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# Tax Policy and Disaster Recovery

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# Tax Policy and Disaster Recovery

The Internal Revenue Code (IRC) contains a number of provisions intended to provide disaster relief. Following certain disasters, Congress has passed legislation with temporary and targeted tax relief policies. At other times, Congress has passed legislation providing tax relief to those affected by all federally declared major disasters (disasters with Stafford Act declarations) occurring during a set time period. In addition, several disaster tax relief provisions are permanent features of the IRC.

This report discusses the following permanent provisions:

- disaster casualty loss deductions;
- deferral of gain from involuntary conversions of property destroyed by a disaster;
- disaster relief for owners of low-income housing tax credit properties;
- income exclusion for disaster relief payments to individuals;
- income exclusion for certain insurance living expense payments; and
- IRS administrative relief in the form of extended deadlines and waiving of certain penalties.

Congress began enacting tax legislation generally intended to assist victims of specific disasters in 2002 in the wake of the September 11, 2001, terrorist attacks. Some laws targeting specific disasters contained provisions that were temporary in nature. Other laws provided more general, but still temporary, relief for any federally declared disaster occurring during designated time periods. The acts providing temporary relief include the following:

- The Job Creation and Worker Assistance Act of 2002 (P.L. 107-147), which provided tax benefits for areas of New York City damaged by the terrorist attacks of September 11, 2001;
- The Katrina Emergency Tax Relief Act of 2005 (KETRA; P.L. 109-73), which provided tax relief to assist the victims of Hurricane Katrina in 2005;
- The Gulf Opportunity Zone (GO Zone) Act of 2005 (P.L. 109-135), which provided tax relief to those affected by Hurricanes Katrina, Rita, and Wilma in 2005;
- The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill; P.L. 110-234), which provided tax relief intended to assist those affected by severe storms and tornadoes in Kansas in 2007;
- The Heartland Disaster Tax Relief Act of 2008 (P.L. 110-343), which provided tax relief to assist recovery from both the severe weather that affected the Midwest during summer 2008 and Hurricane Ike (this act also included general disaster tax relief provisions that applied to federally declared disasters occurring before January 1, 2010);
- The Disaster Tax Relief and Airport and Airway Extension Act of 2017 (P.L. 115-63), which provided tax relief to those affected by Hurricanes Harvey, Irma, and Maria in 2017;
- The 2017 tax act (P.L. 115-97, commonly referred to using the title of the bill as passed in the House, the "Tax Cuts and Jobs Act") responded to major disasters occurring in 2016;
- The Bipartisan Budget Act of 2018 (BBA18; P.L. 115-123), which provided relief to those affected by the 2017 California wildfires;
- The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of the Further Consolidated Appropriations Act, 2020; P.L. 116-94), which provided relief for major disasters generally occurring in 2018 and 2019; and
- The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of the Consolidated Appropriations Act, 2021; P.L. 116-260), which provided relief for major disasters generally occurring in 2020.

This report provides a basic overview of existing, permanent disaster tax provisions, as well as past, targeted legislative responses to specific disasters. The report also includes a discussion of economic and policy considerations related to providing disaster tax relief to individuals and businesses, and encouraging charitable giving to support disaster relief.

## SUMMARY

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Tax policy is one of several policy tools that can be used for disaster relief.[1] At various points in time, Congress has passed legislation to provide tax relief and to support recovery following disaster incidents. Permanent tax relief provisions may take effect following qualifying disaster events. Targeted, temporary tax relief provisions can be designed to respond to specific disaster events.

The Internal Revenue Code (IRC) contains a number of permanent disaster-related tax provisions. These include provisions providing that qualified disaster relief payments and certain insurance payments are excluded from income, and thus not subject to tax. Taxpayers are also able to deduct casualty losses and defer gain on involuntary conversions (an involuntary conversion occurs when property or money is received in payment for destroyed property). The Internal Revenue Service (IRS) can also provide administrative relief to taxpayers affected by disasters by delaying filing and payment deadlines, waiving underpayment of tax penalties, and waiving the 60-day requirement for retirement plan rollovers. For disasters declared after December 20, 2019, the IRS is required to postpone federal tax deadlines for 60 days. The availability of certain tax benefits is triggered by a federal disaster declaration.[2] Before 2017, casualty losses were generally deductible. However, changes made in the 2017 tax revision (commonly referred to as the "Tax Cuts and Jobs Act" [TCJA]; P.L. 115-97) restrict casualty loss deductions to federally declared disasters.

Temporary tax-related disaster relief measures were enacted following a number of major disasters that occurred between 2001 and 2020.[3] The following measures addressed specific disasters:

- The Job Creation and Worker Assistance Act of 2002 (Job Creation Act; P.L. 107-147) responded to the terrorist attacks of September 11, 2001.
- The Katrina Emergency Tax Relief Act of 2005 (KETRA; P.L. 109-73) responded to Hurricane Katrina.
- The Gulf Opportunity Zone Act of 2005 (GO Zone Act; P.L. 109-135) responded to Hurricanes Katrina, Rita, and Wilma.
- The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill; P.L. 110-246) responded to severe storms and tornadoes in Kansas in 2007.
- The Heartland Disaster Tax Relief Act of 2008, enacted as Title VII of Division C of P.L. 110-343 (the Heartland Act), and other provisions in P.L. 110-343 responded to severe Midwest storms in summer 2008 and Hurricane Ike and provided general disaster relief for events occurring before January 1, 2010.
- The Disaster Tax Relief and Airport and Airway Extension Act of 2017 (Disaster Tax Relief Act of 2017; P.L. 115-63) responded to Hurricanes Harvey, Irma, and Maria.

[1] For general information on disaster response, see CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, by Bruce R. Lindsay and Elizabeth M. Webster.

[2] For purposes of the Internal Revenue Code (IRC), federally declared disasters generally refer to disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. For more information on the declaration process, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Bruce R. Lindsay.

[3] Congress did not pass legislation responding to all disaster events that occurred in this time frame. Legislation with disaster tax benefits was not passed following Hurricane Irene in 2011 or Hurricane Sandy in 2012, for example.

- The 2017 tax act (P.L. 115-97; commonly referred to using the title of the bill as passed in the House, the "Tax Cuts and Jobs Act") responded to disasters occurring in 2016.
- The Bipartisan Budget Act of 2018 (BBA18; P.L. 115-123) responded to the 2017 California wildfires.[4]
- The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of the Further Consolidated Appropriations Act, 2020; P.L. 116-94) provided relief for major disasters that generally occurred in 2018 or 2019.[5]
- The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of the Consolidated Appropriations Act, 2021; P.L. 116-260), which provided relief for major disasters generally occurring in 2020.[6]

This report provides an overview of permanent and temporary disaster tax provisions that have been enacted in response to specific disaster events, including information on which types of temporary provisions have been used to respond to different disaster events. The focus of this report is on relief for natural disasters, separate from relief provided in response to the COVID-19 pandemic.[7] Policy considerations related to business, individual, and charitable disaster relief are also addressed.

**Disaster Tax Relief for 2020 Disasters**

The Taxpayer Certainty and Disaster Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021 (P.L. 116-260), included various types of disaster relief for those affected by a non-COVID-19 federally declared major disaster in 2020 (so long as the incident period of the disaster began on or before December 27, 2020). This disaster relief was for disasters other than the COVID-19 pandemic. Specifically, disaster relief in this legislation included (1) enhanced access to retirement funds; (2) an employee retention tax credit; (3) increased limits for corporate charitable giving for disaster relief; (4) an increased personal casualty loss deduction; (5) additional low-income housing tax credit (LIHTC) allocations; and (6) payments to U.S. possessions (territories) for any losses associated with these disaster tax relief provisions. Taken together, these provisions are estimated to reduce federal tax revenue by $9.6 billion during the FY2021-FY2030 budget window (see **Table 1**).[8]

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[4] The 2017 California wildfire disaster area is the area that received a major disaster declaration by reason of wildfires in California between January 1, 2017, and January 18, 2018.

[5] The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (P.L. 116-94) applies to major disasters declared during the period beginning on January 1, 2018, and ending 60 days after the date of enactment (which was December 20, 2019), if the incident period of the disaster began on or before the date of enactment. The qualified disaster area in P.L. 116-94 does not include the California wildfire disaster area, as disaster tax relief to this area was provided in the Bipartisan Budget Act of 2018 (P.L. 115-123).

[6] Disaster relief for non-COVID-19-related disasters in the Taxpayer and Disaster Tax Relief Act of 2020 (P.L. 116-260) applies to major disasters declared during the period beginning on January 1, 2020, if the incident period of the disaster began on or after the date of enactment. The act also includes tax relief for COVID-19, as described in CRS Report R46649, *The COVID-Related Tax Relief Act of 2020 and Other COVID-Related Tax Provisions in P.L. 116-260*, by Molly F. Sherlock et al.

