing a charitable purpose, and
- any benefit to a private interest is incidental to the accomplishment of a charitable purpose.

Once a damaged business has been restored to viability or a newly attracted business is self-supporting, further assistance from a charity is no longer appropriate. Charities that aid businesses should have criteria and procedures in place to determine when aid should be offered and discontinued.

### EXAMPLE

As a result of a tornado, the central business district of a community is severely damaged. Because of the devastation, the area has become blighted. No single business wants to begin restoration efforts until it can be assured that the whole business district will be restored. A charity may provide funds to begin rebuilding the infrastructure of the district, such as roads, sidewalks, parks, sewers and power lines. This type of assistance would accomplish a charitable purpose by combating community deterioration. Any benefit to the business is incidental to the public purpose accomplished by the charity's program of assistance to the community.



## CHARITABLE CLASS

The group of individuals that may properly receive assistance from a tax-exempt charitable organization is called a “charitable class.”

A charitable class must be large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance. For example, a charitable class could consist of all the individuals in a city, county or state. This charitable class is large enough that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community.

If the group of eligible beneficiaries is limited to a smaller group, such as the employees of a particular employer, the group of persons eligible for assistance must be indefinite. To be considered to benefit an indefinite class, the proposed relief program must be open-ended and include employees affected by the current disaster and those who may be affected by a future disaster. Accordingly, if a charity follows a policy of assisting employees who are victims of all disasters, present or future, it would be providing assistance to an indefinite charitable class. If the facts and circumstances indicate that a newly established disaster relief program is intended to benefit only victims of a current disaster without any intention to provide for victims of future disasters, the organization would not be considered to be benefiting a charitable class.

Because of the requirement that exempt organizations must serve a charitable class, a tax-exempt disaster relief or emergency hardship organization cannot target and limit its assistance to specific individuals, such as a few persons injured in a particular fire. Similarly, donors cannot earmark contributions to a charitable organization for a particular individual or family.



## EXAMPLE

A hurricane causes widespread damage to property and loss of life in several counties of a coastal state. In one of the affected counties, an existing charitable organization has an ongoing program that provides emergency assistance to residents of the county. A small number of residents of this county suffered significant injury or property damage as a result of the storm. The organization provided assistance to some of these individuals. The organization's assistance was provided to a charitable class because the group of potential recipients is indefinite in that it is open-ended to include other victims of future disasters in the county.





## NEEDY OR DISTRESSED TEST

Generally, a disaster relief or emergency hardship organization must make a specific assessment that a recipient of aid is financially or otherwise in need. Individuals do not have to be totally destitute to be financially needy; they may merely lack the resources to obtain basic necessities. Under established rules, charitable funds cannot be distributed to individuals merely because they are victims of a disaster. Therefore, an organization's decision about how its funds will be distributed must be based on an objective evaluation of the victims' needs at the time the grant is made. The scope of the assessment required to support the need for assistance may vary depending upon the circumstances.

A charity may provide crisis counseling, rescue services, or emergency aid such as blankets or hot meals in the immediate aftermath of a disaster without a showing of financial need. Providing such services to the distressed in the immediate aftermath of a disaster serves a charitable purpose regardless of the financial condition of the recipients. However, as time goes on and people are able to call upon their individual resources, it may become increasingly appropriate for charities to conduct individual financial needs assessments. For example, if a charity intends to provide three to six months of financial assistance to families to pay for basic housing because of a disaster or emergency hardship, it would be required to make an assessment of financial need before disbursing aid. While those who may not have the resources to meet basic living needs may be entitled to such assistance, those who do not need continued assistance should not use charitable resources.





## NO AUTOMATIC RIGHT TO CHARITY AID

An individual who is eligible for assistance because the individual is a victim of a disaster or emergency hardship has no automatic right to a charity's funds. For example, a charitable organization that provides disaster or emergency hardship relief does not have to make an individual whole, such as by rebuilding the individual's uninsured home destroyed by a flood, or replacing an individual's income after the person becomes unemployed as the result of a civil disturbance. This issue is especially relevant when the volume of contributions received in response to appeals exceeds the immediate needs. A charitable organization is responsible for taking into account the charitable purposes for which it was formed, the public benefit of its activities, and the specific needs and resources of each victim when using its discretion to distribute its funds.



## SHORT-TERM AND LONG-TERM ASSISTANCE

Often charitable organizations (or programs of existing charities) are established as a result of a particular disaster where both short-term and long-term assistance might be required. The following types of assistance, if based on individual need, would be consistent with charitable purposes:

- assistance to allow a surviving spouse with young children to remain at home with the children to maintain the psychological well-being of the family,
- assistance with elementary and secondary school tuition and higher education costs to permit a child to attend school,
- assistance with rent, mortgage payments or car loans to prevent loss of a primary home or transportation that would cause additional trauma to families already suffering, and
- travel costs for family members to attend funerals and to provide comfort to survivors.

### EXAMPLE

A group of individuals is killed in a fire in a large office complex. A charitable organization was previously formed to assist needy individuals in the surrounding region. The charity determines that some victims' spouses and dependents lack adequate resources to meet immediate basic needs; others have resources to meet these needs, but will likely have a continuing need for counseling, medical, housing, childcare and education expenses. In this circumstance, the organization can grant funds to assist in meeting current and continuing needs. The organization can also set aside funds for possible future needs. However, when payments are made out of the set-aside funds, they must be based on needs of victims' families that exist at the time the payments are made.



## INCOME TAX TREATMENT OF QUALIFIED DISASTER PAYMENTS

Internal Revenue Code section 139 provides that **qualified disaster relief payments** from any source, including employers, reimbursing or paying individuals' specified expenses in connection with **qualified disasters** are not taxable as income and are not subject to employment taxes or withholding.

**A qualified disaster** is defined in section 139 as a disaster that:

- results from terrorist or military actions,
- results from an accident involving a common carrier,
- is a Presidentially declared disaster, or
- is an event that the Secretary of the Treasury determines is catastrophic.



**Qualified disaster relief payments** within the meaning of section 139 include payments received (regardless of the source) for the following expenses:

- reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence due to a qualified disaster (a personal residence can be a rented residence or one you own), and
- reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster.

Payments by a federal, state, or local government, or their agencies or instrumentalities, to persons affected by a qualified disaster in order to promote general welfare are also considered to be qualified disaster relief payments. For purposes of such payments by federal, state, or local governments, a qualified disaster includes the events listed above, as well as a disaster determined by a federal, state or local authority to warrant governmental assistance.

Qualified disaster relief payments do not include:

- payments for expenses otherwise paid for by insurance or other reimbursements, or
- income replacement payments, such as payments of lost wages, lost business income, or unemployment compensation





## EMPLOYER-SPONSORED ASSISTANCE PROGRAMS

Frequently, employers fund relief programs through charitable organizations aimed at helping their employees cope with the consequences of a disaster or personal hardship. As noted above, all charitable organizations, including those that provide disaster relief, must demonstrate that they serve a public rather than a private interest and serve a charitable class. In the past, employer-sponsored organizations were considered to enhance employee recruitment and retention, resulting in private benefit to sponsoring employers. In addition, there were concerns that employers could exercise undue influence over the selection of recipients. For these reasons, special rules apply to employer-sponsored charities.

Employer-sponsored charities sometimes establish emergency hardship funds to help employees who have been the victims of crime or a personal loss such as a fire or a sudden death in the family.

Not all employer-sponsored charitable organizations are permitted to provide assistance to employees and their families in any type of emergency hardship situations. The types of benefits a charitable organization can provide through an employer-sponsored assistance program depend on whether the employer-sponsored organization is a public charity, a donor advised fund or a private foundation. When an employer-sponsored organization provides assistance to employees, certain limitations apply that help to ensure that such aid does not result in impermissible private benefit to the employer.



## EMPLOYER-SPONSORED PUBLIC CHARITIES

Because public charities typically receive broad financial support from the general public, their operations are generally more transparent and are subject to greater public scrutiny. Accordingly, public charities may provide a broader range of assistance to employees than can be provided by donor advised funds or private foundations. An employer can establish an employer-sponsored public charity to provide assistance programs to respond to any type of disaster or employee emergency hardship situations, as long as the related employer does not exercise excessive control over the organization. Generally, employees contribute to the public charity and rank and file employees constitute a significant portion of the board of directors.

To ensure the program is not impermissibly serving the related employer, the following requirements must be met:

- the class of beneficiaries must be large or indefinite (a “charitable class”),
- the recipients must be selected based on an objective determination of need, and
- the recipients must be selected by an independent selection committee or adequate substitute procedures must be in place to ensure that any benefit to the employer is incidental and tenuous. The charity’s selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

If these requirements are met, the public charity’s payments to the employer-sponsor’s employees and their family members in response to a disaster or emergency hardship are presumed: (1) to be made for charitable purposes, and (2) not to result in taxable compensation to the employees.



## EMPLOYER-SPONSORED DONOR ADVISED FUNDS

Certain community foundations and other public charities maintain separate funds or accounts to receive contributions from individual donors. These individual donors then receive advisory privileges over investment or distribution of the donated funds.

In general, these organizations, known as donor advised funds, can make grants to 501(c)(3) public charities and, under certain conditions, to other organizations for charitable purposes, but cannot make grants to individual persons. However, there is an exception for certain employer-related funds or accounts established to benefit employees and their family members who are victims of a qualified disaster.

A donor advised fund or account can make grants to employees and their family members in the following circumstances:

- the fund serves the single identified purpose of providing relief from one or more qualified disasters as *defined on page 14* in the discussion of section 139 of the Internal Revenue Code,
- the fund serves a charitable class,
- recipients of grants are selected based upon an objective determination of need,
- the selection of recipients of grants is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous (the selection committee is considered independent if a majority of its members consists of persons who are not in a position to exercise substantial influence over the employer's affairs),
- no payment is made from the fund to or for the benefit of any director, officer, or trustee of the sponsoring community foundation or public charity, or members of the fund's selection committee, and
- the fund maintains adequate records to demonstrate the recipients' need for the disaster assistance provided.





## EMPLOYER-SPONSORED PRIVATE FOUNDATIONS

Like public charities, private foundations can make need-based distributions to victims of disasters or to the poor or distressed. However, several issues arise when an employer-sponsored private foundation provides aid that favors the employees of the sponsoring employer. The IRS has previously ruled that, because the availability of the disaster relief programs aided employers in recruiting and retaining a stable workforce, such programs conferred a significant private benefit on the sponsoring companies. However, after the September 11 attacks, Congress took the position that employer-sponsored private foundations should be able to provide assistance to employees in certain situations.

Accordingly, employer-sponsored private foundations may provide assistance to employees or family members affected by a qualified disaster, as defined in section 139 of the Code, as long as certain safeguards are in place to ensure that such assistance is serving charitable purposes, rather than the business purposes of the employer. Employer-sponsored private foundations can only make payments to employees or their family members affected by qualified disasters, not in non-qualified disasters or in emergency hardship situations.



The IRS will presume that payments in response to a qualified disaster, as defined above, made by a private foundation to employees (or family members of employees) of an employer that is a disqualified person (such as a company that is a substantial contributor) are consistent with the foundation's charitable purposes if:

- the class of beneficiaries is large or indefinite (a "charitable class"),
- the recipients are selected based on an objective determination, and
- the selection is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. The foundation's selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

If the requirements of this presumption are met, the private foundation's payments in response to a qualified disaster are treated as made for charitable purposes; do not result in prohibited self-dealing merely because the recipient is an employee (or family member of an employee) of the employer-sponsor; and do not result in taxable compensation to the employees.

