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Client Alert: National Emergency Enables Tax-Free Employee Relief Fund

BY CESIRA NEWCOMB • APRIL 28, 2020

Once the President declared the COVID-19 pandemic a national emergency on March 13, 2020, in addition to opening access to billions of federal dollars, it also allowed employers to offer financial assistance to their employees who have been directly affected by the pandemic. Under normal conditions, something we have not seen in some time, any money that an employer gives to an employee is subject to income taxes, no matter what motivated the payment.

However, a federally declared disaster makes it possible for an employer to make tax-free payments to or for the benefit of an employee:

1. to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a *qualified disaster* or
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*,

so long as the expense paid by the employer is not also paid by another person, such as an insurance company or government agency.

When the disaster declaration is no longer effective, the normal tax rules come back into effect. Employers may continue to make these helpful payments to their employees, but they must include the payments in the employees' taxable income and withhold income taxes on the payments. Employers also have the option of nominating and providing funding to a non-profit that manages employee relief funds or establishing their own non-profit. Both of these options are very complicated and are not as clean and simple as the declared disaster payment rules.