Natural Disaster Tax Relief

The expiration of key provisions of the 2017 tax law at the end of 2025 sets the stage for one of the most consequential tax debates in a generation. The networks of the National Council of Nonprofits are committed to identifying and promoting fundamental tax policy proposals that will enhance the abilities of organizations to advance their missions in communities while working to ensure that adverse policies, including benign proposals with identifiable, adverse consequences, are not adopted.

Days after Hurricane Debby ravaged the south and in recognition of the one-year anniversary of wildfires that devastated Maui, it is undeniable that natural disasters are a fact of life in the 21st Century, affecting large segments of the United States population every year. Yet, it frequently takes an act of Congress or decree of the President to determine whether and to what level of support government and private resources can be dedicated to relief and recovery efforts in communities ravaged by the forces of nature. That should change with enactment of a package of targeted and temporary tax provisions that would only be triggered by a natural disaster declaration by the President of the United States.

The networks of the National Council of Nonprofits call on Congress to better utilize the federal tax code to relieve suffering and promote recovery efforts after natural disasters strike. The following four-point proposal provides recommendations based on real-world experiences of charitable organizations in dealing with disaster relief and recovery activities across the country. Combined, the four common-sense recommendations will eliminate uncertainty and remove barriers to nonprofit success in helping our fellow residents rebuild their lives and assisting our communities to come together to develop local solutions.

Before addressing the four recommendations, we highlight that while natural disasters are typically regional in scope, they occur throughout the United States in many different forms. The Atlantic and Gulf Coast states have extensive experiences dealing with the aftermath of hurricanes. The Midwest has tornadoes and floods. Western states deal with the ravages of wildfires, mudslides, earthquakes, and even tsunamis and volcanic eruptions.

The positive news for individuals and communities whose lives have been disrupted by natural disasters is that wherever disasters strike, charitable nonprofits respond. They help people through and beyond the trauma and provide a platform for those wanting to help. Federal and state money may be slow in arriving, but nonprofits wade in immediately (and often literally) to provide relief. More lasting assistance may be coming, but the charitable organizations in the community already know the recovery needs of their neighbors, take action right away, and continue doing so for the long term. Charitable nonprofits often serve as connectors and conveners of other nonprofits in the immediate hours of a disaster, as well as down the line as the full impact of loss is understood.

Tax Policy Proposal

Congress should enact a package of disaster tax relief and recovery provisions to enable tax policy to truly support victims of disasters and the vital work of charitable organizations in times of great need.

Upon the declaration of a natural disaster by the President, the following proposals should automatically go into effect without the need for additional legislation, executive, order, or other governmental action:

1. **IRS Filing Deadlines**
   Any disaster relief and recovery tax package should include language granting automatic extensions for tax filing deadlines for nonprofit organizations, other businesses, and individuals without requiring an express statement from the IRS or Congress. Nonprofits engaged in immediate disaster-relief work shouldn't have to divert attention and personnel from the crisis at hand to scour reports

to determine if a deadline has been extended.

2. **Disaster Relief and Recovery**
   Any disaster relief tax package should also ensure that incentives apply not just to immediate disaster "relief" efforts, but also to disaster "recovery" activities. This matters because the housing and feeding of victims of disaster may extend for many months or even years after the event. Likewise, many nonprofits find their own facilities destroyed, "under water," or otherwise unusable as a result of the disaster and must commence their own recovery efforts while simultaneously providing immediate relief in their communities.

3. **Employer Tax Credits**
   Dating back to the congressional response to Hurricane Katrina and consistently thereafter, Congress has crafted disaster tax relief packages that include a provision granting ***income*** tax credits to employers that maintain employee income during disaster-related shutdowns. Prior to the CARES Act in 2020, charitable nonprofits, which represent 10% of America's private workforce, generally were unable to utilize these tax credits enacted in disaster bills because they are exempt from the income taxes to which the credits apply.

   The CARES Act, at Section 2301, established the Employee Retention Tax Credit (ERTC) which authorized refundable payroll tax credits to all employers. It was drafted in recognition that employers needed immediate help in maintaining payrolls during shutdowns ordered by governments due to the pandemic, and provided direct relief, particularly for charitable organizations and businesses without profits that would have been left out of the traditional income tax credit approach.

   The ERTC was the right solution but was clearly abused by bad actors. As made clear during a congressional hearing in summer 2023, the ERTC as written in the CARES Act and subsequent laws was recognized as extremely effective in securing relief for truly eligible employers keeping their millions of employees on the payroll during the depths of the pandemic. Lawmakers and witnesses at that hearing also agreed that the way the law was structured opened the door to widespread fraud by unscrupulous agents and profit-seekers who flooded the IRS with bogus claims, resulting in significant delays in relief checks and profound doubt about the viability of the tax credit program going forward. Reform of the ERTC was the consensus of the participants.

A solution to the challenge going forward is to include a provision in a disaster tax relief and recovery package that would require organizations promoting the credit to sign, under penalty of perjury, as preparers or some other type of attestation that accompanies the Form 941-X claiming the relief. Congress should also consider outlawing in any future relief and recovery programs finders fees or contingency fees, a practice that appears to have spawned misleading radio and television advertising, unscrupulous telemarketing, and other aggressive tactics. The key point here is that the Employee Retention Tax Credit, with modifications, can and should be utilized as a tool for keeping employees off unemployment and helping to move communities from disaster to recovery.

4. **Temporary Universal or Non-Itemizer Charitable Contribution Deduction**
   Finally, with each natural disaster comes the need for greater resources. Disaster tax packages normally incentivize greater giving in the aftermath of disasters by removing the cap on the charitable contribution deduction of 60 percent of Adjusted Gross Income. This approach, however, is limited to the 1 in 13 taxpayers who currently itemize their deductions. More help from more people is needed in extraordinary circumstances.

   In addition to expanding the non-itemizer deduction via legislation such as the Charitable Act (S. 566/H.R. 3435), the networks of the National Council of Nonprofit call for the creation of a supplemental **temporary, targeted non-itemizer deduction that would enable all taxpayers to receive a charitable giving tax incentive when they donate to disaster relief and recovery efforts of charitable organizations in the affected areas**.

   The increase in the standard deduction in the 2017 tax law means that now only 7.5% of taxpayers who itemize receive a tax incentive when they contribute to the work of charitable nonprofits. Many more people experience a desire to give to these efforts and make small donations via their phone or online. The lack of a tax incentive for those who do not itemize means that most of these donations will remain very small or will not be made at all. We believe that an above-the-line charitable deduction that is **temporary** (e.g., for six months after the disaster declaration) and **targeted** (i.e., available for donations to the charitable organizations engaged in relief and recovery activities in the designated disaster area) would enable all taxpayers to support their fellow Americans throughout the country in an immediate and responsible way.

We note, and fully endorse, advocacy and interest dedicated to the creation of a permanent non-itemizer deduction. To the extent those efforts are successful in establishing a deduction for those taxpayers claiming the standard deduction, it is possible that some form of ceiling or cap on the deductibility of donations may be included. For example, the bipartisan Charitable Act (S. 566/H.R. 3435) sets a ceiling at a third of the standard deduction. Natural disasters require extraordinary assistance; for that reason, we recommend that whatever ceiling, if any, Congress adopts, the automatic disaster relief and recovery tax package should provide an added, targeted incentive. As with the elimination of the AGI cap that has typically been included in past disaster tax packages, **we recommend lifting any ceiling for non-itemizer deductions for amounts devoted directly to disaster relief and recovery efforts**.