[7] Information on tax relief in response to the COVID-19 pandemic can be found in CRS Report R46279, *The Coronavirus Aid, Relief, and Economic Security (CARES) Act—Tax Relief for Individuals and Businesses*, coordinated by Molly F. Sherlock; CRS Report R46649, *The COVID-Related Tax Relief Act of 2020 and Other COVID-Related Tax Provisions in P.L. 116-260*, by Molly F. Sherlock et al.; and CRS Report R46680, *The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2): Title IX, Subtitle G—Tax Provisions Related to Promoting Economic Security*, by Molly F. Sherlock, Margot L. Crandall-Hollick, and Jane G. Gravelle.

[8] Joint Committee on Taxation, *Estimated Budget Effects Of The Revenue Provisions Contained In Rules Committee Print 116-68, The "Consolidated Appropriations Act, 2021,"* JCX-24-20, December 21, 2020, at https://www.jct.gov/publications/2020/jcx-24-20/.

**Table 1. Cost of Disaster Tax Relief in P.L. 116-260, FY2021-FY2030**

(in millions of dollars)

| Provision | Revenue Loss |
|---|---|
| Enhanced access to retirement funds | $77 |
| Employee retention tax credit | $315 |
| Increased casualty loss deduction | $8,300 |
| Special rules for disaster relief corporate charitable contributions | $38 |
| Low-income housing tax credit | $887 |
| Treatment of U.S. possessions | Included in estimate of other provisions |
| ***Total Disaster Tax Relief*** | ***$9,617*** |

**Source:** Joint Committee on Taxation.

Other provisions that were previously used to provide disaster relief were made generally available for 2020 in P.L. 116-260. Specifically, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provided that for all taxpayers, for purposes of the refundable child tax credit and the earned income credit, if a taxpayer's 2020 earned income is less than the taxpayer's 2019 earned income, the taxpayer may elect to determine the refundable child tax credit and earned income tax credit by substituting 2019 earned income for 2020 earned income (this is sometimes referred to as the "lookback" provision). Additionally, for 2020 and 2021, the limitation for deductible cash contributions to a public charity is increased from 60% to 100%.

# Permanent Disaster Tax Relief Provisions

There are several permanent disaster tax relief provisions. In some cases, these provisions apply to any property that is destroyed or damaged due to casualty or theft. In other cases, relief is limited to property lost as a result of federally declared disasters or for disasters for which the IRS undertakes administrative actions. Additionally, as discussed further below, there are instances where these permanent relief provisions have been temporarily enhanced in response to specific disaster events.

## Disaster Casualty Losses

Taxpayers may be able to deduct casualty losses resulting from damage to or destruction of personal property (property not connected to a trade or business).[9] For tax years 2018 through 2025, the casualty loss deduction is limited to losses attributable to federally declared disasters. After 2025, under current law, the deduction is to be available to losses arising from any fire, storm, shipwreck, or other casualty or theft. Casualty losses are an itemized deduction. Each casualty is subject to a $100 floor, meaning that only losses in excess of $100 are deductible for each casualty. Additionally, casualty losses are deductible only to the extent that aggregate losses exceed 10% of the taxpayer's adjusted gross income (AGI). Only casualty losses not compensated for by insurance or otherwise can be deducted.

[9] Internal Revenue Code (IRC) §165.

## Involuntary Conversions

An involuntary conversion occurs when property is destroyed, stolen, condemned, or disposed of under threat of condemnation, and the owner of the property receives money or payment for the property, such as an insurance payment. An involuntary conversion can also be viewed as a forced sale of property. The IRC allows taxpayers to defer recognizing a gain on property that is involuntarily converted.[10] The replacement period—the time within which a taxpayer must replace converted property to receive complete deferral—is two years (three years for condemned business property). For a taxpayer's principal residence and its contents, the replacement period for an involuntary conversion stemming from a federally declared disaster is four years.[11]

Taxpayers whose principal residence or any of its contents are involuntarily converted as a result of a federally declared disaster qualify for additional special rules. First, gain realized from the receipt of insurance proceeds for unscheduled personal property (property in the home that is not listed as being covered under the insurance policy) is not recognized. Second, any other insurance proceeds received for the residence or its contents are treated as a common fund. If the fund is used to purchase property that is similar or related in service or use to the converted residence or its contents, then the owner may elect to recognize gain only to the extent that the common fund exceeds the cost of the replacement property.

If a taxpayer's business property is involuntarily converted as a result of a federally declared disaster, then the taxpayer is not required to replace it with property that is similar or related in service to the original property in order to avoid having to recognize gain on the conversion, as long as the replacement property is still held for a type of business purpose.

## Disaster Relief for Low-Income Housing Credit

The low-income housing tax credit allows owners of qualified residential rental property to claim a credit over a 10-year period that is based on the costs of constructing, rehabilitating, or acquiring the building attributable to low-income units.[12] Owners may claim a credit based on 130% of the project's costs if the housing is in a low-income or difficult development area.[13] Owners must be allocated this credit by a state. Each state is limited in the amount of credits it may allocate to the greater of $2,000,000 or $1.75 multiplied by the state's population (both figures are adjusted for inflation and are $3,166,875 and $2.75625, respectively, for 2019), with adjustments.

Owners of low-income housing tax credit (LIHTC) properties are eligible for relief from certain requirements of the program if the property is located in a major disaster area.[14] Specifically,

[10] IRC §1033.

[11] Taxpayers may also be able to exclude gains on their personal residence under another section of the IRC. Under IRC §121, individuals may exclude up to $250,000 ($500,000 if married filing jointly) of gain from selling a principal residence if the taxpayer meets a use test (has lived in the house for at least two years out of the last five years) and an ownership test (has owned the house, also for two years out of the last five). If a taxpayer fails to meet the use test but experienced an unforeseen circumstance, the taxpayer may claim a reduced exclusion. Unforeseen circumstances include the involuntary conversion of a residence and a natural or man-made disaster (or act of war or terrorism) resulting in a casualty to a principal residence.

[12] IRC §42. For more information, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley.

[13] Difficult development areas are designated as such by the Secretary of Housing and Urban Development, within certain constraints.

[14] IRS Revenue Procedure, Rev. Proc. 2014-49.

property owners are provided relief from credit recapture, carryover allocation rules, and income certifications for displaced households temporarily housed in an LIHTC unit. Property owners may also qualify for additional credits for rehabilitation expenditures, and, for severely damaged buildings in the first year of the credit period, the allocation of credits may either be treated as having been returned, or the first year of the credit period can be extended. State LIHTC allocating agencies are eligible for relief from compliance monitoring under the same IRS guidance. Additionally, households are eligible to occupy an LIHTC unit without being subject to the program's income limits if their principal residence was located in a major disaster area.

## Exclusion for Disaster Assistance Payments to Individuals

Taxpayers can exclude from income qualified disaster relief and disaster mitigation payments.[15] Excludable relief payments include payments for expenses that are not compensated for by insurance (or otherwise compensated). Excludable relief payments can include personal, family, living, or funeral expenses incurred as a result of the disaster; payments for home repairs or to replace damaged and destroyed contents; payments by a transportation provider for injuries or deaths resulting from a disaster; and payments from governments (or similar entities) for general welfare when disaster relief is warranted. Qualified disaster mitigation payments include 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) for hazard mitigation.

## Exclusion for Insurance Living Expense Payments

Taxpayers whose principal residence is damaged in a disaster (including a fire, storm, or other casualty) can exclude insurance reimbursements for living expenses while temporarily occupying another residence from income.[16] This exclusion also applies to taxpayers who are denied access to their home by government authorities due to the threat of casualty or disaster.

## IRS Administrative Relief

The IRS is authorized to postpone any federal tax deadline, including deadlines for filing returns, paying taxes, or claiming refunds, for up to one year for taxpayers affected by federally declared disasters.[17] The IRS may also postpone certain Individual Retirement Account (IRA) deadlines. Specifically, the IRS can extend the 60-day period for plan participants to deposit rollover retirement plan distributions to another qualified plan or IRA.[18] Additionally, the IRS may extend the time for a qualified plan to make a required minimum distribution.

The IRS is required to postpone federal tax deadlines for 60 days for disasters declared after December 20, 2019.[19] Taxpayers for whom deadlines are automatically postponed include (1) those whose principal residence is in a disaster area; (2) those whose principal place of business is

[15] IRC §139. IRC §139 was established by the Victims of Terrorism Relief Act of 2001 (P.L. 107-139).

[16] IRC §123.

[17] IRC §7508A. For a full list of the time-sensitive requirements that can be postponed under IRC §7508A, see IRS Revenue Procedure, Rev. Proc. 2018-58. The IRS must publish a notice or issue guidance for taxpayers to be entitled to any postponement under IRC §7508A. This provision was enacted in the Victims of Terrorism Tax Relief Act of 2001 (P.L. 107-134) and applies to federally declared disasters occurring on or after September 11, 2001.

[18] IRC §§402(c)(3)(B) and 408(d)(3)(I).