The presumption described above does not apply to payments that would otherwise constitute self-dealing and subject the organization to excise taxes. For example, the presumption does not apply to payments made to (or for the benefit of) individuals who are directors, officers, or trustees of the private foundation or members of the private foundation's selection committee.

While a private foundation may fail to meet all of the requirements of the presumption, other procedures and standards may be considered to constitute adequate substitutes to ensure that any benefit to the employer is incidental and tenuous, when all the facts and circumstances are taken into account. Conversely, even though a private foundation meets the presumption, the IRS may still review the facts and circumstances to ensure that any benefit to the employer is tenuous and incidental. For example, a program may not be used to induce employees to follow a course of action sought by the employer or designed to relieve the employer of a legal obligation for employee benefits.



### EXAMPLE

A for-profit company is located in an area of the country designated a Presidentially-declared disaster because of hurricane devastation. A private foundation funded by the company establishes a new program to provide assistance to the company's employees and their immediate family members who are victims of the current disaster and any future qualified disasters. The private foundation's committee that selects recipients for assistance consists of a majority of members who are not in a position to exercise substantial influence over the affairs of the company. The foundation provides assistance to the employees and their families based on an objective determination of need.

The foundation's program does not relieve the company of any legal obligation, such as an obligation under a collective bargaining agreement or written plan that provides insurance benefits. The company does not use the program to recruit employees to continue their employment, or to otherwise follow a course of action sought by the company.

Because the foundation serves a charitable class, provides assistance based on an objective determination of need, and has an independent selection committee, the IRS will presume that it is carrying out a charitable program. Distributions are neither self-dealing transactions between the foundation and the employer nor taxable compensation to its employees under the program.





# SPECIAL TAX RULES FOR RECIPIENTS OF DISASTER RELIEF ASSISTANCE

This part of the publication discusses special tax rules that apply to individuals who receive assistance from public charities, private foundations, employer-related charitable organizations, government entities and other sources in disaster situations.

Gross income, for federal income tax purposes, generally includes all income from whatever source derived, unless a specific exception applies. Whether a payment to a disaster victim constitutes gross income for income tax purposes or compensation subject to employment tax depends, in part, on the source of the payment.

## CHARITABLE ORGANIZATIONS

Payments that individuals receive under a charitable organization's program as a result of a disaster or emergency hardship are considered to be gifts and are excluded from gross income of recipients under section 102 of the Code. Payments from an employer-sponsored public charity or private foundation are also exempt from gross income as gifts so long as the requirements described in *Employer-Sponsored Assistance Programs*, [page 15](#), are met.

An examination of the facts and circumstances surrounding a charity's payment to a for-profit business will govern whether the business can exclude the amount paid from gross income as a gift under section 102 of the Code. The IRS will evaluate whether the charity intended the payment to be a gift, and was motivated by charitable impulses. If the payment was made out of a moral or legal obligation, an anticipated economic benefit or in return for services, the payment will not be excluded from income as a gift.



## FEDERAL AND STATE GOVERNMENT

Generally, payments that individual disaster victims receive from governmental units under social programs for the promotion of the general welfare (i.e. based on need) are not included in the gross income of the recipients of the payments. In addition, certain payments that individuals receive from a state, federal or local government (or agency thereof), in connection with a qualified disaster, as described on [page 14](#), are excluded from the gross income of the recipient under section 139 of the Code. See *Direct Assistance from Employers and Other Sources*, [page 21](#), for additional information about the types of payments excluded from income and employment taxes under section 139.

### EXAMPLE

An area within a state was affected by a hurricane that was a Presidentially-declared disaster. The state enacted emergency legislation to provide grants to pay or reimburse medical, temporary housing, and transportation expenses incurred by individuals as a result of the flood that are not compensated by insurance or otherwise. Payments received under the state's grant program are excluded from income under the general welfare exclusion as well as under section 139 of the Code.



## DIRECT ASSISTANCE FROM EMPLOYERS AND OTHER SOURCES

In some instances a corporation or other non-exempt entity may choose to provide direct assistance to disaster victims rather than funneling its assistance through a charity or governmental entity. In addition, sometimes an employer may provide assistance through a non-exempt fund established to receive contributions from the employer as well as employees. In certain circumstances, payments from such sources may receive favorable tax treatment as well. As noted on [page 14](#), section 139 of the Code provides for special tax treatment of qualified disaster relief payments made to victims of a qualified disaster, regardless of the source. Qualified disaster relief payments are not included in the income of recipients to the extent that any expenses covered by these payments are not otherwise compensated by insurance or other reimbursements. Qualifying payments are not subject to income tax, self-employment tax, or employment taxes (Social Security, Medicare, and federal unemployment taxes) even if the payments are made directly from an employer.





## EXAMPLE

A for-profit corporation makes grants to its employees who are affected by a flood that was a Presidentially-declared qualified disaster. The grants will pay or reimburse employees for medical, temporary housing, and transportation expenses they incur as a result of the flood that are not compensated by insurance or otherwise. The corporation will not require individuals to provide proof of actual expenses to receive a grant payment. The corporation's program, however, contains requirements (which are described in the program documents) to ensure that the grant amounts are reasonably expected to be commensurate with the amount of unreimbursed reasonable and necessary medical, temporary housing, and transportation expenses the corporation's employees incur as a result of the flood. The grants are not intended to indemnify all flood-related losses or to reimburse the cost of non-essential, luxury, or decorative items and services. The grants are available to all employees regardless of length or type of service with the corporation.

The grants made by the employer are qualified disaster relief payments expected to be commensurate with the unreimbursed reasonable and necessary personal, living or family expenses of the employees not compensated by insurance or otherwise. The grants are excluded from the employees' gross income under section 139.





# GIFTS AND CHARITABLE CONTRIBUTION RULES

This part of the publication discusses the tax rules that apply to individuals who want to claim a tax deduction for their contributions to a qualified charitable organization. It also discusses the potential liability of donors for gift tax.

## CHARITABLE CONTRIBUTIONS

Contributors to qualified domestic charitable organizations may be eligible to claim federal income tax deductions for their contributions if they file itemized tax returns. Qualified organizations include charitable organizations that the IRS has determined are exempt from federal income tax. Churches, synagogues, temples and mosques are also qualified charitable organizations.

Domestic charitable organizations are those created under the laws of the United States or its possessions. For charitable contribution purposes, United States possessions include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of Northern Mariana Islands.



Before making a contribution to an organization for disaster relief, a contributor may want to verify whether the contribution would be tax-deductible. A contributor may use the following resources to determine if the organization is qualified to accept tax-deductible contributions:

- Go to *EO Select Check* on the *Charities and Nonprofits home page* on the IRS website, [www.irs.gov](http://www.irs.gov), to access an online database of qualified charitable organizations, or
- Call IRS Exempt Organizations Customer Service at (877) 829-5500.

Potential contributors, like other interested members of the public, may obtain a copy of an organization's exemption application or its recent annual information returns (Form 990, 990-EZ, 990-PF or 990-N).

Contributors can contact the organization directly or submit *Form 4506-A, Request for Public Inspection or Copy of Exempt Organization IRS Form*, to the IRS to receive copies of the completed forms. Some organizations also post the forms on their website. An organization's Form 990-N may be accessed on the IRS website using *EO Select Check*.

A contributor cannot claim a tax deduction for any cash, check, or other monetary contribution to a qualified charitable organization made on or after January 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a canceled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution, and the amount of the contribution. For more information about contributions, see *Publication 526, Charitable Contributions*.

In addition, a donor cannot claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a contemporaneous acknowledgment of the contribution from the recipient organization. For detailed information on what a charity is required to include in written acknowledgment statements given to donors, see *Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements*.



## FOREIGN CONTRIBUTIONS

Contributions to qualified domestic charitable organizations that provide assistance to individuals in foreign countries qualify as tax-deductible contributions for federal income tax purposes, provided the U.S. organization has full control and discretion over the uses of such funds.

If the contributor is a corporation, its contributions for use in a foreign country are not deductible unless the domestic charity is itself organized as a corporation for federal tax purposes.

Contributions to foreign organizations are generally not tax-deductible, unless permitted by a tax treaty. The United States currently has tax treaties with Canada, Mexico, and Israel. See *Publication 526, Charitable Contributions*, for limitations that apply pursuant to these treaties.





## GIFTS

Individuals can also help victims of disaster or hardship by making gifts directly to victims.

This type of assistance does not qualify as a tax-deductible contribution since a qualified charitable organization is not the recipient. However, individual recipients of gifts are generally not subject to federal income tax on the value of the gift. If you make a gift directly to an individual, you are not subject to federal gift tax unless the total gifts made in a year exceed the annual exclusion amount.

Sometimes providing financial assistance apart from a qualified charity is desirable.

### EXAMPLE

Jim, a college student and a counselor at a summer camp, accidentally rolls his old truck into a lake. The other counselors collect several hundred dollars and give the monies directly to Jim to help with the down payment for another truck. Since the counselors are making gifts to a particular individual, the use of a qualified charitable organization would not be appropriate. The counselors cannot claim tax deductions for their gifts to Jim. However, Jim is not subject to federal income tax on the gift amount. The other counselors would not be subject to federal gift tax if the total gifts made by each counselor to Jim during the year did not exceed the annual exclusion amount.



# Tax Considerations Following Recent Hurricanes

- Tax advisors are already working hard to determine how the IRS disaster relief announcements and Internal Revenue Code will impact disaster victims and those who reside in disaster areas.
- The first thoughts of many tax advisors are how to extend income tax returns that were due October 15, 2024, and whether they can deduct losses and home restoration costs. There is much more to know and consider.
- Currently, due to hurricane and other disaster declarations:
  - Taxpayers in parts of Arkansas, Iowa, Kentucky, Mississippi, New Mexico, Oklahoma, Texas and West Virginia have until Nov. 1, 2024, to file their 2023 returns.
  - Taxpayers in the entire states of Louisiana and Vermont, all of Puerto Rico and the Virgin Islands and parts of Arizona, Connecticut, Illinois, Kentucky, Minnesota, Missouri, New York, Pennsylvania, South Dakota, Texas and Washington state have until Feb. 3, 2025, to file their 2023 returns.
  - Taxpayers in the entire states of Alabama, Florida, Georgia, North Carolina and South Carolina, and parts of Tennessee and Virginia will have until May 1, 2025, to file their 2023 returns. For these taxpayers, May 1 will also be the deadline for filing their 2024 returns and paying any tax due.
- Tax professionals in these States will have great challenges working with incomplete records, staffing issues, financially and emotionally distraught clients, and many corporate challenges.





