

**DESCRIPTION OF H.R. 5863,
THE “FEDERAL DISASTER TAX RELIEF ACT OF 2023”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on October 4, 2023

Prepared by the Staff
of the
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for October 4, 2023, a markup of H.R. 5863, the “Federal Disaster Tax Relief Act of 2023.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5863, the “Federal Disaster Tax Relief Act of 2023”* (JCX-45-23), October 2, 2023. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Disaster Tax Proposals

Present Law

Exclusion from income for qualified disaster relief payments

Present law provides an exclusion from income for qualified disaster relief payments.² Qualified disaster relief payments include amounts paid to an individual: (1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; (2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster; (3) by a person engaged in the furnishing or sale of transportation (*i.e.*, common carriers) by reason of death or personal injuries as a result of a qualified disaster; or (4) by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare.³ These amounts do not include payments for any expenses compensated for by insurance or otherwise.⁴

Qualified disaster relief payments also are excludable for purposes of self-employment taxes and employment taxes.⁵

A qualified disaster is a disaster which results from a terroristic or military action (as defined in section 692(c)(2)); a Federally declared disaster (as defined in section 165(i)(5)(A)); a disaster which results from an accident involving a common carrier or from any other event which would be determined by the Secretary of the Treasury (the “Secretary”) to be of a catastrophic nature; or, for purposes of payments made by a Federal, State or local government, or an agency or instrumentality of a government, a disaster designated by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance.⁶

The exclusion from income does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack, or to a representative of such individual.⁷ No deduction or credit is allowed for, or by reason of, any expenditure to the extent of the amount excluded from income with respect to such expenditure.⁸

² Sec. 139.

³ Sec. 139(b).

⁴ *Ibid.*

⁵ Sec. 139(d).

⁶ Sec. 139(c).

⁷ Sec. 139(e).

⁸ Sec. 139(h).

Personal casualty losses

In general

An individual taxpayer may claim an itemized deduction for a personal casualty loss.⁹ If the loss is attributable to a disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (the “Stafford Act”)¹⁰ then the loss is deductible only to the extent of the sum of the individual’s personal casualty gains plus the amount by which aggregate net disaster-related losses exceed 10 percent of the individual taxpayer’s adjusted gross income.¹¹ In any taxable year beginning after December 31, 2017, and before January 1, 2026, all other personal casualty losses are deductible only to the extent that the losses do not exceed the individual’s personal casualty gains.

For individual taxpayers, personal casualty losses are losses of property not connected with a trade or business or a transaction entered into for profit that arise from fire, storm, shipwreck, or other casualty, or from theft.¹² Personal casualty gains are recognized gains from any involuntary conversion of property not connected with a trade or business or a transaction entered into for profit that arise from fire, storm, shipwreck, or other casualty, or from theft.¹³ Personal casualty losses are deductible to the extent they exceed \$100 per casualty.¹⁴

Additional relief for certain disasters

Congress has at times enacted more generous casualty loss provisions in response to specific natural disasters.¹⁵

Most recently, Division EE of Public Law 116-260, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the “Act”), provides special rules for “qualified disaster-related personal casualty losses,” personal casualty losses arising in a qualified disaster area on or after the first day of the incident period of the applicable qualified disaster which are attributable to that qualified disaster.¹⁶ These losses are deductible without regard to whether aggregate net losses

⁹ Sec. 165(h).

¹⁰ Sec. 165(h)(5).

¹¹ Sec. 165(h)(2). Personal casualty gains are reduced for this purpose by any gain used to offset any personal casualty loss which is not attributable to a disaster.

¹² Sec. 165(c)(3)(B).

¹³ Sec. 165(c)(3)(A).

¹⁴ Sec. 165(h)(1).