[19] IRC §7508A(d). This provision was added in the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (P.L. 116-94).

in a disaster area; (3) individuals who are relief workers assisting in a disaster area; (4) individuals whose tax records are maintained in a disaster area; (5) any individual visiting a disaster area who was killed or injured as a result of the disaster; or (6) spouses filing a joint return with any person described in (1) to (5). The IRS is also authorized to waive underpayment penalties when a casualty, disaster, or other unusual circumstances have made it such that the imposition of a penalty would be against equity and good conscience.[20]

# Past Temporary Disaster-Relief Provisions

At times, Congress has chosen to use tax policy to provide temporary relief and support following disaster incidents or for disasters occurring in certain time periods. Temporary and event-specific disaster tax policy has been enacted following many major disaster events in recent years. However, temporary or targeted tax relief has not been enacted following all major disaster events. For example, no temporary or targeted disaster tax relief was enacted in response to Hurricane Irene in 2011 or Hurricane Sandy in 2012. Most recently, temporary disaster tax relief has been extended to all disasters occurring during a specified period of time.

The specific tax relief provisions enacted to respond to past disaster events are summarized in **Table 2** and **Table 3**. The following discussion provides additional information on these provisions. Tax provisions that have been used to respond to disasters most recently are discussed first.

## Temporary Provisions Enacted to Respond to Recent Disasters

The disaster tax relief packages enacted in 2017 in response to Hurricanes Harvey, Irma, and Maria; in 2018 in response to the 2017 California wildfires; in 2019 in response to disasters that occurred in 2018 and 2019; and in 2020 in response to disasters that occurred in 2020 generally contained the following provisions (see **Table 2**): (1) an enhanced casualty loss deduction; (2) expanded access to retirement plan funds; (3) increased limits on charitable deductions; (4) employee retention tax credits; and (5) EITC/CTC credit computation look-back rules. Additionally, disaster tax relief for 2018, 2019, and 2020 disasters is available in U.S. possessions.

### Enhanced Casualty Loss Deduction

An enhanced casualty loss deduction has been made available for losses attributable to certain disasters or for losses occurring during certain periods of time. Most recently, an enhanced casualty loss deduction was provided for 2020 disasters in the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of P.L. 116-260). Before that, an enhanced casualty loss deduction was provided for 2018 and 2019 disasters in the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of P.L. 116-94); for California wildfires in the Bipartisan Budget Act of 2018 (BBA18; P.L. 115-123); for any disaster-related casualty loss in calendar years 2016 or 2017 in the 2017 tax act, commonly called the "Tax Cuts and Jobs Act" (TCJA; P.L. 115-97); and for Hurricanes Harvey, Irma, and Maria in the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (P.L. 115-63). The enhancements (1) waive the 10% of AGI floor; (2) increase the $100 floor for each casualty to $500; and (3) allow taxpayers not itemizing deductions to add the deduction to their standard deduction. Generally, casualty loss deductions are claimed in the year of the loss. However, a loss in a federally declared disaster area may be

[20] IRC §6654(e)(3)(A).

deducted on the prior year's tax return. A similar provision was enacted in response to several previous disasters (see "Temporary Tax Provisions Used to Respond to Disasters Before 2010" and **Table 3**).

## Retirement Plan Distributions

The Disaster Tax Relief Act of 2020, the Disaster Tax Relief Act of 2019, BBA18, TCJA, and the Disaster Tax Relief Act of 2017 all provided tax relief relating to retirement plan distributions. First, each act waived the 10% penalty that would otherwise apply on early withdrawals made from a qualifying retirement plan[21] if the individual's principal place of abode was in the disaster area and the individual sustained an economic loss due to the disaster. The distributions were required to occur within a specified time frame, and the maximum amount that could be withdrawn without penalty was $100,000 or 100% of the present value of the plan participant's benefits (but not less than $10,000). Funds could be recontributed to a qualified plan over a three-year period and receive tax-free rollover treatment. Additionally, with respect to any taxable portion of the distribution, the individual could include one-third of such amount in gross income each year over the course of three tax years rather than including the entire amount on the tax return for the year of distribution.

The acts increased the amount disaster victims could borrow from their retirement plans without immediate tax consequences.[22] Under current law, the maximum amount that may be borrowed without being treated as a taxable distribution is the lesser of (1) $50,000, reduced by certain outstanding loans, or (2) the greater of $10,000 or 50% of the present value of the employee's vested benefits. For loans made during the applicable period, the acts increased this to the lesser of (1) $100,000, reduced by certain outstanding loans, or (2) the greater of $10,000 or 100% of the present value of the employee's vested benefits, as well as extending certain loan repayment dates by one year. A similar provision was enacted in response to several previous disasters (see "Temporary Tax Provisions Used to Respond to Disasters Before 2010" and **Table 3**).

## Increased Limits on Charitable Deductions

Taxpayers are generally permitted to deduct contributions made to 501(c)(3) charitable organizations, subject to various limitations.[23] Individuals may not claim a charitable deduction that exceeds 50% (temporarily increased to 60% for cash contributions beginning in 2018 through 2025) of their "contribution base" (adjusted gross income with certain adjustments), and corporations may not claim a deduction that exceeds 10% of their taxable income with certain adjustments. Any excess contributions may generally be carried forward for five years.

The Disaster Tax Relief Act of 2020 extended an above-the-line charitable deduction and increased charitable contribution limits that had previously been enacted for 2020 in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).[24] Specifically, for 2020 the CARES Act (1) provided an above-the-line deduction for cash donations for nonitemizers of up to $300; (2) eliminated (by increasing to 100%) the limit on cash gifts of individuals to public charities; and (3) increased the limit on charitable contributions from corporations (including food inventory) and individual contributions of food inventory to 25% of

[21] IRC §72(t).

[22] IRC §72(p).

[23] IRC §170. For more information, see CRS In Focus IF11022, *The Charitable Deduction for Individuals*, by Margot L. Crandall-Hollick and Molly F. Sherlock.

[24] For more information, see CRS Insight IN11420, *Temporary Enhancements to Charitable Contributions Deductions in the CARES Act*, by Jane G. Gravelle.

taxable income. Division EE of P.L. 116-260 extended the nonitemizer deduction for 2021, and increased it to $600 for married taxpayers filing joint returns. The 100% limit for individual cash contributions to public charities was also extended through 2021. Additionally, the Disaster Tax Relief Act of 2020 provided that corporations could deduct up to 100% of taxable income for qualified disaster-related charitable contributions.

The Disaster Tax Relief Act of 2019, BBA18, and the Disaster Tax Relief Act of 2017 also temporarily suspended the 50% and 10% limitations for qualified contributions made for disaster relief efforts. An additional deduction was allowed for amounts by which the taxpayer's charitable contribution base exceeded the amount of all other allowable charitable contributions in the tax year. For individuals, the deduction could not exceed the amount by which the charitable contribution base exceeded other charitable contributions. For individuals, the earlier acts also suspended the overall limitation on itemized deductions for qualified contributions that was in effect through 2017. A similar provision was enacted in response to several previous disasters (see "Temporary Tax Provisions Used to Respond to Disasters Before 2010" and **Table 3**).

## Employee Retention Credit

The Disaster Tax Relief Act of 2020, the Disaster Tax Relief Act of 2019, BBA18, and the Disaster Tax Relief Act of 2017 provided a temporary retention credit for disaster-damaged businesses that continued to pay wages to their employees who were unable to work after the disaster rendered the business inoperable.[25] Eligible employees were those whose principal place of employment was in the applicable disaster area. The credit equaled 40% of the employee's first $6,000 in wages paid between the date the business became inoperable and the date it resumed significant operations at that location (or the end of the first calendar year, whichever came first). Wages can be those paid even if the employee provides no services for the employer, or for wages paid for services performed at a different location or before significant operations resume. This employee retention may not be for an employee during any period that the employer claims a work opportunity credit for the employee. A similar provision was enacted in response to several previous disasters (see "Temporary Tax Provisions Used to Respond to Disasters Before 2010" and **Table 3**).

## EITC/CTC Credit Computation Look-Back

The Disaster Tax Relief Act of 2019 and BBA18 permitted individuals affected by 2018 and 2019 disasters or California wildfires in 2017 to elect to use their earned income from the previous year for computing the Child Tax Credit (CTC)[26] and the Earned Income Tax Credit (EITC),[27] instead of their disaster-year income, if previous-year income was greater than disaster-year income.[28] Division EE of P.L. 116-260 extended this provision, providing *all* taxpayers in 2020 the option to use 2019 earned income to compute these refundable tax credits (not just taxpayers affected by natural disasters). The Disaster Tax Relief Act of 2017 also included this provision for those

[25] The employee retention credit increases a taxpayer's general business credit (IRC §38). The disaster-related employee retention credit is separate from the employee retention credit provided to support employers during the COVID-19 pandemic. For more on the COVID-related employee retention credit, see CRS In Focus IF11721, *The Employee Retention and Employee Retention and Rehiring Tax Credits*, by Molly F. Sherlock.

[26] IRC §24.

[27] IRC §32.