## Disaster Relief

A guide for Foundations, Charities, and Employers





# Why Are We Talking About This?

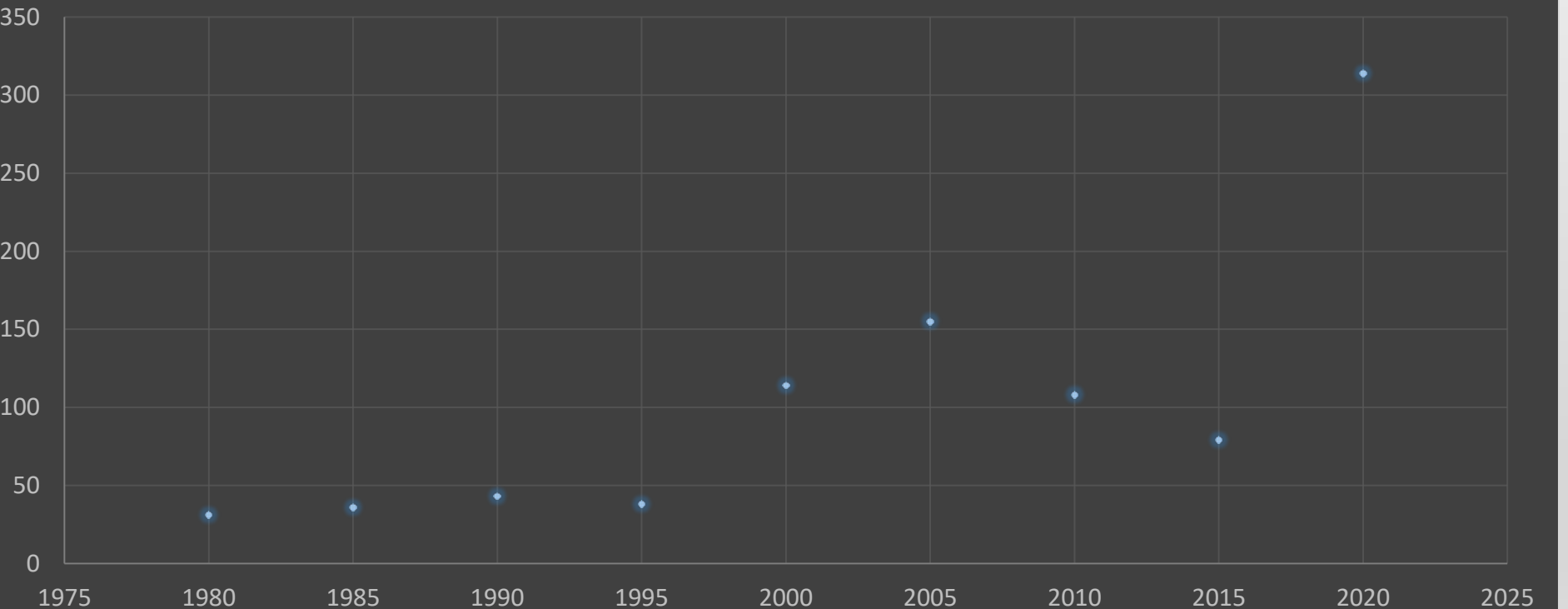
1. In times of disaster, companies and individuals all want a place to give with the knowledge that the money will get where it is supposed to go.
2. It is becoming increasingly common (and for many employers, expected) to establish funds ***specifically serving employees and their families impacted by disasters.***
3. There are right (and wrong) ways to do disaster relief.
4. When done right, charitable vehicles (e.g. company foundations, company-affiliated charities, company-advised funds at existing charities) are effective and tax-efficient ways to accomplish employer/donor goals in times of disaster.



# Why Are We Talking About This Now?



Number of Federally Declared Disasters





# Outline and Where to Learn More

1. Giving to Charity vs. Giving Directly to Needy Individuals
2. Charitability and Disaster Relief
3. Documentation (Short-Term vs. Long-Term)
4. Relationship to Donor-Employer: Serving a Particular Group of Employees Without “Excessive Private Benefit”
  1. Company Foundation
  2. Company-Affiliated Charity
  3. Company-Affiliated Fund
5. Sponsoring New Organizations
  1. Formation
  2. Exemption Application (Expediting Option)

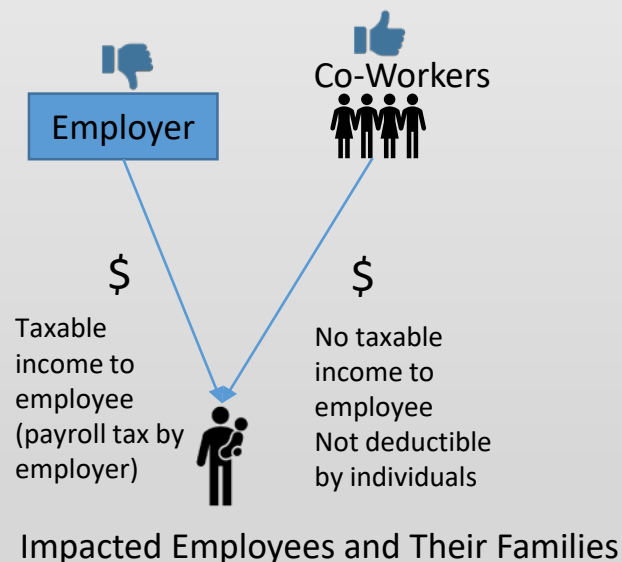
***For more information than we can cover, see Publication 3833: <https://www.irs.gov/pub/irs-pdf/p3833.pdf>***



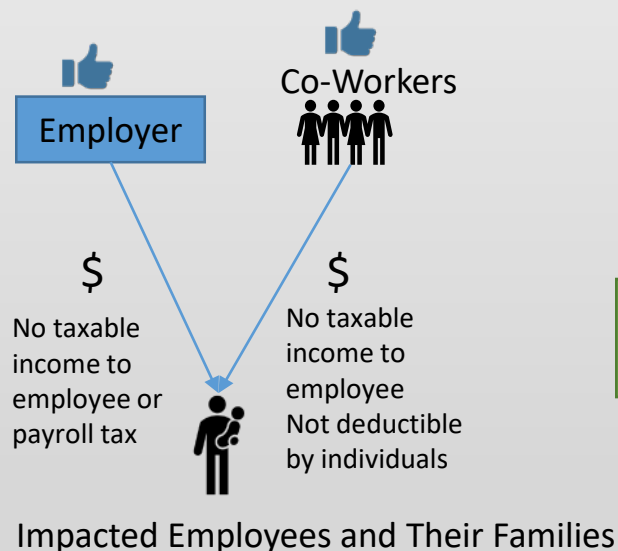


# Giving to Charity vs. Giving Directly to Needy Individuals

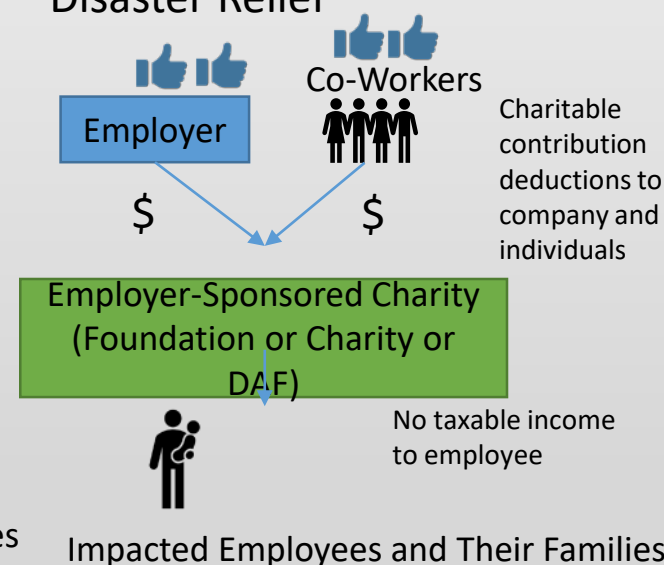
## Non-Qualifying Direct Payments for Disaster Relief



## Qualifying (IRC 139) Direct Payments for Disaster Relief



## Donation to Employer-Sponsored Charitable Vehicle for Disaster Relief



# Charitability and Disaster Relief

- Basic principles:
  - Providing relief to people suffering as a result of a disaster = charity (providing relief to needy and distressed)
  - Includes financial assistance to help people secure basic necessities (food, clothing, housing, transportation, medical care)
  - Can include financial assistance to business when done right (owned by needy, lessening burdens of govt., combat community deterioration – private benefit only incidental to charitable purpose)
- BUT:
  - No earmarking.
    - X giving to Charity Y with a requirement they give funds to individual Z is NOT a charitable contribution.
    - X giving to Charity Y for providing disaster relief in Z's community is a charitable contribution – Y may send to Z in its discretion
    - Charitable class must be sufficiently large or indefinite (no “one-disaster” charities”)
  - Not all victims of a disaster are members of a charitable class
    - In immediate aftermath of disasters, charities can provide short-term relief to ANYONE
    - Beyond that, financial assistance needs to be limited to the financially needy with appropriate measures to confirm.

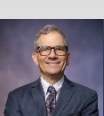


# Documentation (Short-Term vs. Long-Term)

- For long-term aid, documentation should generally include:
  - a complete description of the assistance provided,
  - costs associated with providing the assistance,
  - the purpose for which the aid was given,
  - the charity's objective criteria for disbursing assistance under each program,
  - how the recipients were selected,
  - the name, address, and amount distributed to each recipient,
  - any relationship between a recipient and officers, directors, or key employees of, or
  - substantial contributors to, the charitable organization, and,
  - the composition of the selection committee approving the assistance.

For short-term aid (e.g. distribution of blankets, hot meals, electric fans, or coats, hats and gloves, less is required, but documentation should still include:

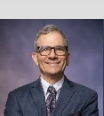
- type of assistance provided,
- criteria for disbursing assistance,
- date, place, estimated number of victims assisted (individual names and addresses are not required),
- charitable purpose intended to be accomplished, and
- the cost of the aid.





# Company-Affiliated Charity

- Because public charities typically receive broad financial support from the general public, their operations are generally more transparent and are subject to greater public scrutiny. Accordingly, public charities may provide a broader range of assistance to employees than can be provided by donor advised funds or private foundations. An employer can establish an employer-sponsored public charity to provide assistance programs to respond to any type of disaster or employee emergency hardship situations, as long as the related employer does not exercise excessive control over the organization. Generally, employees contribute to the public charity and rank and file employees constitute a significant portion of the board of directors.
- To ensure the program is not impermissibly serving the related employer, the following requirements must be met:
  - The class of beneficiaries must be large or indefinite (a “charitable class”),
  - The recipients must be selected based on an objective determination of need, and,
  - The recipients must be selected by an independent selection committee or adequate substitute procedures must be in place to ensure that any benefit to the employer is incidental and tenuous.
  - The charity’s selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.



# Company Foundation (Avoiding Self-Dealing)

- While it used to be risky, there is now a safe harbor for employer-related disaster relief from a company foundation that payments are presumed not to be self-dealing even though employer is a disqualified person:
  - The relief must be for one or more qualified disasters as section 139 of the Internal Revenue Code
  - the class of beneficiaries is large or indefinite (a “charitable class”),
  - the recipients are selected based on an objective determination of need or, and,
  - the selection is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. The foundation’s selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.
- Presumption does not apply to payments to disqualified persons (foundation directors or officers) or members of selection committee. Can lose presumption if other actions to provide more than incidental benefit to company (e.g. disaster relief functions like disguised comp).
- \*Also, just be careful: Self-Dealing can happen in a lot of ways.



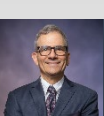
# Company-Affiliated Fund at Existing Charity (Satisfying Exception to DAF Rules)

- In general, DAFs\* cannot make grants to individuals, BUT there is a regulatory exception for:
  - Funds that serve the single identified purpose of providing relief from one or more qualified disasters as section 139 of the Internal Revenue Code,
  - Fund serves a charitable class (i.e. Large and indefinite enough),
  - Recipients of grants are selected based upon an objective determination of need,
  - The selection of recipients of grants is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous (the selection committee is considered independent if a majority of its members consists of persons who are not in a position to exercise substantial influence over the employer's affairs),
  - No payment is made from the fund to or for the benefit of any director, officer, or trustee of the sponsoring community foundation or public charity, or members of the fund's selection committee, and,
  - The fund maintains adequate records to demonstrate the recipients' need for the disaster assistance provided.



