TAX INFORMATION MEMORANDUM

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Subj: Tax Relief for Hurricane Irene, Military Retiree Pay Dates Change, Tax Implications of Having a Respite Care Provider, Employer-Provided Cell Phones Excluded from Employee Income.

1. Tax Relief for those Impacted by Hurricane/Tropical Storm Irene.

The IRS is in the process of providing tax relief to individual and business taxpayers impacted by Hurricane/Tropical Storm Irene.

The IRS announced that individuals in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and Puerto Rico are eligible for limited tax relief, including postponement of filing and payment deadlines. After the Federal Emergency Management Agency (FEMA) conducts additional damage assessments, other states may be added to the list.

The tax relief postpones certain tax filing and payment deadlines to October 31, 2011. It includes corporations and businesses that previously obtained an extension until September 15, 2011, to file their 2010 returns and individuals and businesses that received a similar extension until October 17. It also includes the estimated tax payment for the third quarter of 2011, which would normally be due September 15.

Full details, including the start date for the relief in various locations and information on how to claim a disaster loss by amending a prior-year tax return, can be found in tax relief announcements for individual states on the IRS website: http://www.irs.gov/newsroom/article/0,,id=108362,00.html. The website will be updated regularly with the latest guidance.

Additionally, the IRS has determined the following deductions in New Jersey and Vermont:

New Jersey: President Obama has determined that taxpayers in the following counties who sustained uninsured losses attributable to Hurricane Irene beginning may deduct the losses on their 2010 federal income tax returns: Atlantic, Bergen, Cape May, Cumberland, Essex, Morris, Passaic, Salem and Somerset.

Vermont: President Obama has indicated that taxpayers in the following counties who sustained uninsured losses attributable to Tropical Storm Irene may deduct the losses on their 2010 returns: Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Lamoille, Orange, Orleans, Rutland, Washington, Windham, and Windsor.

This tax relief applies only to federal income tax; check with individual states for information on state income tax relief.

2. Military Retiree Pay Dates to Change.

Paydays for military retirees and those who receive portions of retired pay are changing for September and December, as the DFAS changes its pay schedule to comply with the 2011 National Defense Authorization Act.

The 2011 NDAA requires military retiree pay to be processed on the first day of the month. When that day falls on a weekend or national holiday, the pay date is moved to the previous business day. Thus, the payment original scheduled for October 3, 2011 was issued on September 30, 2011, and the payment scheduled for January 3, 2012, will be issued on December 30, 2011. This change affects regular retired pay, Concurrent Retirement and Disability Pay, and Combat Related Special Compensation. The new rule also applies to retiree allotments, garnishments and court-ordered former spouse and child support payments, but does not affect annuity payments.

Because the 13th payday falls within 2011, some retirees, including recipients of spousal support, may see an increase in their 2011 tax liability. To avoid paying the increased tax out-of-pocket, affected individuals should increase the amount the IRS withholds from their income for the rest of the year. In 2012, the number of payments will return to 12, and anyone who increased their tax withholding in 2011 should return to their “normal” withholding amounts at the end of December.

If retirees need to make changes to their federal or state tax withholding, the quickest and most secure way to do so is through myPay. Customers who cannot access myPay can change federal withholding amounts by completing a new IRS Form W-4 or W-4P, or change state withholding amounts using a DD 2866. These forms can be found on the DFAS website www.dfas.mil/retiredmilitary/forms.html. The forms either refer to “exemptions” or “allowances.” Although the terminology differs from form to form, decreasing the number means the IRS will withhold more money from each retirement payment.

3. The tax implications of having a respite care provider. Many Active Duty Servicemembers (sponsors) have Exceptional Family Members (EFMs) who need in-home respite care. If the sponsor hires a respite care worker, and the DoD pays the sponsor or reimburses the sponsor for the expenses associated with that worker, then the sponsor is generally considered to be an employer of that respite care worker. As an employer, the sponsor must comply with federal and state employment laws. Those laws include issuing a W-2 to the care provider and paying the employer’s contribution of the Social Security (6.2%) and Medicare (1.45%) taxes associated with the respite care worker’s pay. As an employer, the sponsor is also responsible for withholding the employee’s portion of those taxes (4.2% for Social Security and 1.45% for Medicare) and paying those amounts to the IRS

A person who pays another’s salary can sometimes avoid the tax responsibilities of being an “employer” by hiring an “independent contractor” instead of an “employee.” The IRS, however, has strict rules that determine when a person is considered to be an independent contractor. If the respite care worker cannot create his or her own schedule, must report to work at a particular time, and performs his or services in the sponsor’s home, the IRS will usually consider the respite care worker to be an employee (independent contractors can generally make their own schedules and do not work in the employer’s home).

If the sponsor pays $1700 or more per tax year to a respite care worker or other household employee (except a spouse, the sponsor’s own child under age 21, and possibly the sponsor’s parent) then the sponsor must:

a. obtain an Employer Identification Number Form SS-4;
b. obtain an Employment Eligibility Verification Form I-9 from the caregiver;
c. obtain the Employee's Withholding Allowance Certificate Form W-4;
d. provide the caregiver and IRS with a Wage and Tax Statement Form W-2;
e. complete Schedule H Form 1040;
f. withhold and pay (to the IRS) the employee's share of employment taxes;
g. pay the employer's share of employment taxes; and
h. possibly pay federal and state unemployment taxes (generally on the first $7,000 in wages)

For additional information on this topic, please see IRS Pub. 926, available at http://www.irs.gov/pub/irs-pdf/p926.pdf.

4. Employer-provided cell phones are excluded from employee's income.

The IRS recently issued clarifying guidance on the tax treatment of employer-provided cell phones. Employer-provided cell phones have traditionally been classified as "listed property," meaning that taxpayers must keep additional records on those phones. The Small Business Jobs Act of 2010, enacted last Fall, removed cell phones from the "listed property" category.

The Notice, issued on September 14, 2011, states that when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, both the business use and personal use of that cell phone are generally nontaxable to the employee. Thus, the IRS no longer requires an employee to keep complex records to prove that the employer-provided cell phone should be considered a non-taxable benefit. The guidance does not apply to cell phones that are provided to employees for primarily personal use (or reimbursements for personal cell phones) as such arrangements are generally taxable.

For more information, please see the IRS website at: http://www.irs.gov/newsroom/article/0,,id=245741,00.html.

5. Points of contact.

For questions or comments about this TIM, or if you have information you would like us to make available to your LA colleagues, please contact Code 16. Our contact information is in the sidebar.