[28] For more information on the CTC and EITC in 2020, see CRS Report R41873, *The Child Tax Credit: How It Works and Who Receives It*, by Margot L. Crandall-Hollick and CRS Report R43805, *The Earned Income Tax Credit (EITC): How It Works and Who Receives It*, by Margot L. Crandall-Hollick, Gene Falk, and Conor F. Boyle.

affected by Hurricanes Harvey, Irma, and Maria. For some taxpayers, this provision provides benefits when income is reduced in the year of the disaster. In years when this provision was provided as disaster relief, taxpayers generally qualified only if they lived in the disaster zone or lived in the disaster area and the disaster caused them to be displaced from their principal place of abode. A similar provision was enacted in response to several previous disasters (see "Temporary Tax Provisions Used to Respond to Disasters Before 2010" and **Table 3**).

## Low-Income Housing Tax Credit

The Disaster Tax Relief Act of 2020 increased, for calendar years 2021 and 2022, the credit allocation authority for buildings located in any qualified disaster area. For 2021 the increase is equal to the lesser of $3.50 multiplied by the population residing in a qualified disaster zone or 65% of the state's overall credit allocation authority for calendar year 2020. For 2022, the increase is equal to any unused increased credit allocation authority from 2021 (i.e., 2021 increased credit allocation authority may be carried over to 2022). Buildings impacted by this provision will also be granted a one-year extension of the placed in service deadline and the so-called 10% test.[29]

The Disaster Tax Relief Act of 2019 increased credits available to California in 2020. Specifically, for certain areas of California that were affected by natural disasters in 2017 and 2018, the act increased California's 2020 LIHTC allocation by the lesser of the state's 2020 LIHTC allocations to buildings located in qualified 2017 and 2018 California disaster areas, or 50% of the state's combined 2017 and 2018 total LIHTC allocations.

Other past disaster relief legislation has provided additional LIHTC allocations to disaster-affected areas. The GO Zone Act temporarily increased the credits available to Alabama, Louisiana, and Mississippi for use in the GO Zone by up to $18.00 multiplied by the state's population that was located in the GO Zone prior to the date of Hurricane Katrina. It also temporarily treated the disaster zones as difficult development areas and used an alternate test for determining whether certain GO Zone projects qualified as low-income housing. The Heartland Act permitted affected states to allocate additional amounts for use in the disaster area of up to $8.00 multiplied by the state's disaster area population.

## Treatment of Certain U.S. Possessions

Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands are U.S. territories. Each has a local tax system with features that help determine the territory's local public finances.[30] Guam, the U.S. Virgin Islands, and the Northern Mariana Islands are *mirror code* possessions, meaning these territories use the Internal Revenue Code as their territorial tax law. Puerto Rico and American Samoa are *non-mirror code* possessions. These two possessions have their own tax laws.

The Disaster Tax Relief Act of 2020 and the Disaster Tax Relief Act of 2019 require payments from the U.S. Treasury to possessions for the temporary tax relief provided in the bills. Mirror code possessions will receive an amount equal to the loss in revenue by reason of the temporary disaster-related tax relief provided in the legislation. Non-mirror code possessions may receive a similar payment (a payment equal to the amount of temporary disaster tax relief that would have

[29] For more information, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley.

[30] See CRS Report R44651, *Tax Policy and U.S. Territories: Overview and Issues for Congress*, by Sean Lowry.

been provided if a mirror code had been in effect) if the possession has an approved plan for prompt distribution of payments.

**Table 2. Temporary Disaster-Related Tax Provisions, 2010-Present**

| Provision | Taxpayer Certainty and Disaster Tax Relief Act of 2020 | Taxpayer Certainty and Disaster Tax Relief Act of 2019 | Bipartisan Budget Act of 2018 | 2017 Tax Act | Disaster Tax Relief and Airport and Airway Extension Act of 2017 |
|---|---|---|---|---|---|
| | *2020 Disasters*[a] | *2018 and 2019 Disasters*[b] | *2017 California Wildfires* | *2016 Disasters* | *Hurricanes Harvey, Irma, and Maria* |
| Enhanced Casualty Loss Deduction | Yes | Yes | Yes | Yes[c] | Yes |
| Retirement Plan Distributions | Yes | Yes | Yes | Yes | Yes |
| Increased Limits on Charitable Deductions | Yes[d] | Yes | Yes | — | Yes |
| Employee Retention Credit | Yes | Yes | Yes | — | Yes |
| EITC/CTC Credit Computation Look-Back | Yes[e] | Yes | Yes | — | Yes |
| Low-Income Housing Tax Credit | Yes | Yes[f] | — | — | — |
| Treatment of Certain Possessions | Yes | Yes | — | — | — |

**Source:** Congressional Research Service.

**Notes:** Provisions enacted in response to specific disasters are not necessarily identical. Provisions that are highly similar are grouped here to facilitate comparison across disaster events.

a. 2020 non-COVID-19-related disasters qualify so long as the incident period began on or before December 27, 2020.

b. 2019 disasters qualify so long as the incident period of the disaster began on or before December 20, 2019.

c. The special casualty loss deduction applies to disaster losses occurring in 2016 and 2017.

d. Disaster-specific relief provided that corporations could deduct disaster-related contributions for amounts up to 100% of their taxable income. As discussed in the text, provisions allowing for an above-the-line charitable deduction and enhanced charitable giving limits were made generally available for 2020 and 2021.

e. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 allowed this provision for all taxpayers in 2020, as opposed to specifically for disaster victims.

f. Provides additional 2020 LIHTC allocations to qualified 2017 and 2018 California disaster areas.

## Temporary Tax Provisions Used to Respond to Disasters Before 2010

Provisions used to respond to 2016, 2017, 2018, 2019, and 2020 disasters were also used to respond to some disasters before 2010. Additionally, a number of other temporary tax provisions were used to respond to these pre-2010 disasters. The first time a temporary disaster tax relief package was enacted was in response to the September 11 terrorist attacks. The following sections summarize the various provisions included in temporary disaster tax relief legislation before 2010.

### Expensing

In general, capital expenditures must be added to a property's basis rather than being expensed (i.e., deducted in the current year). IRC Section 179 provides an exception so that a business may expense the costs of certain property in the year it is placed in service.[31] After 2018, the maximum expensing allowance is $1 million, with an investment limitation of $2.5 million (both amounts are adjusted for inflation). In the past, these thresholds have been lower. For example, in 2007, the maximum expensing allowance under Section 179 was $125,000, and the deduction decreased dollar-for-dollar as the total cost of all property the business placed in service during the year exceeded $500,000. The Heartland Act increased the Section 179 limitations by up to $100,000 and $600,000 for qualified disaster area property for federally declared disasters occurring prior to January 1, 2010. Increased expensing allowances were enacted in response to several disasters before 2007 as well.

The Heartland Act also added IRC Section 198A, which permitted full expensing (subject to depreciation recapture) of qualified expenditures for the abatement or control of hazardous substances released on account of a federally declared disaster, the removal of debris or the demolition of structures on business-related real property damaged by such a disaster, and the repair of business-related property damaged by such a disaster. This provision applied only to federally declared disasters occurring prior to January 1, 2010.

### Net Operating Loss Carryback

Under current law, a business's net operating loss (NOL) can be carried forward indefinitely.[32] Generally, NOLs are limited to 80% of taxable income and there is generally no carryback of NOLs.[33] This treatment was enacted in the 2017 tax act (P.L. 115-97).[34] Before 2018, in general, a taxpayer's net operating loss (NOL) could be carried back and deducted in the two tax years before the NOL year, and then carried forward for up to 20 years after the NOL year. Additionally, before 2018, the carryback was extended to three years for individuals who had a

[31] For more information, see CRS Report RL31852, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects*, by Gary Guenther.

[32] IRC §172.

[33] The CARES Act made a number of temporary changes to permanent law regarding NOLs. First, the act allowed for NOLs generated in taxable years beginning after December 31, 2017, and before January 1, 2021, to be carried back for up to five years. Second, the act suspended the limit to 80% of taxable income for taxable years beginning before January 1, 2021. Third, the CARES Act suspended the $250,000/$500,000 limitations on noncorporate taxpayers for taxable years beginning before January 1, 2021. For more information, see CRS Report R46377, *The Tax Treatment and Economics of Net Operating Losses*, by Mark P. Keightley.

[34] CRS Insight IN10846, *P.L. 115-97: Net Operating Losses*, by Mark P. Keightley.

loss of property arising from a casualty or theft. A three-year period also applied for small businesses and farmers for NOLs attributable to federally declared disasters.

The Heartland Act provided for a five-year carryback period for qualified losses from any federally declared disaster occurring prior to January 1, 2010.[35] For such disasters, it also suspended the alternative minimum tax (AMT) provision that generally limits NOL deductions to 90% of alternative minimum taxable income. The corporate AMT was repealed in the 2017 tax act.

## Bonus Depreciation

For eligible property acquired and placed in service after September 27, 2017, and before January 1, 2023, businesses may claim a 100% expensing (or bonus depreciation) allowance under Section 168(k).[36] Like expensing limitations, the bonus depreciation allowance has changed over time. The Heartland Act provided a 50% bonus depreciation provision for qualified disaster assistance property from a federally declared disaster occurring prior to January 1, 2010.[37] However, since other legislation provided 50% bonus depreciation during this time period, the provision was probably not meaningful.[38] With 100% bonus depreciation in effect through 2022, providing additional bonus depreciation is not currently a policy option.