# Setting Up a New Organization

- Beyond scope of this presentation, but basically:
  - Articles of Incorporation
  - Bylaws
  - Conflict of Interest Policy
  - Action of Sole Incorporator and/or Initial Board Actions
  - Initial Filings with State Authorities (AG? State Tax Agency? Secretary of State?)
- THEN, the Tax-Exemption Application
  - Public Charity vs. Private Operating Foundation vs. Private Foundation
  - 1023 vs. 1023-EZ
  - Expediting Option (Disaster Relief = Basis for Expediting, Include if Applicable)



# § 139 Qualified Disaster Payments to Employees and Contractors Are Not Taxable to the Recipient

- Employers should keep in mind that they can pay certain expenses for employees under Internal Revenue Code Section 139 as deductible expenses that the employee or independent contractor will not have to include in income.
- The employer will be able to deduct such payments of employee expenses and will not have to pay employment taxes, workers compensation, unemployment compensation, or pension contributions on the payments.



# § 139 Qualified Disaster Payments to Employees and Contractors Are Not Taxable to the Recipient (Cont'd)

- Employers may therefore ask their tax advisors about providing qualified disaster payments in lieu of future bonuses or other forms of compensation.
- This can apply even when the only payments are made to an owner or relatives of the owner and possibly an S corporation and partnership.
- It may not apply to payments made by a partnership to a partner, but if the partner puts his or her partnership interest into an S corporation before the payment is made, then it may qualify.





# § 139 Qualified Disaster Payments to Employees and Contractors Are Not Taxable to the Recipient (Cont'd)

- A qualified disaster relief payment is any amount paid to or for the benefit of a person to reimburse or pay reasonable and necessary personal, family, living or funeral expenses that are a result of a qualified disaster.
- In addition, amounts paid to reimburse or pay for reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or the repair or replacement of the contents of a personal residence that is attributable to the disaster will also qualify to the extent attributable to a qualified disaster. This can be a vacation home, but probably not a home that is rented to someone other than the employee or independent contractor.
- However, the above expenses qualify only to the extent that what was paid for is not compensated by insurance or other sources, and amounts received as Section 139 payments cannot be deducted as casualty losses, so there can be no double dipping.



# § 139 Qualified Disaster Payments to Employees and Contractors Are Not Taxable to the Recipient (Cont'd)

- Revenue Ruling 53-131 held that payments to employees from a disaster fund established by a corporation to assist in tornado relief (as explained in the excerpt below) were excluded from the employees' gross income.
- "The taxpayer corporation is one of the largest employers in the disaster area. Most of its employees, who lived in residential communities hardest hit by the tornado, suffered immediate losses including lives of family members, injuries, and severe property damage extending, in some instances, to the complete destruction of their homes. Hundreds of automobiles and other items of personal property were either completely or partially destroyed."
- "A disaster committee was created immediately after the disaster, by a resolution of the board of directors of the corporation, to assist in the rehabilitation of its employees and their families. A fund tentatively set at 500x dollars was established from which contributions are to be made to employees and their families and pensioners. No payment from the fund is to be made by the committee for injuries resulting from any act of the corporation nor for any injuries normally occurring in the course of employment. The payments, which are to be made to employees who are not directors or officers of the corporation, are for purposes of rehabilitation not actually compensated for by insurance or other sources, and are to be made without regard to length or type of service."



# § 139 Qualified Disaster Payments to 2% S Corporation Shareholders

## IRC § 1372:

### (a) General rule

For purposes of applying the provisions of this subtitle which relate to employee fringe benefits—

(1) the S corporation shall be treated as a partnership, and

(2) any 2-percent shareholder of the S corporation shall be treated as a partner of such partnership.

### (b) 2-percent shareholder defined

For purposes of this section, the term “2-percent shareholder” means any person who owns (or is considered as owning within the meaning of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation.

**It is reasonable to conclude that IRC § 139 is not a “provision . . . relating to employee fringe benefits,” however we have not found any law or specific IRS guidance on this issue. It is of note that the IRS does not mention Qualified Disaster Relief Payments anywhere in its Employer's Tax Guide to Fringe Benefits ([https://www.irs.gov/publications/p15b#en\\_US\\_2024\\_publink1000193624](https://www.irs.gov/publications/p15b#en_US_2024_publink1000193624))**



IRC § 139

**(a) GENERAL RULE** Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

**(b) QUALIFIED DISASTER RELIEF PAYMENT DEFINED** For purposes of this section, the term “qualified disaster relief payment” means any amount paid to or for the benefit of an individual—

- (1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- (2) to 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,
- (3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or
- (4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

**(c) QUALIFIED DISASTER DEFINED** For purposes of this section, the term “qualified disaster” means—

- (1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),
- (2) a federally declared disaster (as defined by section 165(i)(5)(A)),
- (3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or
- (4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality

**(d) COORDINATION WITH EMPLOYMENT TAXES** For purposes of chapter 2 and subtitle C, qualified disaster relief payments and qualified disaster mitigation payments shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

**(e) NO RELIEF FOR CERTAIN INDIVIDUALS** Subsections (a), (f), and (g) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

**(f) EXCLUSION OF CERTAIN ADDITIONAL PAYMENTS** Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.

**(g) QUALIFIED DISASTER MITIGATION PAYMENTS**

- (1) **IN GENERAL** Gross income shall not include any amount received as a qualified disaster mitigation payment.
- (2) **QUALIFIED DISASTER MITIGATION PAYMENT DEFINED** For purposes of this section, the term “qualified disaster mitigation payment” means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.
- (3) **NO INCREASE IN BASIS** Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.
- (h) **DENIAL OF DOUBLE BENEFIT** Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.

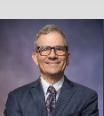


# Casualty Loss Deduction



# Casualty Loss Deductions

- Treasury Regulation 1.165-7(b)(1) provides that the casualty loss deduction for damaged property “whether or not incurred in a trade or business or in any transaction entered into for profit” “is equal to the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty” but not more than “[t]he amount of the adjusted basis.”
- The loss is further reduced by any amount “compensated for by insurance or otherwise” (IRC § 165(a)).





# Casualty Loss Deductions (Cont'd)

- Additional Rules for Trade, Business, or Income-Producing Property
  - “[I]f property used in a trade or business or held for the production of income is totally destroyed by casualty, and if the fair market value of such property immediately before the casualty is less than the adjusted basis of such property, the amount of the adjusted basis of such property shall be treated as the amount of the loss for purposes of section 165(a).” (Emphasis added.)
  - Casualty loss deduction must be computed based on each single identifiable property separately.



# Casualty Loss Deductions (Cont'd)

Trade, Business, or Income-Producing Property	
Damaged	<p>The lesser of:</p> <p>(A) the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or</p> <p>(B) the adjusted basis.</p>
Destroyed	Maximum potential deduction is adjusted basis



### General Rule for Calculating Casualty Loss Deduction:

- The casualty loss deduction for damaged property is equal to the lesser of: (A) the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or (B) the adjusted basis.
- The loss is further reduced by any amount “compensated for by insurance or otherwise.” IRC § 165(a).

Additional Rules for Trade, Business, or Income-Producing Property	Additional Rules for Personal Use Property
<p>“[I]f property used in a trade or business or held for the production of income is totally destroyed by casualty, and if the fair market value of such property immediately before the casualty is less than the adjusted basis of such property, the amount of the adjusted basis of such property shall be treated as the amount of the loss for purposes of section 165(a).”</p>	<p><b><u>No casualty deduction for personal property for loss incurred in 2018 – 2025 “in excess of the individual’s personal casualty gains for that year” unless “attributable to a Federally declared disaster.” IRC § 165(h)(5).</u></b></p>
<p>Casualty loss deduction must be computed based on each single identifiable property separately.</p>	<p>“In determining a casualty loss involving real property and improvements thereon . . . , the improvements (such as buildings and ornamental trees and shrubbery) to the property damaged or destroyed shall be considered an integral part of the property . . . and no separate basis need be apportioned to such improvements. Treasury Regulation § 1.165-7(b)(2)(ii).</p>
	<p>“Any [casualty] loss of an individual . . . shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty . . . exceeds . . . \$100 for taxable years beginning after December 31, 2009.” IRC § 165(h)(1). (Congress has suspended the \$100 limitation after past disasters.)</p>
	<p>Limited to 10% of the individual’s adjusted gross income. IRC § 165(h)(2). (Congress has suspended the 10% limit after past disasters.)</p>
	<p>Deduction for personal property casualty loss is an itemized deduction, unless it is attributable to a federally declared disaster.</p>



# Casualty Loss Deductions (Cont'd)

## Additional Rules for Personal Use Property

- “In determining a casualty loss involving real property and improvements thereon . . . , the improvements (such as buildings and ornamental trees and shrubbery) to the property damaged or destroyed shall be considered an integral part of the property . . . and no separate basis need be apportioned to such improvements.” Treasury Regulation § 1.165-7(b)(2)(ii).
- No casualty deduction for personal property for loss incurred in 2018 – 2025 “in excess of the individual’s personal casualty gains for that year” unless “attributable to a federally declared disaster.” IRC § 165(h)(5).
- “Any [casualty] loss of an individual . . . shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty . . . exceeds . . . \$100 for taxable years beginning after December 31, 2009.” IRC § 165(h)(1). (Congress has suspended the \$100 limitation after past disasters.)
- Limited to 10% of the individual’s adjusted gross income. IRC § 165(h)(2). (Congress has suspended the 10% limit after past disasters.)
- If loss is covered by insurance, individual must file a timely insurance claim to receive the deduction. IRC § 165(h)(4)(E).
- Deduction for personal property casualty loss is an itemized deduction, unless it is attributable to a federally declared disaster.



# Casualty Loss Deductions (Cont'd)

- The below example Schedule from IRS Publication 584 (February 2019) provides an example of how to calculate the casualty deduction for personal use property:

(1)  Item	(2) Cost or other basis	(3) Insurance or other reimbursement	(4) Gain from casualty or theft <sup>1</sup>	(5) Fair market value before casualty	(6) Fair market value after casualty	(7) Column (5) minus column (6)	(8) Smaller of column (2) or column (7)	(9) Casualty/Theft loss (column (8) minus <sup>2</sup> column (3))
Example:								
Chair	350.00	200.00	.00	275.00	.00	275.00	275.00	75.00
Clock	90.00	.00	.00	60.00	.00	60.00	60.00	60.00

- Treasury Regulation § 1.165-7(b)(3) provides several examples to illustrate the casualty loss deduction rules, which are reproduced on the following slides.



# Casualty Loss Deductions (Cont'd)

- Example (1): In 1956 B purchases for \$3,600 an automobile which he uses for nonbusiness purposes.
- In 1959 the automobile is damaged in an accidental collision with another automobile.
- The fair market value of B's automobile is \$2,000 immediately before the collision and \$1,500 immediately after the collision.
- B receives insurance proceeds of \$300 to cover the loss.





