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# Disaster and Special Relief Provisions

*(victims of the California wildfires and Puerto Rico)*

## Qualified Plans

**Qualified wildfire distributions**: The act provides that the 10% additional tax imposed by Sec. 72(t) on early distributions from a qualified retirement plan will not apply to any "qualified wildfire distribution." A qualified wildfire distribution is any distribution (up to $100,000) from a plan described in Sec. 402(c)(8)(B) made to a "qualified individual" during prescribed periods. A qualified wildfire distribution can be made to an individual whose principal place of abode during any portion of the period from Oct. 8, 2017, to Dec. 31, 2017, is located in the California wildfire disaster area and who has sustained an economic loss by reason of the wildfires to which the declaration of the area relates.

In addition to relief from the Sec. 72(t) penalty, the act allows eligible taxpayers to spread out any income inclusion resulting from those distributions over a three-year period, beginning with the tax year the distribution is required to be included in income. The distributions are also exempt from the trustee-to-trustee transfer and withholding rules.

**Repayments**: Taxpayers who receive qualified wildfire distributions can repay them into a qualified plan (other than an individual retirement account (IRA)) within three years of the distribution, and the repayment will be treated as an eligible rollover distribution. Repayments to IRAs will be treated as transfers from an eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Similarly, taxpayers who made withdrawals from qualified plans after March 31, 2017, and before Jan. 15, 2018, to purchase or construct a residence within one of the wildfire disaster areas, and whose purchase or construction was canceled because of one of the wildfires, can repay that distribution on or before June 30, 2018.

**Loans:** The act also increases the limit on the amount of a loan from a qualified employer plan that will not be treated as a distribution, from $50,000 to $100,000. This increase applies to loans made on or after Feb. 9, 2018, through Dec. 31, 2018. The act also removes the Sec. 72(p)(2)(A)(ii) "one-half of the present value" limitation for these loans and allows for a longer repayment period.

## Employee Retention Tax Credit

The act provides eligible employers with an employee retention tax credit. Eligible employers are employers that conducted an active trade or business on Oct. 17, 2017, in the California wildfire disaster area and whose business is inoperable any day between Oct. 17, 2017, and before Jan. 1, 2018.

The credit equals 40% of up to $6,000 (a maximum of $2,400) in "qualified wages" paid to an eligible employee by an eligible employer. An eligible employee is one who worked for the eligible employer on the date listed above in the California wildfire disaster area.

## Charitable Contribution Limit

For charitable contributions made in cash between Oct. 8, 2017, and Dec. 31, 2018, to a Sec. 170 charitable organization for relief efforts in the California wildfire disaster area, the act temporarily suspends the percentage limitations in Sec. 170(b) and provides that those contributions will not be taken into account for purposes of applying Sec. 170(b) or the Sec. 170(d) carryover rules to other contributions. The act also temporarily loosens the rules regarding excess contributions and makes an exception to the overall limitation on itemized deductions for qualified contributions.

## Casualty Losses

The act eases the rules for casualty losses for taxpayers who suffer a "net disaster loss" in the California wildfire disaster area. A net disaster loss is the excess of the taxpayer's "qualified disaster-related personal casualty losses" over the taxpayer's personal casualty gains (as defined in Sec. 165(h)(3)(A)).

*A qualified disaster-related personal casualty loss is a casualty loss that arises on or after Oct. 8, 2017, in the California wildfire disaster area.*

For qualified disaster-related personal casualty losses, the act removes the requirement that personal casualty losses must exceed 10% of the taxpayer's adjusted gross income to be deductible. It also allows nonitemizers to increase their standard deduction by the amount of their net disaster loss. And, although the standard deduction is disallowed for alternative minimum tax (AMT) purposes, taxpayers subject to the AMT can claim the portion of their standard deduction that is attributable to their net disaster loss for AMT purposes.

The act also increases the Sec. 165(h)(1) $100 per-casualty floor to $500 for qualified disaster-related personal casualty losses.

## Earned Income and Child Tax Credits

The act allows qualified individuals to elect to use their prior-year earned income, instead of their current-year income, for purposes of the Sec. 32 earned income tax credit and the Sec. 24 child tax credit, if their current-year income is less than their prior-year income.

A qualified individual is a person whose principal place of abode was in the California wildfire disaster area on Oct. 8, 2017, through Dec. 31, 2017.