## Mortgage Revenue Bonds

Mortgage revenue bonds are tax-exempt bonds used to finance below-market-rate mortgages for low- and moderate-income homebuyers.[39] In general, the homebuyers must not have owned a residence for the past three years, and the houses' costs may not exceed 90% of the average purchase price for the area. However, for areas that are low income or in chronic economic distress, the three-year restriction does not apply, and the purchase price limitation is increased to 110%.

For individuals whose homes were declared unsafe or ordered to be demolished or relocated due to a federally declared disaster occurring prior to January 1, 2010, the Heartland Act waived the three-year restriction and increased the purchase price limitation from 90% to 110%.[40] It also permitted individuals whose homes were damaged by the disaster to treat the amount of owner financing provided for home repair and construction as a qualified rehabilitation loan, limited to $150,000 (the amount is generally limited to $15,000), which had the effect of waiving the three-year requirement for such financing. The GO Zone Act and KETRA contained similar provisions.

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35 The GO Zone Act and the 2008 Farm Bill had allowed net operating losses (NOLs) from the disasters to be carried back for five years.

36 For more information, see CRS Report RL31852, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects*, by Gary Guenther.

37 GO Zone Act and the 2008 Farm Bill also provided a 50% bonus depreciation provision for qualified property, as well as granting the Secretary the authority to suspend the deadline by which property must be placed in service, on a case-by-case basis, for up to one year for taxpayers affected by the hurricanes.

38 See CRS Report RL31852, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects*, by Gary Guenther.

39 IRC §143. For more information, see CRS In Focus IF10739, *Disaster Assistance and Federal Subsidies for Municipal Bonds*, by Grant A. Driessen and Joseph S. Hughes.

40 KETRA and the GO Zone Act temporarily removed the three-year requirement for qualifying homes, as well as increasing the limitation on qualified home improvement loans from $15,000 to $150,000 for loans used to repair hurricane damage.

In the Heartland Act, the maximum amount of bonds each state could issue was $1,000 multiplied by that state's population in the disaster area, and need-based prioritization for state allocations was established. The GO Zone Act also expanded qualified private activity bond issuances for mortgage revenue bonds in disaster areas. The Go Zone Act added $2,500 per person in the federally declared Katrina disaster areas in which the residents qualify for individual and public assistance. The increased capacity added approximately $2.2 billion for Alabama, $7.8 billion for Louisiana, and $4.8 billion for Mississippi in aggregate bonds over the subsequent five years through 2010.[41]

## Expensing of Environmental Remediation Costs ("Brownfields")

Capital expenditures must generally be added to the property's basis rather than being expensed (i.e., deducted in the current year). IRC Section 198 provided an exception by allowing taxpayers to expense any qualifying environmental remediation costs paid or incurred prior to January 1, 2012, for the abatement or control of hazardous substances at a qualified contaminated site. Unlike the other provisions discussed in this report, Section 198 is not limited to federally declared disasters or specific disasters. The provision was enacted as a temporary one in the Taxpayer Relief Act of 1997 (P.L. 105-34) and was extended a number of times before expiring at the end of 2011.

The Heartland Act was among those laws that temporarily extended Section 198. The GO Zone Act had also extended the provision, but only for those costs for contaminated sites in the GO Zone, and treated petroleum products as a hazardous substance for the purposes of environmental remediation.

## Charitable Contributions of Inventory

Before 2005, donors of food inventory that were not C corporations could only claim a charitable deduction equal to their basis in the inventory (typically, its cost).[42] C corporations were allowed an enhanced deduction, which was the lesser of (1) the basis plus 50% of the property's appreciated value, or (2) two times basis.

KETRA provided special rules that allowed all donors of wholesome food[43] inventory to benefit from the enhanced deduction and allowed C corporations to claim an enhanced deduction for donations of book inventory to public schools. Neither provision was limited to donations related to the hurricane, but both were originally set to expire on December 31, 2005. The provisions have been extended several times since then, including by the Heartland Act (as part of its tax extenders package, rather than its disaster relief provisions). The enhanced deduction for charitable contributions of food inventory was made permanent in the Protecting Americans from Tax Hikes Act of 2015, enacted as Division Q in the Consolidated Appropriations Act, 2016 (P.L. 114-113).[44] The enhanced deduction for book inventory expired as scheduled at the end of 2011.

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[41] For more information, see CRS Report RL31457, *Private Activity Bonds: An Introduction*, by Steven Maguire and Joseph S. Hughes.

[42] IRC §170(e). For more information on the charitable contribution deduction, CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock.

[43] *Wholesome food* means food that meets all quality and labeling standards imposed by federal, state, and local laws or regulations, even though the food may not be readily marketable due to appearance, age, freshness, grade, surplus, or other condition. See 42 U.S.C. §1791.

[44] For more information, see CRS Report R43517, *Recently Expired Charitable Tax Provisions ("Tax Extenders"): In Brief*, by Jane G. Gravelle and Molly F. Sherlock.

## Involuntary Conversions

In addition to the general treatment of involuntary conversions (discussed above), the Job Creation Act, KETRA, the 2008 Farm Bill, and the Heartland Act increased the two-year time period to purchase the replacement property to five years for property in the applicable disaster area so long as substantially all of the use of the replacement property occurred in such area.

## Discharge of Indebtedness

When all or part of a debt is forgiven, the amount of the cancellation is ordinarily included in the income of the taxpayer receiving the benefit of the discharge.[45] However, there are several exceptions to this general rule. For example, no amount of the discharge is included in income if the cancellation is intended to be a gift or is from the discharge of student loans for the performance of qualifying services.[46] The Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142) temporarily excluded qualified canceled mortgage debt income that is associated with a primary residence from taxation (this provision has been extended multiple times, and is currently set to expire at the end of 2025).[47] There are also certain situations in which the taxpayer may defer taxation, with the possibility of permanent exclusion, on income from the discharge of indebtedness, such as if discharge occurs when the debtor is in Title 11 bankruptcy proceedings or legally insolvent.[48] Both KETRA and the Heartland Act included provisions that allowed victims to exclude nonbusiness debt forgiveness from income in certain conditions.

Victims of Hurricane Katrina were allowed to exclude nonbusiness debt that was forgiven by a governmental agency or certain financial institutions if the discharge occurred after August 24, 2005, and before January 1, 2007. Individuals were eligible for this benefit if (1) their principal place of abode was in the core disaster area, or (2) it was in the Hurricane Katrina disaster area and they suffered an economic loss due to the hurricane.[49] Individuals with certain tax attributes (such as basis) were required to reduce them by the amount excluded from income, which has the effect of deferring (rather than permanently eliminating) the tax on the cancelled debt.

For victims with a principal place of abode in a Midwestern disaster area, the Heartland Act provided similar relief. However, if that home was in an area determined by the President to warrant only public assistance, the individual also had to have suffered an economic loss due to the severe weather.

## Employer-Provided Housing

Both the GO Zone Act and the Heartland Act excluded the value of certain employer-provided housing, limited to $600 per month, from the employee's income and allowed the employer to claim a credit equal to 30% of that amount. Among other requirements, the employee must have had a principal residence in the applicable disaster area and have performed substantially all

[45] IRC §61(a)(12).

[46] IRC §§102 and 108.

[47] For more information, see CRS Report R46772, *Temporary Individual Tax Provisions ("Tax Extenders")*, coordinated by Molly F. Sherlock and Jane G. Gravelle.

[48] IRC §108(a).

[49] In KETRA, the *Hurricane Katrina Disaster Area* is the area that received a federal disaster declaration. The *core disaster area* is the portion of the Hurricane Katrina Disaster Area determined to warrant individual or individual and public assistance. For background on individual and public assistance, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Bruce R. Lindsay; and CRS Report R43139, *Federal Disaster Assistance After Hurricanes Katrina, Rita, Wilma, Gustav, and Ike*, coordinated by Bruce R. Lindsay and Jared C. Nagel.

employment services for that employer in that area. The employer must have had a trade or business located within the applicable disaster area.

### Tax-Exempt Bonds

Both the GO Zone Act and the Heartland Act temporarily allowed affected states to issue tax-exempt bonds to finance (1) qualified activities involving residential rental projects, nonresidential real property, and public utility property located in the disaster area; and (2) below-market rate mortgages for low- and moderate-income homebuyers. Under the GO Zone Act, the maximum amount of bonds that each state could issue was $2,500 multiplied by that state's population located in the GO Zone as determined prior to the date of Hurricane Katrina. Under the Heartland Act, the maximum amount of bonds each state could issue was capped at $1,000 multiplied by that state's population in the disaster area, and the act expressly stated that the bonds would have to be designated by the appropriate state authority on the basis of providing assistance to where it was most needed. The Job Creation Act, meanwhile, allowed New York to issue up to $8 billion (divided equally between the state and New York City) in tax-exempt bonds to finance qualified activities involving residential rental projects, nonresidential real property, and public utility property located in the disaster zone. The Job Creation Act and the GO Zone Act also allowed one additional advance refunding of qualifying bonds that were issued by those states.