# Casualty Loss Deductions (Cont'd)

- The amount of the deduction allowable under section 165(a) for the taxable year 1959 is \$200, computed as follows:

Value of automobile immediately before casualty	\$2,000
Less: Value of automobile immediately after casualty	1,500
	-----
Value of property actually destroyed	500
	=====
Loss to be taken into account for purposes of section 165(a): Lesser amount of property actually destroyed (\$500) or adjusted basis of property (\$3,600)	500
Less: Insurance received	300
	-----
Deduction allowable	200
	=====





# Casualty Loss Deductions (Cont'd)

- Example (2): In 1958 A purchases land containing an office building for the lump sum of \$90,000. The purchase price is allocated between the land (\$18,000) and the building (\$72,000) for purposes of determining basis.
- After the purchase A planted trees and ornamental shrubs on the grounds surrounding the building.
- In 1961 the land, building, trees, and shrubs are damaged by hurricane. At the time of the casualty the adjusted basis of the land is \$18,000 and the adjusted basis of the building is \$66,000. At that time the trees and shrubs have an adjusted basis of \$1,200.
- The fair market value of the land and building immediately before the casualty is \$18,000 and \$70,000, respectively, and immediately after the casualty is \$18,000 and \$52,000, respectively.
- The fair market value of the trees and shrubs immediately before the casualty is \$2,000 and immediately after the casualty is \$400.
- In 1961 insurance of \$5,000 is received to cover the loss to the building.
- A has no other gains or losses in 1961 subject to section 1231 and § 1.1231-1. The amount of the deduction allowable under section 165(a) with respect to the building for the taxable year 1961 is \$13,000, computed as follows:



# Casualty Loss Deductions (Cont'd)



Value of property immediately before casualty	\$70,000
Less: Value of property immediately after casualty	52,000
	-----
Value of property actually destroyed	18,000
	=====

Loss to be taken into account for purposes of section 165(a):	
Lesser amount of property actually destroyed (\$18,000) or adjusted basis of property (\$66,000)	18,000
Less: Insurance received	5,000
	-----
Deduction allowable	13,000
	=====

The amount of the deduction allowable under section 165(a) with respect to the trees and shrubs for the taxable year 1961 is \$1,200, computed as follows:

Value of property immediately before casualty	\$2,000
Less: Value of property immediately after casualty	\$400
	-----
Value of property actually destroyed	1,600
	=====
Loss to be taken into account for purposes of section 165(a): Lesser amount of property actually destroyed (\$1,600) or adjusted basis of property (\$1,200)	1,200



# Casualty Loss Deductions (Cont'd)



- Example (3): Assume the same facts as in example (2) except that A purchases land containing a house instead of an office building.
- The house is used as his private residence.
- Since the property is used for personal purposes, no allocation of the purchase price is necessary for the land and house.
- Likewise, no individual determination of the fair market values of the land, house, trees, and shrubs is necessary.



# Casualty Loss Deductions (Cont'd)



- The amount of the deduction allowable under section 165(a) with respect to the land, house, trees, and shrubs for the taxable year 1961 is \$14,600, computed as follows:

Value of property immediately before casualty	\$90,000
Less: Value of property immediately after casualty	70,400
	-----
Value of property actually destroyed	19,600
	=====
Loss to be taken into account for purposes of	
Lesser amount of property actually destroyed (\$19,600) or adjusted basis of property (\$91,200)	19,600
Less: Insurance received	5,000
	-----
Deduction allowable	14,600
	=====



# Casualty Loss Deductions (Cont'd)

- The IRS FAQ page on disaster victims does a great job of summarizing the casualty loss rules, which are reproduced on the following slides.
- CPAs and financial advisors will learn a lot about these rules in the next few days and weeks.
- <https://www.irs.gov/businesses/small-businesses-self-employed/faqs-for-disaster-victims>





# IRS FAQs for Disaster Victims



# FAQs for Disaster Victims

## Taxpayers Affected by Disasters

### Affected Taxpayers and Records

#### *Definition of an Affected Taxpayer*

An affected taxpayer includes:

- An individual
- Any business entity or sole proprietor
- Any shareholder in an S Corporation

A taxpayer does not have to be located in a federally declared disaster area to be an “affected taxpayer.” Taxpayers are considered “affected” if records necessary to meet a filing or payment deadline postponed during the relief period are located in a covered disaster area. See 26 CFR § 301.7508A-1(d)(1) for more information.



# FAQs for Disaster Victims

## Taxpayers Affected by Disasters


### Affected Taxpayers and Records

#### ⊖ Q1: Does disaster relief apply to me if my tax preparer is in a disaster area, but I am not?

**A:** Disaster relief applies to the clients of tax preparers who are unable to file returns or make payments on behalf of the client because of a federally declared disaster. Therefore, if you are a taxpayer outside of the disaster area, you may qualify for relief if:

- your preparer is in the federally declared disaster area, and
- the preparer is unable to file or pay on your behalf.

To get the postponement for filing or payment, you must:

- Call the Disaster Hotline at [866-562-5227](tel:866-562-5227)
- Explain your necessary records are located in a covered disaster area
- Provide the [FEMA Disaster Number](#)  of the area where your tax preparer is located.





# FAQs for Disaster Victims


## Taxpayers Affected by Disasters

### Affected Taxpayers and Records

⊖ **Q2: I own an interest in a partnership, or I am a shareholder in an S Corporation, 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 Corporation to file my tax return. Do I qualify as an affected taxpayer for purposes of receiving filing and payment relief?**

**A: Yes.** If the affected partnership or S Corporation cannot provide you the records necessary to file your return, then you are an affected taxpayer. Your filing and payment deadlines are postponed until the end of the postponement period just like the affected partnership or S Corporation.

To get the postponement for filing or payment, you must:

- Call the Disaster Hotline at [866-562-5227](tel:866-562-5227)
- Explain your necessary records are located in a covered disaster area
- Provide the [FEMA Disaster Number](#)  of the county where the affected partnership or S Corp is located

See Treas. Reg. § 301.7508A-1 and Rev. Proc. 2018-58 for a list of taxpayer acts that may be postponed in response to a federally declared disaster.





# FAQs for Disaster Victims

## Tax Returns

### Change of Address

⊖ **Q1: What address should be used on a taxpayer's return considering the number of times they may move and may not remain at a current address for a long period of time?**

**A:** Taxpayers should use their current address when filing. If the taxpayer moves after filing the return, they should update their address with the IRS by calling the IRS Disaster Hotline at [866-562-5227](tel:866-562-5227), or by filing [Form 8822, Change of Address](#) [PDF](#). The IRS also recommends that taxpayers notify the Post Office serving the old address.





# FAQs for Disaster Victims

## Tax Returns

### Amended Returns

#### ⊖ Q1: If I sustain a loss that is attributable to a federally declared disaster, may I elect to deduct that disaster loss in the preceding tax year?

**A:** Generally, you may elect to deduct a disaster loss in the year you sustain the loss. This is known as the disaster year.

The disaster year is generally the year in which the disaster occurred but may be a year after the disaster occurred. If, for example, you have a claim for reimbursement with a reasonable prospect of recovery, then you have not sustained a loss until you know with reasonable certainty whether you will receive reimbursement.

If you have a loss attributable to a federally declared disaster occurring in an area identified by FEMA as qualifying for public or individual assistance (or both), you may elect to deduct that loss on your return or amended return for the tax year immediately preceding the disaster year. If you make this election, the loss is treated as having occurred in the preceding year.

This election may be made on Form 4684 Casualties and Thefts, section D. This election should be attached to a return or amended return for the preceding year. With respect to the due date for the election, you must make the election to claim your disaster loss in the preceding year on or before the date that is 6 months after the regular due date for filing your original return (without extensions) for the disaster year. See Publication 547 for more information.

A list of areas warranting public or individual assistance (or both) is available at the FEMA website at [FEMA.gov/Disasters](https://www.fema.gov/Disasters).

For tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property, are deductible only if the loss is attributable to a federally declared disaster.





# FAQs for Disaster Victims

## Tax Returns

### Amended Returns

- **Q2: How long does it take for the IRS to process amended returns filed by disaster victims who elect to deduct their disaster related loss in the preceding taxable year?**

**A:** The IRS expedites processing of amended returns notated with the appropriate disaster information, **on the top of page one of Form 1040X**, i.e. "Midwestern Disaster Area." The timeframe is generally 60 days.

- **Q3: A taxpayer affected by a disaster timely filed a federal income tax return for the taxable year the disaster occurred and did not claim a casualty loss deduction on the return. May the taxpayer wait until a later year and amend the original return to claim a casualty loss deduction reduced by insurance and other reimbursements received in subsequent years?**

**A:** A taxpayer may claim a casualty loss deduction for the first time on an amended original return. A casualty loss must be reduced by the amount of insurance proceeds and other reimbursements received.







# FAQs for Disaster Victims

## Tax Returns

### Amended Returns

- ⊖ **Q4: A taxpayer affected by a disaster timely filed a federal income tax return for the taxable year the disaster occurred and claimed a casualty loss deduction. Taxpayer received reimbursements for the loss in a subsequent year. May a taxpayer file an amended return for the year in which the taxpayer claimed a casualty loss deduction to reduce the loss by the amount of the reimbursement the taxpayer received?**

**A:** If a taxpayer properly claimed a casualty loss deduction on an original return and in a later year receives reimbursement for the loss, the taxpayer does not amend the original return. Instead, the taxpayer should report the amount of the reimbursement in gross income in the tax year in which the reimbursements were received, to the extent the casualty loss deduction reduced their income tax in the tax year that the taxpayer reported the casualty loss deduction. See section entitled "Insurance and Other Reimbursements" of [Publication 547, Casualties, Disasters, and Thefts](#).

In computing the "tax benefit," you are advised to review [Publication 525, Taxable and Nontaxable Income](#).





# FAQs for Disaster Victims

## Tax Returns

### Copies of Tax Returns

#### ⊖ Q1: How does a taxpayer or return preparer obtain an expedited copy of a tax return or tax return transcript?

**A: Copies of tax returns** – You can use [Form 4506, Request for Copy of Tax Return](#) [PDF](#) to order a copy of your tax return. Generally, there is a \$50 fee for requesting each copy of a tax return. If your main home, principal place of business, or tax records are located in a federally declared disaster area, the fee will be waived if the name of the disaster (for example, “Midwestern Disaster Area”) is written across the top of the [Form 4506, Request for Copy of Tax Return](#) [PDF](#) when filed.

**Transcript of tax returns** - The IRS will provide disaster victims or their return preparer with an expedited tax return transcript free of charge. Expedited services are available to taxpayers or their authorized representative who call the IRS Disaster Hotline at [866-562-5227](#). Also, [Form 4506-T, Request for Transcript of Tax Return](#) [PDF](#), may be faxed or mailed to the appropriate IRS Campus found in the instructions. If mailed, the appropriate disaster information, such as “Midwestern Disaster Area,” should be written across the top of the form. For tax professionals who are registered for [E-Services](#), this is the most expedient and efficient method for obtaining the tax return transcript for their client.





# FAQs for Disaster Victims

## Tax Returns

### Copies of Tax Returns

— **Q2: What is the effect of filing an extension of time to file under section 6081, if, prior to the March 15, 202X, due date for filing a U.S. Return of Partnership Income (Form 1065), an event in the state and county in which the partnership was formed, results in the area being declared a federally declared disaster area and, pursuant to section 7508A of the Internal Revenue Code, the IRS postpones filing and payment obligations for the period March 1, 202X, through June 30, 202X?**

**A:** The partnership return must be filed by the later of the extended due date or the end of the postponement period. If the partnership, which is an affected taxpayer with respect to the federally declared disaster, filed an extension of time to file prior to the end of the postponement period (June 30, 202X), the extension would relate back to the due date, March 15, 202X. The extension would run from March 15, 2021, to September 15, 202X. Because the extended due date (September 15, 202X) is later than the end of the postponement period (June 30, 202X), the partnership's Form 1065 is timely if filed on or before September 15, 202X.