¹⁵ See, e.g., sec. 204(b) of Pub. L. No. 116-94 (Hurricanes Florence and Michael); sec. 20104(b) of Pub. L. No. 115-123 (certain California wildfires); sec. 504(b) of Pub. L. No. 115-63 (Hurricanes Harvey, Irma, and Maria); and former sec. 1400S(b) (Hurricanes Katrina, Rita, and Wilma).

¹⁶ Sec. 304(b) of Div. EE. of Pub. L. No. 116-260.

exceed 10 percent of a taxpayer's adjusted gross income. These losses are deductible to the extent they exceed \$500 per casualty. These losses are allowed as a deduction in addition to the standard deduction and are allowed against alternative minimum taxable income.

A "qualified disaster area" refers to an area with respect to which a major disaster has been declared by the President during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment of the Act,¹⁷ under section 401 of the Stafford Act, if the incident period of the disaster with respect to which the declaration is made begins on or after December 28, 2019 and on or before the date of enactment of the Act. A qualified disaster area does not include any area with respect to which a major disaster had been declared only by reason of COVID-19.

A "qualified disaster" is, with respect to the applicable qualified disaster area, the disaster by reason of which a major disaster was declared with respect to that area.

The "incident period" is, with respect to the applicable qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which the disaster occurred, except that the period is not treated as ending after the date which is 30 days after the date of enactment of the Act.

Description of Proposals

Certain disaster-related personal casualty losses

For purposes of personal casualty losses arising in a qualified disaster area, the proposal broadens the Act's definition of qualified disaster area to include any area with respect to which a major disaster was declared by the President during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment of the proposal, under section 401 of Stafford Act if the incident period of the disaster begins on or after December 28, 2019, and on or before the date of enactment of the proposal. The incident period will be treated as ending no later than the date which is 30 days after the date of enactment of the proposal.

Thus, under the proposal, certain disaster-related personal casualty losses attributable to major disasters beginning any time after the date of enactment of the Act and through the date of enactment of the proposal are provided the same treatment as qualified disaster-related personal casualty losses under the Act.

Exclusion of certain wildfire relief payments

The proposal provides an exclusion from gross income for amounts received as qualified wildfire relief payments. Qualified wildfire relief payments are amounts received by or on behalf of an individual as compensation for expenses or losses incurred as a result of a qualified wildfire disaster. Qualified wildfire relief payments do not include payments for any expenses or losses compensated for by insurance or otherwise.

¹⁷ The Act became law on December 27, 2020.

A qualified wildfire disaster is any Federally declared disaster (as defined in section 165(i)(5)(A)) declared, after December 31, 2014, as a result of any forest or range fire.

No deduction or credit is allowed with respect to any expenditure to the extent of the amount excluded under the proposal with respect to the expenditure. The basis of any property is not increased by amounts excluded from gross income under the proposal.

East Palestine disaster relief payments

The proposal treats East Palestine train derailment payments as qualified disaster relief payments for purposes of section 139(b). As a consequence, the payments are excluded from gross income and are subject to other present-law provisions, such as the employment tax exclusions from wages and net earnings from self-employment (section 139(d)) and the prohibition on double benefits (section 139(h)), applicable to qualified disaster relief payments.

The proposal defines East Palestine train derailment payment as any amount received by or on behalf of an individual as compensation for loss, damages, expenses, loss in real property value, closing costs with respect to real property (including realtor commissions), or inconvenience (including access to real property) resulting from the East Palestine train derailment if the amount was provided by a Federal, State, or local government agency, Norfolk Southern Railway, or a subsidiary, insurer, or agent of Norfolk Southern Railway or any related person. For this purpose, East Palestine train derailment means the derailment of a train in East Palestine, Ohio on February 3, 2023.

Effective Dates

The proposal relating to certain disaster-related personal casualty losses is effective on date of enactment.

The proposal relating to the exclusion of certain wildfire relief payments applies to qualified wildfire relief payments received during taxable years beginning after December 31, 2019, and before January 1, 2026.

The proposal relating to the East Palestine train derailment applies to amounts received on or after February 3, 2023.