The GO Zone Act, the 2008 Farm Bill, and the Heartland Act allowed operators of low-income residential rental projects financed by IRC Section 142(d) bonds to rely on the representations of displaced individuals regarding their income qualifications so long as the tenancy began within six months of the displacement.

### Tax Credit Bonds

Both the GO Zone Act and the Heartland Act permitted affected states to issue tax credit bonds to pay the principal, interest, or premiums on qualified governmental bonds or to make loans to political subdivisions to make such payments.[50] Bondholders may claim a credit based on the product of a credit rate and the bonds' outstanding face amount. The bonds were required to be issued within a certain time period and could not have a maturity date beyond two years, among other requirements. Further, each state was capped in the amount of bonds it could issue—for example, under the Heartland Act, the maximum amount of bonds that could be issued by states with disaster area populations of at least 2 million was $100 million; the cap was $50 million for states with disaster area populations between 1 million and 2 million; and the other states could not issue any bonds. Bonds could not be used for certain activities.[51]

### Housing Exemption

Both KETRA and the Heartland Act provided tax relief to those who provided free housing to those displaced by the storms. Individuals could claim additional personal exemptions of $500 each for up to four displaced people whom they housed for at least 60 consecutive days. These exemptions could be claimed in both the year of the disaster and the next year; however, no person could qualify the taxpayer for the exemption in both years. Among other requirements, the

[50] The authority to issue all tax credit bonds was eliminated beginning in tax year 2018 as part of TCJA. For more information, see CRS Report R40523, *Tax Credit Bonds: Overview and Analysis*, by Grant A. Driessen.

[51] Bonds could not be used to provide private or commercial golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetrack or other facilities used for gambling, or any store the principal purpose of which is the sale of alcoholic beverages.

displaced person must have had a principal place of abode in the disaster area; if the home was not in the core disaster area, then the person must have been displaced due to either storm damage to the home or evacuation caused by the storm.

### Mileage Rate and Reimbursement

Generally, individuals who use their personal vehicles for charitable purposes may claim a deduction based on the number of miles driven. The amount is set by statute at 14 cents per mile.[52]

KETRA and the Heartland Act each temporarily increased the charitable mileage rate to 70% of the standard business mileage rate if the vehicle was used for hurricane or Midwest disaster relief. The standard business mileage rate is periodically set by the IRS. In 2019, the standard mileage rate is 56 cents per mile.[53]

Additionally, both acts provided a temporary exclusion from a charitable volunteer's gross income for any qualifying mileage reimbursements received from the charity for the operating expenses of a volunteer's passenger automobile, when used for disaster relief.

### Treasury Authority to Make Adjustments Relating to Status

KETRA, the GO Zone Act, and the Heartland Act all contained similar provisions that authorized the Treasury Secretary to make adjustments in the application of the tax laws for the tax years of the disaster and the immediate subsequent year so that temporary relocations due to the disaster did not cause taxpayers to lose any deduction or credit or to experience a change of filing status.

### Education Credits

Individuals with eligible tuition and related expenses may claim certain higher education tax credits.[54] Under the law existing when KETRA, the GO Zone Act, and the Heartland Act were enacted, the Hope credit was 100% of the first $1,000 of eligible expenses plus 50% of the next $1,000 of eligible expenses, both adjusted for inflation. The maximum Lifetime Learning credit is and was 20% of up to $10,000 of eligible expenses. Beginning in 2009, the partially refundable American Opportunity Tax Credit (AOTC)[55] temporarily increased the Hope credit, allowing 100% of eligible expenses up to $2,000 plus 25% of the next $2,000 of eligible expenses. The Protecting Americans from Tax Hikes (PATH) Act (Division Q of P.L. 114-113) made the AOTC permanent, effectively eliminating the Hope credit.

For individuals attending school in the GO Zone for 2005 and 2006, the GO Zone Act allowed certain nontuition expenses (e.g., books, equipment, and room and board) to qualify for the Hope and Lifetime Learning credits; doubled the $1,000 limitations in the Hope credit to $2,000; and increased the 20% limitation in the Lifetime Learning credit to 40%. The Heartland Act provided similar rules for students attending school in a Midwestern disaster area during 2008 or 2009.

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52 IRC §170(i).

53 IRS Notice 2019-2.

54 IRC §25A. For more information, see CRS Report R41967, *Higher Education Tax Benefits: Brief Overview and Budgetary Effects*, by Margot L. Crandall-Hollick.

55 For information on the AOTC, see CRS Report R42561, *The American Opportunity Tax Credit: Overview, Analysis, and Policy Options*, by Margot L. Crandall-Hollick.

However, to take advantage of this provision for 2009, taxpayers were required to waive application of the AOTC provisions.

### Rehabilitation Credit

Taxpayers may claim a credit equal to 10% of the qualifying expenditures to rehabilitate a qualified building or 20% of such expenditures for a certified historic structure.[56] Both the GO Zone Act and the Heartland Act temporarily increased these percentages to 13% and 26%, respectively, for rehabilitating qualifying buildings and structures damaged by the applicable disasters.

### Public Utility Losses

Under IRC Section 172, certain net operating losses, called specified liability losses, may be carried back for 10 years. Under IRC Section 165(i), certain disaster losses may be deducted in the year prior to the disaster. The GO Zone Act treated public utility casualty losses as a Section 172 loss. The GO Zone Act and the 2008 Farm Bill allowed public utility disaster losses to be deducted in the fifth taxable year preceding the disaster.

### Gulf Coast Recovery Bonds

The GO Zone included provisions to encourage the Treasury Secretary to designate at least one series of bonds as Gulf Coast Recovery Bonds. The Treasury designated Series I inflation-indexed savings bonds purchased through financial institutions as "Gulf Coast Recovery Bonds."[57]

### New Markets Tax Credit

Under the new markets tax credit, taxpayers are allocated a credit for investments made in qualified community development entities.[58] The credit is claimed over a period of seven years and equals the amount of the investment multiplied by a percentage: 5% for the first three years and 6% for the next four years. The credit was capped at $2 billion for 2005 and $3.5 billion for 2006 and 2007. The GO Zone Act increased the cap by $300 million for 2005 and 2006 and by $400 million for 2007, and it allocated these amounts to entities making low-income community investments in the GO Zone.

### Small Timber Producers

Under IRC Section 194, taxpayers may expense up to $10,000 of qualifying reforestation expenditures. Under IRC Section 172, the general rule is that taxpayers may carry net operating losses back for two years. The GO Zone Act created two special rules for timber producers with less than 501 acres of timber property: it (1) increased the Section 194 limit by up to $10,000 for expenditures made for qualified timber property in the applicable disaster zones; and (2)

[56] IRC §47.

[57] U.S. Department of the Treasury, "Treasury Designates Series I Savings Bonds as Gulf Coast Recovery Bonds," press release, March 29, 2006, at https://www.treasury.gov/press-center/press-releases/Pages/js4140.aspx.

[58] IRC §45D. For more information, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples and Sean Lowry.

increased the Section 172 carry back period to five years for certain losses attributable to timber property in those zones.

## Work Opportunity Tax Credit

Generally, businesses that hire individuals from groups with high unemployment rates or special employment needs, such as high-risk youths and veterans, may claim the work opportunity tax credit.[59] The credit may be claimed for the wages of up to $6,000 that were paid during the employee's first year. For an employee who worked at least 400 hours, the credit equals 40% of his or her wages—thus, the maximum credit is $2,400.

KETRA allowed businesses to claim the work opportunity credit on wages paid to certain employees hired after Hurricane Katrina. Eligible employees were those who had a principal place of abode in the core disaster area and either (1) were hired during the two-year period beginning August 28, 2005, for a position in the area, or (2) were displaced by the hurricane and hired after August 27, 2005, and before January 1, 2006. Congress later extended the WOTC's expiration from August 28, 2007, to August 28, 2009, for firms who hire "Hurricane Katrina employees" to work in the core disaster area (see the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 in P.L. 110-343). The Job Creation Act provided similar treatment for New York Liberty Zone business employees and certain employees outside the zone.

## Leasehold Improvements

For purposes of depreciation, the Job Creation Act generally shortened the recovery period for leasehold improvement property to five years for qualifying property located in the New York disaster zone.

[59] IRC §51. For more information, see CRS Report R43729, *The Work Opportunity Tax Credit*, by Benjamin Collins and Sarah A. Donovan.