# FAQs for Disaster Victims

## Tax Returns

### Copies of Tax Returns

- ⊖ **Q3: A corporate taxpayer whose U.S. Corporation Income Tax Return (Form 1120) is due to be filed on or before April 15, 202X, files an extension of time to file under section 6081 prior to the due date for filing the return thereby extending the due date to October 15, 202X. If, as a result of a disaster, the county in which the corporate taxpayer's principal place of business is located is declared a federally declared disaster and pursuant to section 7508A of the Internal Revenue Code, the IRS postpones filing and payment obligations for the period May 1, 202X, through August 31, 202X, when must the corporate taxpayer file its Form 1120?**

**A:** The postponement period under section 7508A runs concurrently with any extensions of time to file and pay under other sections of the Internal Revenue Code. The return must be filed by the later of the extended due date or the end of the postponement period. If the extended due date occurs prior to the end of the postponement period, the return must be filed by the end of the postponement period. If, however, the postponement period ends prior to the extended due date, the return must be filed by the extended due date. Here, the extended due date (October 15, 202X) is later than the end of the postponement period (August 31, 202X). Therefore, the corporate taxpayer's Form 1120 must be filed by October 15, 202X. Unless the corporate taxpayer also filed and received an extension of time to pay pursuant to section 6161, the corporate taxpayer must pay any tax it owes by August 31, 202X, the last day of the postponement period.





# FAQs for Disaster Victims

## Tax Returns

### Filing of Extensions/Extensions of Time to File

— **Q:** A taxpayer whose individual income tax return (Form 1040 or 1040-SR) is due to be filed on or before April 15, 202X, timely files an extension of time to file the return under section 6081 thereby extending the due date to October 15, 202X. If the county in which the taxpayer resides is declared a federally declared disaster area and, pursuant to section 7508A of the Internal Revenue Code, the IRS postpones filing and payment obligations for the period September 1, 202X through December 31, 202X, when must the taxpayer file their Form 1040 or 1040-SR?

**A:** The taxpayer must file their individual income tax return by the later of the end of the postponement period or the extended due date. Here, the postponement period ends on December 31, 202X, which is later than the extended due date (October 15, 202X). Therefore, the taxpayer's individual income tax return must be filed by December 31, 202X.







# FAQs for Disaster Victims

## Tax Returns

### Filing of Extensions/Extensions of Time to File

⊖ **Q: What is the effect of filing an extension of time to file under section 6081, if, prior to the March 15, 202X, due date for filing a U.S. Return of Partnership Income (Form 1065), an event in the state and county in which the partnership was formed, results in the area being declared a federally declared disaster area and, pursuant to section 7508A of the Internal Revenue Code, the IRS postpones filing and payment obligations for the period March 1, 202X, through June 30, 202X?**

**A.** The partnership return must be filed by the later of the extended due date or the end of the postponement period. If the partnership, which is an affected taxpayer with respect to the federally declared disaster, filed an extension of time to file prior to the end of the postponement period (June 30, 202X), the extension would relate back to the due date, March 15, 202X. The extension would run from March 15, 2021, to September 15, 202X. Because the extended due date (September 15, 202X) is later than the end of the postponement period (June 30, 202X), the partnership's Form 1065 is timely if filed on or before September 15, 202X.



# FAQs for Disaster Victims

## Payments

### Penalty and Interest

⊖ **Q1: Is there any interest relief for taxpayers who have balances due that arise during the disaster relief period for prior year returns?**

**A:** No. The IRS will not abate interest on balances due on liabilities for prior years. However, the IRS will consider waiving late payment penalties when the reason for the late payment is due to reasonable cause related to the disaster.

⊖ **Q2: What, if any, relief is accorded to Installment agreement payments that become due during the disaster relief period?**

**A:** Installment agreement payments due during the disaster relief period are suspended. After the postponement period has ended, the installment agreement will be reinstated (without a fee). The taxpayer will be required to resume making payments in accordance with the terms of the installment agreement beginning the month that follows after the end of the postponement period.





# FAQs for Disaster Victims

## Payments

### Mitigation Payments

#### ⊖ Q1: Are mitigation payments under Code section 139 tax-free?

**A:** Qualified disaster mitigation payments are excludable from the recipient's income. Such payments are amounts paid under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or the National Flood Insurance Act (as in effect on April 15, 2005) to or for the benefit of the owner of any property for hazard mitigation. There is no resulting increase in the basis or adjusted basis of the property for which the payments are made. Also, no person for whose benefit a qualified disaster mitigation payment is made can take a deduction or credit due to an expenditure for which exclusion for a payment is granted. The exclusion does not apply to amounts received for the sale or disposition of property.

#### ⊖ Q2: Do you have to subtract FEMA payments in arriving at the calculation for your net casualty loss?

**A:** According to Publication 547, in the section entitled "Types of Reimbursements," food, medical supplies, and other forms of assistance you receive do not reduce your casualty loss, unless they are replacements for lost or destroyed property. In calculating your casualty loss, if the payment is for replacement of lost or destroyed property, then you would subtract the amount in figuring your casualty loss.





# FAQs for Disaster Victims

## Payments

### Taxable State Recovery Payments

⊖ **Q1: How do reimbursements from state funds to compensate for property damage that are received in a subsequent year affect a homeowner's casualty loss and basis computations?**

**A:** If a taxpayer properly claimed a casualty loss deduction and in a later year receives reimbursement for the loss, the taxpayer reports the amount of the reimbursement in gross income in the tax year it is received to the extent the casualty loss deduction reduced the taxpayer's income tax in the year in which the taxpayer reported the casualty loss deduction. If the subsequent year reimbursement exceeds the amount of the casualty loss deduction, the taxpayer reduces basis in the property by the amount of such excess. In addition, the taxpayer includes such excess in income as gain to the extent it exceeds the remaining basis in the property, unless such gain can be excluded from income or its recognition can be deferred. Also see section entitled "Insurance and Other Reimbursements" of [Publication 547, Casualties, Disasters, and Thefts](#).



# FAQs for Disaster Victims

## Payments

### Taxable State Recovery Payments

⊖ **Q2: What if a net operating loss (NOL) was generated on the original return, would a taxpayer amend all amended returns and Form 1045?**

**A:** No. If a taxpayer properly claimed a casualty loss deduction and in a later year receives reimbursement for the loss, the taxpayer reports the amount of the reimbursement in gross income in the tax year it is received to the extent the casualty loss deduction reduced the taxpayer's income tax in the tax year in which the taxpayer reported the casualty loss deduction or reduced income tax in a prior year as a result of an NOL caused by a casualty loss deduction. See the preceding question for guidance if the subsequent year reimbursement exceeds the amount of the casualty loss deduction. Also see section entitled "Insurance and Other Reimbursements" of [Publication 547, Casualties, Disasters, and Thefts](#).

In computing the "tax benefit," you are advised to review [Publication 525, Taxable and Nontaxable Income](#).





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q1: A number of concerns have been raised by taxpayers and tax professionals about casualty loss valuations. Will the IRS continue to research and develop specific answers to these issues?**

**A:** While we cannot address every question received about property valuation issues, the IRS wants to express to the public that we recognize the extraordinary damage disasters can cause. We urge taxpayers and tax professionals to act in good faith and make reasonable estimations based on all information available. The IRS considers each situation on a case-by-case basis. We have extensive experience with disaster situations and will be reasonable in determinations.

As for lost records, when records are not available or it is not feasible to obtain documentation sufficient to re-create records otherwise required, the IRS will consider documentation requirements satisfied by the best reasonably available information presented in good faith.



# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

#### — Q2: What is the best method of reporting casualty losses on Form 4684 when using the repairs as evidence of the loss?

**A:** Under the law, a personal casualty loss is determined by taking the smaller of:

- The cost or other basis of the property (reduced by any insurance reimbursement), or
- The decline in fair market value of the property as measured immediately before and after the casualty (reduced by any insurance reimbursement).

The cost of repairs may, in certain cases, be used to measure the decline in fair market value, but it cannot be used by itself to determine the amount of the loss. The cost to repair method may be used if the repairs are actually made, are not excessive in cost, are necessary to bring the property back to its condition before the casualty, take care of the damage only, and do not cause the property to be worth more than before the casualty. See Regulations § 1.165-7(a)(2). When the cost of repairs is determined to be a fair measure of the decline in fair market value, then all you have to do is take the fair market value before the casualty and reduce it by the cost of repairs to arrive at the fair market value after the casualty. See section entitled “Decrease in Fair Market Value” of [Publication 547, Casualties, Disasters, and Thefts](#).

For tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property are deductible only if the loss is attributable to a federally declared disaster.

Suggestions for redesign of the Form 4684 to make the computation less cumbersome and still follow the law are welcome and may be submitted at the [Comments on Tax Forms and Publications](#) page, or you may write to Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q3: The decrease in fair market value of the property for which I am taking a casualty loss is the difference between the property's value immediately before and immediately after the casualty. What constitutes "immediately after"?**

**A:** To compute the amount deductible as a casualty loss, taxpayers need to determine: (1) the difference between the fair market value immediately before and immediately after the casualty; and (2) the adjusted basis of the property (usually the cost of the property and improvements). Taxpayers may deduct the smaller of these two amounts minus insurance or any other form of compensation received or expected to be received.

One method of determining the decrease in fair market value is an appraisal. An appraisal must reflect only the physical damage to the property and not a general decline in the property's fair market value. Taxpayers may also use the cost to repair or clean up the property (cost-of-repairs method) to determine the decrease in fair market value caused by the casualty. See section entitled "Decrease in Fair Market Value" of Publication 547, Casualties, Disasters, and Thefts.

Although we use the term "immediately after" when referring to the post-casualty value, we recognize that taxpayers' ability to determine the decrease in the fair market values of their properties, as a result of a disaster, may be restricted by lack of access to the properties. For example, if taxpayer's property flooded and access to the property was restricted until all the water was removed from the area, the decrease in fair market value would take into account any additional damage sustained to the property as a result of delays due to legal and physical restrictions to taxpayers' access to their property.

For tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property are deductible only if the loss is attributable to a federally declared disaster.







# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q4: If a taxpayer owns several parcels of real estate that are damaged by a federally declared disaster, may the taxpayer choose to claim a casualty loss on one property in the preceding year and a casualty loss on other property in the disaster year?**

**A:** No. If a taxpayer chooses to deduct a disaster loss sustained in the disaster year on an original or on an amended return for the preceding year, the taxpayer must report all related losses that qualify for the election on the preceding year return. See § 1.165-11(c) of the Income Tax Regulations.



# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

- ⊖ **Q5: A homeowners/condo association sustained a loss from a disaster and made a special assessment on owners to replace uninsured property. May the homeowners claim the special assessment as a casualty loss?**

**A:** The answer depends on whether the damaged property was owned by the homeowners association or by the individual members as tenants in common.

A homeowner's association (including a condominium association) is organized and operated for the purpose of acquiring, constructing, managing, and maintaining "association property." Such property includes real and personal property owned by the organization or owned as tenants in common by the members of the organization. This property is generally referred to as "common elements."

Funds for performance of the activities of the homeowners association are generally derived from assessments of the members and the assessments include real property taxes on association property as well as reserves for capital items such as resurfacing a parking lot, replacement of street lights, construction of a swimming pool, etc. This would include special assessments for any uninsured portion of the cost of repair or replacement of property damaged by a natural disaster.

A casualty loss deduction is only allowed for losses from property owned by the taxpayer. If the common elements are not owned by individual members, but rather by the homeowner's association, an individual member would not be entitled to a casualty loss deduction. A member's assessment for the replacement of a capital item, whether or not the item was damaged by a casualty, is in the nature of a contribution to the capital of the homeowners association and is not currently deductible by the member.



# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

- ⊖ **Q5: A homeowners/condo association sustained a loss from a disaster and made a special assessment on owners to replace uninsured property. May the homeowners claim the special assessment as a casualty loss?**

However, if the individual members of the homeowners association own the common elements as tenants in common, the individual members may be entitled to casualty loss deductions in proportion to each member's interest in the damaged common elements.

To compute the amount of a casualty loss, a taxpayer must determine the fair market value of the property both immediately before and immediately after the casualty and compare the decrease in fair market value with the adjusted basis in the property. From the smaller of these two amounts, a taxpayer must subtract any insurance or other form of compensation they have received or reasonably expect to receive. Fair market value may be determined by an appraisal. The cost to repair or clean up the property (cost-of-repairs method) may also be used as a measure of the decrease in fair market value caused by the casualty if the repairs are actually made, are not excessive in cost, are necessary to bring the property back to its condition before the casualty, take care of the damage only, and do not cause the property to be worth more than before the casualty. See Regulations § 1.165-7(a)(2).





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q5: A homeowners/condo association sustained a loss from a disaster and made a special assessment on owners to replace uninsured property. May the homeowners claim the special assessment as a casualty loss?**

If the members own the common elements damaged by the casualty as tenants in common, they are entitled to a casualty loss deduction for the lesser of: (1) the decline in value of their ownership interest as a result of the casualty or (2) their adjusted basis. From the smaller amount, the member should subtract any insurance or other form of compensation received or expected to be received. With respect to a member claiming the special assessment as a casualty loss, a member could use the amount of the assessment as a measure of the decrease in the fair market value of the common elements caused by the casualty as long as the amount of the assessment is commensurate with the member's ownership interest in the common elements and the requirements for using the cost-of-repairs method of valuation, described above, are satisfied.

In summary, if the common elements are owned by the homeowners association, the members are not entitled to any casualty loss deduction for damage to the common elements and, therefore, the members may not deduct a special assessment to replace uninsured property (common elements) damaged by a disaster. However, if the common elements are owned by the members of the homeowner's association as tenants in common, the members may be entitled to a casualty loss deduction as discussed above.

Please note that for tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property are deductible only if the loss is attributable to a federally declared disaster.



# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

— **Q6: How does a taxpayer determine a casualty loss from damaged trees and other landscaping on personal-use residential property when that loss is attributable to a disaster?**

**A:** In determining the amount of a casualty loss from damage to personal-use residential real property, trees and other landscaping are considered part of the entire residential property, and are not valued separately or assigned a separate basis, even if purchased separately. However, taxpayers should note that loss of property due to progressive deterioration is not deductible as a casualty loss. This is because the damage results from a steadily operating cause or a normal process, rather than from a sudden event.

For tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property are deductible only if the loss is attributable to a federally declared disaster.

To compute your casualty loss:

1. Determine your adjusted basis in the entire residential property before the casualty. Your basis is generally the cost of the property, adjusted for improvements and certain other events. For more information on determining your adjusted basis, see [Publication 530, Tax information for Homeowners](#), and [Publication 551, Basis of Assets](#).
2. Determine the decrease in fair market value of the entire residential property as a result of the casualty.
3. From the smaller of these two amounts, subtract insurance and any other form of compensation received or expected to be received.

For residential property, damaged and destroyed trees and other landscaping may adversely affect the fair market value of the entire property by reducing the curb or overall appeal of the property.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q6: How does a taxpayer determine a casualty loss from damaged trees and other landscaping on personal-use residential property when that loss is attributable to a disaster?**

One method of determining the decrease in fair market value is to compare an appraisal of the entire residential property, including trees and other landscaping, before the damage caused by the casualty, to an appraisal of the entire residential property after the damage caused by the casualty, including damage to trees and other landscaping. Valuation of the damage to a tree by an arborist does not determine the decrease in fair market value of the entire property.

Alternatively, the cost of cleaning up and restoring the residential property, including trees and other landscaping, to its condition before the casualty may be used as evidence of the decrease in fair market value, if the clean-up, repairs, and restoration are actually done, are not excessive in cost, are necessary to bring the property back to its condition before the casualty, take care of the damage only, and do not cause the property to be worth more than before the casualty. For example, if these requirements are satisfied, the cost of removing destroyed or damaged trees (minus any salvage received), pruning and other measures taken to preserve damaged trees, and replanting necessary to restore the property to its approximate value before the casualty may be acceptable as evidence of the decrease in fair market value caused by the casualty. You may not include in your cost of cleaning up and restoring your property the cost of purchasing any capital asset, such as a compact loader or tractor, or the value of the time you spend cleaning up your own property.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

- ⊖ **Q6: How does a taxpayer determine a casualty loss from damaged trees and other landscaping on personal-use residential property when that loss is attributable to a disaster?**

The following examples illustrate the points discussed above:

**Example 1:** A taxpayer lost a large tree in her backyard due to a disaster but sustained no other property damage. An arborist valued the damage to the tree at \$3,000. The taxpayer spent \$600 to remove the tree from the yard and grind the stump. Insurance paid \$500 for debris removal.

The value of the damage to the tree determined by the arborist does not qualify as a measure of the casualty loss because it does not reflect the decrease in the fair market value of the residential property as a whole, including the residence, land, and improvements. The taxpayer may obtain an appraisal of the entire property to determine any decrease in value resulting from the loss of the tree.

Alternatively, the taxpayer may use costs incurred to clean up and to remove the tree as a measure of the decrease in the fair market value of the property provided the costs are not excessive, are necessary to bring the property back to its condition before the casualty, take care of the damage only, and do not cause the property to be worth more than before the casualty. The taxpayer would subtract from the loss any insurance reimbursement for tree removal and clean-up expenses. Under this alternative, the taxpayer has a casualty loss of \$100.

If, however, the personal casualty loss occurred any time beginning after December 31, 2017 and ending before January 1, 2026, the loss is only allowed to the extent that the disaster which caused the loss was a Federally declared disaster.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

- ⊖ **Q6: How does a taxpayer determine a casualty loss from damaged trees and other landscaping on personal-use residential property when that loss is attributable to a disaster?**

**Example 2:** A taxpayer had a large tree that fell during a disaster and crushed a carport. Among many trees on the property, it was the only tree that was damaged. The loss of this tree does not affect the fair market value of the entire property. Homeowners' insurance reimbursed the taxpayer all costs for repairing the carport and removing the tree.

Insurance paid for all repair costs to bring the property back to its pre-casualty condition and value. Therefore, the taxpayer has no casualty loss.

For more information on casualty losses, see [Publication 547, Casualties, Disasters & Thefts](#).





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q7: A taxpayer's residence is damaged by a disaster. Prior to the disaster the taxpayer's basis in the property was \$100,000. The taxpayer receives insurance proceeds of \$10,000 for the damage (not for living expenses), but only spends \$7,500 for repairs necessary to restore the residence to its condition before the disaster. The taxpayer receives no other form of compensation for the damage. Does the taxpayer have a casualty loss deduction? Is the difference of \$2,500 between the insurance recovery and the repair cost taxable? What is the adjusted basis of the residence after the repairs?**

**A:** The taxpayer does not have a casualty loss deduction, because the loss is fully covered by insurance. To compute a casualty loss deduction, a person must:

1. Determine the adjusted basis in the property before the casualty.
2. Determine the decrease in fair market value of the property as a result of the casualty (generally by appraisal or using the cost-of-repairs method).
3. From the smaller of these two amounts, subtract insurance and any other form of compensation

See [Publication 547, Casualties, Disasters, and Thefts](#). In this case, using the cost-of-repairs method to measure the decrease in value caused by the disaster, the taxpayer sustained a casualty loss of \$7,500—the lesser of the \$100,000 basis in the residence and the \$7,500 cost of repairs. However, since the \$10,000 in insurance exceeds the casualty loss, the taxpayer may not claim a casualty loss deduction on the taxpayer's federal income tax return.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

- ⊖ **Q7: A taxpayer's residence is damaged by a disaster. Prior to the disaster the taxpayer's basis in the property was \$100,000. The taxpayer receives insurance proceeds of \$10,000 for the damage (not for living expenses), but only spends \$7,500 for repairs necessary to restore the residence to its condition before the disaster. The taxpayer receives no other form of compensation for the damage. Does the taxpayer have a casualty loss deduction? Is the difference of \$2,500 between the insurance recovery and the repair cost taxable? What is the adjusted basis of the residence after the repairs?**

The mere fact that the insurance proceeds exceed the cost of repairs does not in and of itself result in taxable income to the taxpayer. Any gain from a casualty is determined by the amount of insurance proceeds and any other form of compensation received or expected to be received in excess of the amount of the taxpayer's adjusted basis in the damaged property prior to the casualty. In this example, the taxpayer would not recognize any gain because the amount of the insurance proceeds is less than the taxpayer's pre-disaster basis in the residence.







# FAQs for Disaster Victims

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To determine the new basis in the residence, the taxpayer adjusts the pre-disaster basis by taking into account adjustments that decrease basis and adjustments that increase basis. Casualty loss deductions and compensation for the damage (for example, insurance proceeds) both decrease basis. See [Publication 551, Basis of Assets](#). Note, however, that in this case the taxpayer does not have an allowable casualty loss deduction, so the casualty loss does not affect the taxpayer's basis. The \$10,000 insurance payment reduces the taxpayer's basis in the residence. The \$7,500 spent on repairs to restore the residence to its condition before the disaster increases the taxpayer's basis in the residence. Thus, in this situation, the taxpayer's new basis of the residence is the taxpayer's pre-disaster basis reduced by the \$2,500 difference between the insurance proceeds received and the cost to repair the damage, and is computed as follows:



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#### New Basis Calculation

Basis before casualty	\$100,000
Less casualty loss deduction	0
Less insurance received	\$10,000
Net basis calculation	\$90,000
Plus repairs	\$7,500
Basis after casualty	\$97,500





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

#### — Q8: How will the IRS handle water damage and "mold issues" because of insufficient repairs or other events. Will there be special reporting on the loss related to mold?

**A:** Whether individuals may claim damage to their personal-use property from mold as part of a casualty loss depends on the facts and circumstances of each situation. A key factor to consider is whether the mold damage occurred as a direct result of the disaster or from some other intervening cause since there must be a causal connection between the casualty event and the loss claimed by the taxpayer. For example, individuals would not be entitled to deduct, as part of their casualty loss, mold damage that occurred because of insufficient repairs. The individuals' casualty loss deduction would be limited to the property damage caused by the disaster. In addition, if a large amount of time elapsed between the date of the disaster and the formation of the mold, this raises the question of whether the mold damage was caused by the disaster or by some other factor.

The formation of mold may qualify as a separate casualty. A casualty is an event that is identifiable, damaging to property, sudden, unexpected, and unusual in nature. An event is sudden if it is swift, precipitous, not gradual, or due to progressive deterioration of property through a steadily operating cause. An event is unexpected if it is unanticipated and it occurs without the intent of the one who suffers the loss. An event is unusual if it is extraordinary, nonrecurring, one that does not commonly occur during the activity in which the taxpayer was engaged when the destruction or damage occurred, and does not commonly occur in the ordinary course of day-to-day living of the taxpayer. If, under a particular set of facts, the formation of mold is a sudden, unexpected, unusual and identifiable event that caused damage to the individual's property, then it would qualify as a casualty and the individual may be entitled to deduct the loss for the resulting property damage as a casualty loss under section 165(c)(3) if the individual satisfies the other requirements for the deduction.

Please note that for tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property are deductible only if the loss is attributable to a federally declared disaster.



# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

- ➔ **Q9: A business building has an adjusted basis of \$40,000 (\$30,000 building and \$10,000 land) and the building is 50% destroyed by a federally declared disaster. Insurance proceeds of \$10,000 for the damage (not for living expenses). Cost to repair is \$85,000. What is the amount of the taxpayer's casualty loss deduction?**

**A:** If the business property was damaged but not totally destroyed, the casualty loss is measured by the lesser of the adjusted basis or the decrease in fair market value, minus any other form of compensation (such as insurance reimbursement). There are two methods for taxpayers to determine the decrease in fair market value of property affected by a casualty. The first method is an appraisal. An appraisal must reflect only the physical damage to the property and not a general decline in the property's fair market value. The second method is the cost to repair the property. The cost to repair the damaged property may be used as evidence of the decrease in value if the taxpayer makes the repairs and shows that the repairs: (a) are necessary to bring the property back to its condition before the casualty; (b) the amount spent for repairs is not excessive; (c) the repairs take care of the damage only; and, (d) the value of the property after the repairs is not, as a result of the repairs, more than the value of the property before the casualty. See [Publication 547, Casualties, Disasters, and Thefts](#).





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Since the property is used in a trade or business, the casualty loss deduction must be computed based on each single identifiable property. Therefore, the taxpayer must compute the loss deduction with respect to the building separately. If the taxpayer satisfies all of the requirements for the cost of repairs method, then the casualty loss would be measured by comparing the decrease in fair market value (as evidenced by the cost of repairs) to the adjusted basis of the building. The casualty loss with respect to the building would be the lesser of the decrease in fair market value of the building or the adjusted basis of the building, reduced by insurance compensation. The deductible casualty loss for the building would be \$20,000, computed by using \$30,000, which is the lesser of the decrease in fair market value of the building (\$85,000) (we are assuming that the \$85,000 reflects only the cost to repair the building) or the adjusted basis of the building (\$30,000) and subtracting from \$30,000 the insurance payment of \$10,000 (assuming that the \$10,000 insurance compensation covered the loss of the building only).

The casualty loss must be computed separately for any other improvements to the property.



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- What is the taxpayer's basis in the building?

**Response:** The taxpayer's basis in the damaged building is reduced by the amount of the insurance proceeds received and the amount of the allowable casualty loss deduction attributable to the damaged building.

- If the taxpayer repairs the partially destroyed building, how do the repair costs affect the computation of the taxpayer's basis in the building?

**Response:** If the taxpayer repairs the damaged building, the cost of the repairs ordinarily is capitalized and added to the taxpayer's tax basis in the damaged building.

- What is the authority for the basis information described above?

**Response:** Sections 1012 and 1016 of the Internal Revenue Code. Section 1012 provides, generally, that the basis of property is its cost to the taxpayer. Section 1016 requires that proper adjustment be made to the basis of property for expenses, receipts, losses, or other items properly chargeable to capital account.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

#### ⊖ Q10: Is there an audit technique guide to assist in the preparation of casualty losses?

**A:** No, but there is other IRS-issued guidance to help taxpayers determine and report disaster-related casualty losses. See Publication 584, Casualty, Disaster and Theft Loss Workbook. Also see, Internal Revenue Manual Section 4.10.7.3, Evaluating Evidence, and Section 4.10.7.4, Arriving at Conclusions.

#### ⊖ Q11: The cost of making repairs to restore property to its original condition can be used as a measure of the decrease in the fair market value of the property. If the repairs have not yet been made but the taxpayer received an estimated cost of the repairs, can the taxpayer report the estimated cost on the taxpayer's return?

**A:** No. To be able to use the cost of repairs method to determine the decrease in fair market value of a property, the repairs must have been made by the due date of the tax return. If the repairs have not been made, the taxpayer should file the return without reporting the casualty loss information. After the repairs have been made, the taxpayer may file an amended return.







# FAQs for Disaster Victims

## Property and Casualty Loss

### Casualty Loss (Valuations and Sections 165 (i))

⊖ **Q12: Previously, taxpayers affected by a federally declared disaster were instructed to write, in red ink, at the top of the Form 1040 or 1040-SR, information that identifies the particular disaster. Because many taxpayers file their returns electronically, how will they receive the designated disaster tax relief?**

**A:** Original electronic or paper returns do not require the disaster designation. When the Federal Emergency Management Agency (FEMA) notifies the IRS of the areas qualifying for Individual Assistance under a federal disaster declaration the IRS systemically codes taxpayer accounts if the taxpayer's address of record reflects a zip code within the affected counties. The disaster indicator will identify the account as being eligible for applicable tax filing or payment relief.

Affected taxpayers filing an amended return (Form 1040X), to claim disaster casualty losses, may still place the designation at the top of the form. This action assists in processing disaster claims expeditiously.



# FAQs for Disaster Victims

## Property and Casualty Loss

### SBA Loan

#### ⊖ Q1: If a taxpayer secures a low-interest disaster loan from the Small Business Administration, what effect will it have on calculating a casualty loss?

**A:** A low-interest disaster loan from the Small Business Administration must be repaid and therefore does not reduce the casualty loss amount. However, any amounts of the loan which are cancelled or forgiven are included in gross income in the year of cancellation. Additionally, insurance proceeds or other reimbursements received (or claims for reimbursement for which there is a reasonable prospect of recovery), and not required to be repaid, will reduce the casualty loss.

Generally, to figure the amount of your casualty and theft losses, you must determine the actual reduction in the FMV of lost or damaged property using a competent appraisal or the cost of repairs you actually make. Revenue Procedure 2018-08, 2018-2 I.R.B. 286, provides safe harbor methods that you may use to determine the amount of your casualty and theft losses. Under the disaster loan appraisal safe harbor method, you may use an appraisal prepared to obtain a loan of federal funds or a loan guarantee from the federal government that identifies your estimated loss from a federally declared disaster to determine the decrease in the fair market value of your personal use residential real property. See section entitled "Figuring a Loss" of Publication 547, Casualties, Disasters, and Thefts and Revenue Procedure 2018-08, 2018-2 I.R.B. 286. The use of the special safe harbor method of the revenue procedure is not mandatory. For tax years 2018 through 2025, if you are an individual, casualty or theft losses of personal-use property are deductible only if the loss is attributable to a federally declared disaster.







# FAQs for Disaster Victims

## Property and Casualty Loss

### Sale of Home

- ⊖ **Q1: If a taxpayer's main home was destroyed by a federally declared disaster and the taxpayer later sells the vacant land used only in conjunction with the main home, will gain from the sale of the vacant land qualify for exclusion under § 121 of the Code?**

**A:** The destruction of a taxpayer's home is treated as a sale of the home and any gain may qualify for the exclusion under § 121 of the Internal Revenue Code. Generally, a sale of vacant land that does not include a dwelling structure does not qualify as a sale of a taxpayer's home. However, if the vacant land was owned and used by the taxpayer as part of the taxpayer's main home and the sale of the vacant land occurs within two years from the sale of the main home, the sale of the vacant land and the sale of the taxpayer's main home will be treated as one sale and the § 121 exclusion will apply to that sale if the taxpayer otherwise meets the requirements of § 121. See § 1.121-1(b)(3) of the Income Tax Regulations. See Publication 523, Selling Your Home.

For example, if a taxpayer's main home was destroyed, the taxpayer may exclude gain up to the limitation amount of \$250,000 (\$500,000 for certain situations involving joint returns) if the taxpayer otherwise meets the requirements of § 121 of the Code. If the taxpayer later sells the vacant land used in conjunction with the main home within two years from the date of its destruction, the taxpayer is eligible to use any unused portion of the § 121 limitation amount to exclude gain from the sale of the vacant land.





# FAQs for Disaster Victims

## Property and Casualty Loss

### Realized Gain on Main Home

— **Q1: What are the rules for taxpayers who realize gain from receipt of insurance proceeds or other reimbursements for damage or destruction of a main home that is in a federally declared disaster area?**

**A:** If the taxpayer's main home is damaged, a taxpayer may elect to postpone recognizing gain under the involuntary conversion rules by investing in property similar or related in service or use to the damaged property and meeting other requirements. Generally, the taxpayer must replace the damaged property within two years after the close of the taxable year in which the gain is realized. However, if the damaged property is in a federally declared disaster area, the replacement period is four years.

If the taxpayer's main home is destroyed, the destruction may be treated as a sale for purposes of the tax provisions governing the exclusion of gain from the sale of a principal residence. If certain conditions are met, the gain may be excluded up to \$250,000 (\$500,000 for certain situations involving joint returns). If the destruction exceeds the \$250,000/ \$500,000 limitation, the excess gain may be deferred under the involuntary conversion rules.



# FAQs for Disaster Victims

## Expenses

### Travel Expenses

— **Q1: If your employer relocates to another location because of a federally declared disaster, how do you determine if you will be able to deduct your travel expenses?**

**A:** For tax years beginning after December 31, 2017 and ending before January 1, 2026, travel expenses may only be deducted on Schedule C for taxpayers who own a business and not as a miscellaneous itemized deduction for taxpayers in the trade or business of being an employee. If this restriction does not apply, the answer will then depend on whether the employer move is realistically expected to be for less than or more than one year. A temporary assignment away from home, an assignment whose termination can be foreseen within a fixed and reasonably short period (less than one year), does not shift the "tax home."

Therefore, a taxpayer may deduct the necessary traveling expenses in getting to his temporary assignment and also for the return trip to his tax home after the temporary assignment is completed, and his expenses for lodging and 50% of the cost of the meals while he is in the place to which he is temporarily assigned.

A taxpayer is not treated as being temporarily away from home if his period of employment exceeds one year (Code Sec. 162(a)). The one-year rule generally is not triggered by short intermittent assignments that span more than one year.







# FAQs for Disaster Victims

## Expenses

### Travel Expenses

➔ **Q1: If your employer relocates to another location because of a federally declared disaster, how do you determine if you will be able to deduct your travel expenses?**

Employment away from home at a single location for a period of less than a year is treated as temporary, in the absence of facts and circumstances indicating otherwise. If employment away from home is a single location initially is realistically expected to last for one year or less, but later is realistically expected to exceed one year, then the employment will be treated as temporary until the date that the taxpayer's realistic expectation changes (at which point the employment will no longer be "temporary").

An indefinite assignment away from home shifts the "tax home" and the taxpayer cannot deduct expenses of travel, meals, and lodging while in the location of the "indefinite assignment." Employment is indefinite if it lasts for more than one year, or there is no realistic expectation that the employment will last for one year or less.





# FAQs for Disaster Victims

## Expenses

### Travel Expenses

#### — Q2: May a taxpayer claim a travel expense deduction if the taxpayer is displaced by a federally declared disaster and must live and work in another locality?

**A:** The tax law generally allows business expense deductions for ordinary and necessary traveling expenses (including meals and lodging) incurred while away from home in pursuit of a trade or business. For tax years beginning after December 31, 2017 and ending before January 1, 2026, travel expenses may only be deducted on Schedule C for taxpayers who own a business and not as a miscellaneous itemized deduction for taxpayers in the trade or business of being an employee. A taxpayer's "home" is generally the vicinity of the taxpayer's principal place of business, as determined by all the facts and circumstances. However, if the taxpayer realistically expects to work in a single location for more than one year (or there is no realistic expectation that the work in the single location will last for one year or less), that location must be treated as the tax home (regardless of whether work actually exceeds a year).

Thus, if a displaced taxpayer lives and works in another locality, but realistically expects to return to live and work in the affected area within one year, the taxpayer may be considered to be traveling away from home in pursuit of a trade or business. If the displaced taxpayer works in more than one locality, however, the facts and circumstances must be considered to determine which locality is the taxpayer's "home."

