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## TAX-FAVORED EMPLOYEE BENEFIT FOR DISASTER RELIEF

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As the COVID-19 pandemic continues, we are all acutely aware of its impact on employees and their families. On March 13, 2020, the pandemic was declared a national emergency. At that time, the door opened for tax-free assistance from employers to their employees under section 139 of the Internal Revenue Code. This benefit applies to any federally declared disaster, not just COVID-19.

Section 139 allows employers to provide their employees with disaster relief funds for certain unreimbursed expenses incurred because of the disaster. These payments cover “reasonable and necessary” personal, family, living, or funeral expenses that are not reimbursed from another source (like insurance or national disaster relief payments). The payments are tax-free (not subject to income or employment taxes) for both the employer and the employee.

### USE OF FUNDS

The IRS has not issued specific guidance regarding what type of expenses would be reimbursed for the COVID-19 pandemic; however, the underlying purpose of section 139 suggests that there are several categories of eligible expenses, such as:

- Medical expenses not covered by insurance (COVID-19-related copays, deductibles, over-the-counter medications)

- Health-related expenses (hand sanitizer, face masks, sanitizing cleaning products)
- Dependent care expenses due to school/place of care closings
- Tutoring and home-schooling-related expenses due to school closures (internet, computers to directly aid education, online education applications)
- Working-from-home expenses (cost of a personal computer, printer, supplies, internet services)
- Incremental utility costs due to working from home
- Critical care and funeral expenses for an employee or their family member due to COVID-19
- Counseling
- Temporary housing
- Non-perishable foods for reserve
- Additional travel/food expense for a returning student

This list could include lodging, clothing, food, transportation, and repair of a personal residence and all its contents for other disaster types.

The funds cannot be used for:

- Items covered by insurance or other sources
- Nonessential items, luxury items, decorative items, and services
- Payments for lost income or compensation

*continued >*

## IMPLEMENTING A PLAN

The rules governing the implementation and administration of the section 139 plan are meant to be simple and straightforward, so employers can easily utilize it when a disaster occurs. This allows for easy administration in that:

- Employees are not required to account to their employer for actual expenses to qualify for the funds so long as the amount of the payment is reasonable for the services being reimbursed.
  - » A best practice would be to collect receipts (if available) or some type of written confirmation that the employee incurred qualified expenses (like an affidavit or claim form).
- Employers can provide assistance directly to employees or through a fund established to receive contributions from the employer, as well as employees (on an after-tax basis)
- Payments are not required to be reported on a Form W-2 or 1099.
- There is no specific limit on the amount provided, other than it must be “reasonable and necessary.”

These are not ERISA plans, so there is no requirement that the employer’s disaster relief program be established in writing. However, we recommend that employers create a plan document or policy that outlines their intent in the event of a disaster. This could be as simple as:

- Who is eligible for the funds (full-time, part-time, family members)
- What the funds can be used for (as broad as section 139 allowed expenses or narrower if preferred)

- A statement that the eligibility for the funds is in accordance with the section 139 requirements (federally declared disasters)
- The most the employer would pay for a single disaster (this is not required; there are no limits except that the amount be reasonable)
- How the employees can access the funds and method of payment
- Who is administering the program
- How long the program will last (beginning and end date)
- A statement about the employer reserving the right to change or terminate the program at any time, at their sole discretion

You can set up an account and ask that employees apply for funds or you can make reasonable payments for expected expenses, such as a set amount for all who work at home, for example. We have some clients that established a policy specific to the pandemic, with no current intent to establish the same for future disasters, knowing that they can easily create a new policy if they want to provide future assistance.

Section 139 disaster relief programs provide employers with a tax-favored way to help their employees in a time of need. They allow tremendous flexibility and the process is simple and straightforward for employers that want to establish one. Consult with a knowledgeable employee benefits advisor to explore the available options.