**Table 3. Temporary Disaster-Related Tax Provisions, Pre-2010**

| Provision | Heartland Disaster Tax Relief Act of 2008 and Other Provisions in P.L. 110-343 | | Food, Conservation, and Energy Act of 2008 | GO Zone Act of 2005 | Katrina Emergency Tax Relief Act of 2005 | Job Creation and Worker Assistance Act of 2002 |
|---|---|---|---|---|---|---|
| | *2008 Midwest Storms* | *Disasters Between 2007-2009* | *2007 Storms in Kansas* | *Hurricanes Katrina, Rita, and Wilma* | *Hurricane Katrina* | *Terrorist Attacks of Sept. 11, 2001* |
| Enhanced Casualty Loss Deduction | Yes | Yes | Yes | Yes | Yes | — |
| Retirement Plan Distributions | Yes | — | Yes | Yes | Yes | — |
| Increased Limits on Charitable Deductions | Yes | — | — | Yes | Yes | — |
| Employee Retention Credit | Yes | — | Yes | Yes | Yes | — |
| EITC/CTC Credit Computation Look-Back | Yes | — | — | Yes | Yes | — |
| Expensing | Yes | Yes | Yes | Yes | — | Yes |
| Net Operating Loss Carryback | Yes | Yes | Yes | Yes | — | — |
| Bonus Depreciation | — | Yes | Yes | Yes | — | Yes |
| Mortgage Revenue Bonds | — | Yes | — | Yes | Yes | — |
| Expensing of Environmental Remediation Costs ("Brownfields") | — | Yes (but not limited to disasters)[a] | — | Yes[a] | — | — |
| Charitable Contributions of Inventory | — | Yes (but not limited to disasters)[b] | — | — | Yes (but not limited to disasters)[b] | — |
| Involuntary Conversions | Yes | — | Yes | Yes | Yes | — |
| Discharge of Indebtedness | Yes | — | — | — | Yes | — |
| Employer-Provided Housing | Yes | — | — | Yes | — | — |
| Tax-Exempt Bonds | Yes | — | — | Yes | — | Yes |
| Tax Credit Bonds | Yes | — | — | Yes | — | — |

| Provision | Heartland Disaster Tax Relief Act of 2008 and Other Provisions in P.L. 110-343 | | Food, Conservation, and Energy Act of 2008 | GO Zone Act of 2005 | Katrina Emergency Tax Relief Act of 2005 | Job Creation and Worker Assistance Act of 2002 |
|---|---|---|---|---|---|---|
| | *2008 Midwest Storms* | *Disasters Between 2007-2009* | *2007 Storms in Kansas* | *Hurricanes Katrina, Rita, and Wilma* | *Hurricane Katrina* | *Terrorist Attacks of Sept. 11, 2001* |
| Housing Exemption | Yes | — | — | — | Yes | — |
| Mileage Rate and Reimbursement | Yes | — | — | — | Yes | — |
| Treasury Authority to Make Adjustments Relating to Status | Yes | — | — | Yes | Yes | — |
| Education Credits | Yes | — | — | Yes | — | — |
| Low-Income Housing Tax Credit | Yes | — | Yes (but limited to representation provision) | Yes | — | — |
| Rehabilitation Credit | Yes | — | — | Yes | — | — |
| Public Utility Losses | — | — | Yes | Yes | — | — |
| Gulf Coast Recovery Bonds | — | — | — | Yes | — | — |
| New Markets Tax Credit | — | — | — | Yes | — | — |
| Small Timber Producers | — | — | — | Yes | — | — |
| Work Opportunity Tax Credit | — | — | — | — | Yes | Yes |
| Leasehold Improvements | — | — | — | — | — | Yes |

**Source:** Congressional Research Service.

**Notes:** Provisions enacted in response to specific disasters are not necessarily identical. Provisions that are highly similar are grouped here to facilitate comparison across disaster events.

a. The remediation expensing provision (IRC §198) is not limited to federally declared disasters or specific disasters. It was temporary when enacted and was extended several times, but has now expired. The Heartland Act was among those laws that extended Section 198. The GO Zone Act had also extended it, but only for those costs for contaminated sites in the GO Zone, as well as treating petroleum products as a hazardous substance.

b. KETRA provided special rules regarding donations of food and book inventory, neither of which was limited to donations related to the hurricane, but both of which were originally set to expire on December 31, 2005. The provisions have been extended several times since then, including by the Heartland Act (as part of its tax extenders package, rather than its disaster relief provisions). The enhanced deduction for book inventory expired at the end of 2011, while the special rules for donations of food inventory were made permanent in the Protecting Americans from Tax Hikes Act of 2015, enacted as Division Q in the Consolidated Appropriations Act, 2016 (P.L. 114-113).

# Economic and Policy Considerations[60]

Tax policy for disaster relief might be motivated by multiple objectives. One objective could be distributional or relief-oriented. Tax policy could be designed to provide additional resources to businesses or individuals who experienced an uncompensated disaster loss. This relief could be targeted toward the low-income, although there are limitations when using tax policy to address low-income individuals and businesses.

Tax policy can also be used to encourage investment in disaster-affected areas. Absent government intervention, some level of private rebuilding will occur. A policy question, however, is whether this private building is sufficient, or if there are other barriers to investment in the disaster-affected region that call for government intervention. When investment subsidies are provided, there is the question of how much new investment is supported relative to how much investment is subsidized that would have occurred absent the subsidy.

There are also challenges associated with identifying the disaster area for the purposes of providing tax relief. In some cases, relief has been provided to a certain geographic area. In other cases, relief has been tied to a federal disaster declaration or provided only when individual assistance or individual and public assistance is provided.[61] Narrowly defined geographic areas can limit tax benefits to those most likely to be harmed by the disaster, but can exclude some disaster victims.

The following sections discuss considerations by examining instances in which disaster relief was provided through the tax code for businesses and individuals, as well as through tax policy designed to support disaster-related charitable giving.

## Providing Disaster Tax Relief to Businesses

For businesses, hurricanes like Katrina, Maria, Irma, and Harvey caused unprecedented property and earnings losses. Employee displacement can create labor market challenges that persist over time. Further, longer-term supply chain disruptions can make it difficult for businesses to resume operations after initial clean-up efforts are complete.

In the past, tax policy has been used to reduce the cost of business investment in cleanup and repairs. Bonus depreciation and enhanced expensing were used to provide disaster tax relief to businesses following several disasters before 2010. However, at present, with bonus depreciation at 100% (100% bonus depreciation is expensing), this policy tool is not readily available.[62] Expensing allowances are higher than they have been historically, but could, if deemed necessary and under certain circumstances, be expanded further to provide additional expensing allowances in disaster areas. For instance, this could be a policy option should bonus depreciation be set at a rate of less than 100%, or eliminated altogether. An expansion to expensing for disaster-relief

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[60] A similar discussion can be found in CRS In Focus IF10730, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock.

[61] For background, see CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay. In the case of recent disaster events, disaster areas have been defined as those with major disaster declarations. Disaster zones have been identified as the portion of the disaster area being provided individual or individual and public assistance.

[62] For more information, see CRS Report RL31852, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects*, by Gary Guenther.

purposes could be accomplished through raising the expensing limit; expensing is currently allowed for investments up to $1,050,000.[63]

Expansions to net operating loss (NOL) carrybacks and lengthening of replacement periods for involuntary conversions have also been used to provide tax relief following past disasters. Under current law, there is no carryback of NOLs. Allowing an NOL carryback for disaster-related losses could provide relief for taxpayers experiencing losses who had positive tax liability in a recent tax year. Expanding the replacement period for involuntary conversions could provide more flexibility to taxpayers looking to rebuild or reestablish businesses in the disaster area.

Tax policy can also be used to encourage businesses to provide employment and housing following disaster events. Employee retention credits encourage employers to continue paying employees in circumstances where the disaster affects business operations. Targeted hiring credits, such as the WOTC, can be used to provide an incentive to hire workers who were displaced by a disaster. With respect to housing, tax policy has been used to encourage employers to provide housing to their employees, as well as to support more low-income housing development in disaster-affected areas.

Disaster recovery and rebuilding has also been supported following certain disasters by providing targeted tax benefits to disaster-impacted geographic zones. The New York Liberty Zone was established following the September 11 terrorist attacks. The Gulf Opportunity Zone was established following the 2005 Gulf Coast hurricanes.[64] These zones can receive additional allocations of allocated tax credits, such as the NMTC or the LIHTC. Past disaster tax relief has also provided additional allocations of tax-exempt or tax-credit bonds in disaster-affected zones.[65] Some have questioned the effectiveness of tax-exempt private activity bonds as a tool for disaster relief, noting that in the case of the GO Zone, areas with the most damage were less likely to have access to bonds to help finance recovery and rebuilding.[66] Should special bond allocations be deployed in response to future disasters, there may be ways to improve the bond allocation process to better target small businesses or heavily impacted areas.

Other provisions might be designed to support specific industries or sectors affected by the disaster. For example, tax provisions for small timber producers and public utilities have been included in past disaster tax legislation. Narrowly targeted tax benefits, however, might leave out disaster-affected taxpayers that suffered losses yet have business activities that differ from the sector targeted for relief.

One consideration related to tax relief provisions for business is timing. The tax code is not well-suited to provide capital for cleanup, rebuilding, or recovery in the short term. Reduced tax liabilities provide a future financial benefit, but past disaster tax relief has not been designed to provide immediate access to capital that may be needed following a disaster.

Another consideration related to business disaster tax relief is the potential scope of the benefit. For many business-related provisions, the benefit is limited to businesses with positive taxable

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[63] This amount is for 2021. The expensing limit is $1 million, adjusted for inflation after 2018.

