Compliance Alert: IRC §139 – Disaster Relief Payments

The federal government added §139 to the Internal Revenue Service code after the September 11, 2001 attacks. This provision allows employer groups to give their employees cash on a tax-free basis to help them pay for basic necessities and other expenses whenever the president of the United States declares a national disaster.

President Trump has declared the COVID-19 pandemic to be a disaster which allows employers to provide their employees with disaster relief payments pursuant to IRC §139.

Qualified Disaster Payments

Employee Considerations

- Reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred because of a qualified disaster
- Cannot include non-essential, luxury and/or decorative items or services
- Are not subject to any federal taxes, i.e., Social Security, Medicare, federal income taxes
- Employers making these payments need to confirm that they are exempt from state and local income taxes. Most states follow the federal guidelines for disaster relief payments.
- No requirement in the regulations to substantiate expenses

Employer Considerations

- Not subject to §105(h) nondiscrimination regulations
- No floor or ceiling on the amount or frequency of payments
- Not subject to federal income tax withholding, FICA, FUTA and are not reported on the receiving employees’ Forms W-2
- Not wage replacements of any type
- No requirement to substantiate employees’ expenses

Next Steps

Although not required under §139, employers wanting to take advantage of this valuable option for certain employees should consider adopting a written plan defining allowable expenses and the system of
reimbursements. Additionally, consideration should be given to forming an ad hoc committee of executives to determine which employees will receive help.

Please contact your Oswald client team representative for further information.

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