



Puerto Rico Treasury Department Issues Guidance on Puerto Rico Tax Exemption for Qualified Disaster Relief Payments as a Result of Hurricane María

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On October 4, 2017, the Puerto Rico Treasury Department issued Administrative Determination No. 17-21, in response to the state of emergency declared by Governor Ricardo Rosselló-Nevores, and the Executive Order issued on October 2, 2017, OE-2017-56, which authorizes the Puerto Rico Secretary of Treasury to implement such tax measures deemed reasonably proper and necessary in order to assist taxpayers in the catastrophic aftermath of Hurricane María. Pursuant to Administrative Determination No. 17-21, any “Qualified Disaster Relief Payment” received by an individual with the purpose of providing assistance and support in the process of repairing, mitigating, or compensating any damages or loss suffered by such individual as a result of the impact of Hurricane María on Puerto Rico, shall be excluded from the definition of “gross income” for Puerto Rico income tax purposes.

For the purposes of this Administrative Determination, the term “Qualified Disaster Relief Payment” means any amount paid to, or for the benefit of an individual:

1. To provide or pay for the reasonable and necessary expenses of the individual and his or her family, such as food, medications, fuel, lodging, medical expenses, child care or care for dependents, purchase of power generators, and funeral expenses incurred as a result of Hurricane María, so long as the payment is made **directly** to the provider of the product or service;
2. To pay for reasonable and necessary expenses incurred in the repair or rehabilitation of a primary residence, or the repair or replacement of its contents, so long as the need for repair, rehabilitation, or replacement is attributable to damages caused by Hurricane María and the payment is made **directly** to the provider or the product or service;
3. Payments made **directly** to an individual as financial assistance to cover the costs of damages and losses suffered by such individual as a result of Hurricane María; or

4. Payments made by the federal, state, or local government, or any agency or instrumentality of the same, as a result of the damages caused by Hurricane María, in order to promote general wellbeing, but only insofar as any expense compensated by such payment is not covered by other insurance or by other means.

In order for amounts received by an individual to qualify as Qualified Disaster Relief Payments, and be exempt from payment of Puerto Rico income tax:

1. The payment must be made between September 21, 2017 and December 31, 2017;
2. Payments made **directly** to individuals must be in substitution of lost wages during the time the person was out of work as a result of the disaster; and
3. In the case of payments made by employers to their employees, the total payment made must be in addition to the compensation ordinarily received by the employee; cannot exceed one thousand dollars (\$1,000.00) per month; and cannot be attributable or related to the position or salary received by the employee. The Administrative Determination does not allow employers to favor highly compensated employees, as defined by law.

Any employer who makes Qualified Disaster Relief Payments must file on or before January 31, 2018, a sworn declaration identifying each employee who received a Qualified Payment, and the total amount paid during the period between September 21, 2017, and December 31, 2017. The Puerto Rico Treasury Department will issue further guidance on this process at a later date. Payments made pursuant to this Administrative Determination shall be tax deductible for the purpose of determining the employer's net income for Puerto Rico income tax purposes.

Finally, employers may provide their employees interest-free loans to cover their and their families' reasonable and necessary expenses, as well as for expenses incurred in the construction or repair of the employee's primary residence as a result of Hurricane María. Employers who provide such loans will not be required to report earnings for these amounts, so long as the total amount loaned does not exceed twenty thousand dollars (\$20,000.00). These loans may be provided in addition to Qualified Payments made pursuant the Administrative Determination.

The Puerto Rico Treasury's Administrative Determination on this matter appears to be intended to mirror federal provisions, which also exclude Qualified Disaster Relief Payments from "gross income" under U.S. federal tax law, thereby exempting them from U.S. federal income taxes, and U.S. federal payroll taxes such as FICA and FUTA.

While the Administrative Determination does not address other Puerto Rico payroll taxes, such as Puerto Rico unemployment and disability, as well as Workmen's Compensation insurance, it appears that amounts excluded from "gross income" for Puerto Rico income taxes should be likewise excluded from these other Puerto Rico payroll taxes. We will monitor any additional guidance on this point from Puerto Rico government agencies with authority over these matters.

This Administrative Determination is effective immediately upon its issuance.

If you should have any questions or comments relative to the Treasury Department's Administrative Determination No. 17-21, or any other labor and employment or tax matter, for further information please contact:

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