[64] One empirical analysis found that certain GO Zone counties experienced more rapid per capita personal income growth than comparable non-Go Zone counties several years after the tax relief was provided. This same study did not, however, find that GO Zone counties had stronger employment or population growth. See James M. Williamson and John L. Pender, "Economic Stimulus and the Tax Code: The Impact of the Gulf Opportunity Zone," *Public Finance Review*, vol. 44, no. 4 (July 2016), pp. 415-445.

[65] The TCJA (P.L. 115-97) repealed all authority to issue tax credit bonds after December 31, 2017.

[66] Kevin Fox Gotham, "Dilemmas of Disaster Zones: Tax Incentives and Business Reinvestment in the Gulf Coast after Hurricanes Katrina and Rita," *City & Community*, vol. 12, no. 4 (December 2013), pp. 291-308.

income. Accelerated cost recovery, special deductions, and nonrefundable income tax credits provide limited benefits to businesses with little profit or no tax liability.[67] Businesses with limited current income or tax liability may, however, benefit from expanded NOL carrybacks.

One policy question is whether certain disaster-related tax benefits are necessary or effective in achieving intended policy goals, given that much of the tax relief accrues to taxpayers who would have rebuilt without incentives. This critique raises the question of whether disaster-related tax benefits are intended to encourage certain behavior (rebuilding, for example), or primarily provide financial relief for businesses affected by the disaster.

## Providing Disaster Tax Relief to Individuals

Tax provisions might be used to provide financial relief to individuals who have lost property, income, or both following a disaster. To provide relief for taxpayers experiencing a loss of property, Congress has enacted legislation following certain past disasters to expand the deduction for casualty losses (beyond what is available under the permanent provision). Relief has been provided to taxpayers experiencing a loss of income by providing enhanced access to retirement plan funds or by using look-back rules for computing refundable tax credits. Several past disaster relief packages have also included provisions to support providing housing to affected individuals.

There are limits to using tax policy to provide disaster relief to low- and moderate-income taxpayers. Many low- and moderate-income individuals have zero individual income tax liability. For these individuals, additional exclusions from income or deductions will provide little or no relief, as there is no tax burden to eliminate. Further, low- and moderate-income individuals may have limited wealth. Tax provisions designed to enhance access to certain forms of savings (e.g., retirement accounts) also provide limited relief to the least well-off. Allowing refundable tax credits—the EITC and CTC—to be computed using the previous year's income is one form of individual disaster tax relief that is targeted at low- and moderate-income taxpayers.

Tax policy is generally better suited for providing relief to taxpayers higher in the income distribution. These taxpayers tend to have a positive tax liability that can be offset with various forms of tax reductions. Additionally, taxpayers in higher tax brackets receive a larger tax benefit from additional deductions (a deduction of $100 is worth $35 to someone in the 35% tax bracket, but worth $12 to someone in the 12% tax bracket, for example). Empirical evidence suggests access to savings via retirement account withdrawals helped some taxpayers replace lost income or destroyed assets following Hurricane Katrina.[68] Thus, policies that reduce penalties associated with early withdrawals from retirement accounts or otherwise enhance access to this form of savings is one option for providing relief to taxpayers that have such resources to draw on.

There are also timing concerns in using the tax code to provide individuals relief following a disaster. As was noted for businesses, the tax code does not typically lend itself to providing immediate relief.

Another question regarding individual disaster tax relief is whether relief should be contingent on an individual having suffered losses due to a federally declared disaster, as opposed to some other disaster event. Through 2025, the casualty loss deduction is limited to federally declared disasters. However, after 2025, individuals may be able to claim a deduction for casualty losses

[67] Payroll tax credits may provide assistance to nonprofits and businesses without an income tax liability.

[68] Tatyana Deryugina, Laura Kawano, and Steven Levitt, "The Economic Impact of Hurricane Katrina on Its Victims: Evidence from Individual Tax Returns," *American Economic Journal: Applied Economics*, vol. 10, no. 2 (April 2018), pp. 202-233.

arising from a fire, storm, shipwreck, or other casualty, regardless of whether the casualty was caused by an event with a federal disaster declaration. Is there something about having one's personal property destroyed in a federally declared disaster that merits special relief, different from what is provided when property is destroyed from a disaster without a federal disaster declaration? As it stands, disaster tax policy is inconsistently applied across different types of disaster events (e.g., federally declared versus non-federally declared disasters; disaster areas receiving or not receiving individual or individual and public assistance).[69]

Disaster tax policy can also be designed to prevent taxpayers from facing a tax burden triggered by receipt of disaster relief. The permanent exclusions from income for disaster relief payments and insurance living expense payments clarify that these items are excluded from income for income tax purposes, and thus do not result in additional tax liability. In response to past disasters, temporary provisions have provided that certain forgiven debt would not be treated as income for income tax purposes.

## Charitable Giving to Support Disaster Relief

The charitable sector supports a wide range of activities associated with disaster relief and longer-term recovery. At times, Congress has acted following a disaster to provide additional tax incentives to support charitable disaster-related activities.

To encourage charitable giving in the wake of a disaster, Congress has, in the past, relaxed certain income limitations associated with the deduction for charitable giving. The amount individuals can deduct for charitable use of a vehicle (the charitable mileage rate) was also temporarily increased in response to certain past disasters. Qualifying mileage reimbursements have also been allowed to be excluded from income. Other tax incentives enacted in response to disasters have encouraged particular types of charitable giving. Provisions designed to encourage charitable contributions of food inventory and books were enacted following Hurricane Katrina. The enhanced deduction for contributions of food inventory was later made permanent, while the enhanced deduction for book inventory expired in 2011. In some instances, Congress has relaxed charitable giving deadlines to allow contributions for disaster relief made early in the year to be deducted on the previous year's tax return.[70]

A key question regarding enhanced deductions for charitable giving is how much additional giving results from the policy change. Is it the tax benefits that drive giving, or individuals' desire to aid those affected by the storm? Another question to consider is whether individuals shift their giving to disaster-related causes at the expense of other charitable activities (i.e., does disaster-related giving "crowd out" other forms of charitable giving?).[71] When evaluating enhanced charitable giving incentives following a disaster, another question is how much giving is for disaster-related charitable activities, as opposed to other activities or uses. Charitable giving

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69 Christine Manolakas, "The Tax Law and Policy of Natural Disasters," *Baylor Law Review,* vol. 71, no. 1 (2019), pp. 1-62.

70 This change was made following the 2013 Typhoon Haiyan in the Philippines, the 2010 earthquake in Haiti, and the 2004 Indian Ocean tsunami. For additional background on the policy following the 2010 earthquake in Haiti, see CRS Report R41036, *Charitable Contributions for Haiti's Earthquake Victims*, by Molly F. Sherlock.

71 One study of disaster-related giving following the 2004 Indian Ocean tsunami found that tsunami-related donations were not associated with a reduction in other charitable donations. See Sarah Brown, Mark N. Harris, and Karl Taylor, "Modelling Charitable Donations to an Unexpected Natural Disaster: Evidence from the U.S. Panel Study of Income Dynamics," *Journal of Economic Behavior & Organization*, vol. 84, no. 1 (September 2012), pp. 97-110.

incentives are often applied broadly, and it can be difficult to target them to a particular event or geographic region.

Another consideration is who benefits from an enhanced charitable giving deduction. On the individual side, the value of the tax benefit of the charitable deduction is highly concentrated among high-income taxpayers.[72]

# Concluding Remarks

Since 2001, a variety of temporary tax policies have been used to respond to various disaster events. Following some disaster events, tax relief packages providing numerous types of tax relief were passed by Congress and became law. Following other disaster events, no temporary disaster relief was enacted. Certain permanent tax provisions provide tax relief to all affected by qualifying disasters, even in cases where specific or targeted disaster tax relief is not enacted.

Disasters are inevitable. Each disaster is also unique, with damages affecting individuals, businesses, industries, and other economic sectors differently. This poses a challenge for policymakers in determining what type of disaster relief can provide efficient and effective one-size-fits-all relief. Some disasters may require a targeted and tailored policy response. Some disasters are especially catastrophic events that fundamentally change the economy of the affected region. If disasters cause economic hardships across the region, disaster relief might include broader economic development measures, ones that go beyond compensating individuals or businesses for lost income or property.

Disaster tax relief as presently applied combines a base set of permanent disaster tax provisions, with additional provisions or relief provided for certain disaster events, targeted disaster zones, or time periods. Conceptually, this provides policymakers with flexibility regarding relief provided after certain disaster events. A question to consider is whether the current balance of permanent and temporary disaster tax relief provides the desired policy response efficiently and effectively. If temporary tax relief cannot be relied upon to deliver relief that is efficient and effective, one option could be to expand the set of permanent disaster-triggered tax relief provisions. Tax relief that is provided broadly, however, may not be particularly efficient, as it is not designed to provide the specific type of relief needed in the wake of a certain disaster event.

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[72] See CRS In Focus IF11022, *The Charitable Deduction for Individuals*, by Margot L. Crandall-Hollick and Molly F. Sherlock; and CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock.

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