
Assisting Low-Income Disaster Victims with Tax Legal Issues



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This *Assisting Low Income Disaster Victims with Tax Issues* guide is prepared by Legal Aid of Nebraska. It is not an IRS document.

Caution: The following article is intended for educational purposes only. It does not constitute legal advice. Nor is it a substitute for legal advice. Federal laws, regulations and rules may change with some frequency. It is important to consult with an attorney who is knowledgeable in this area of the law.

Resources Quick List

www.irs.gov/forms-pubs

Form 8821—Authorization to Disclose Confidential Tax Information

Form 2848—Power of Attorney and Declaration of Representative

Form 56—Notice Concerning Fiduciary Relationship

Form 8822—Change of Address

Form 4506-T—Request for Transcript of Tax Return

Form 1040X—Amended U.S. Individual Income Tax Return

Form 911—Request for Taxpayer Advocate Service Assistance

Form 12277—Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien

Form 14134—Application for Certificate of Subordination of Federal Tax Lien

Form 433-F—Collection Information Statement for Wage Earners and Self-Employed Individuals

Publication 2194—Disaster Resource Guide for Individuals and Businesses

Publication 547—Casualties, Disasters, and Thefts

Publication 584—Casualty, Disaster, and Theft Loss Workbook

Publication 584B—Business Casualty, Disaster, and Theft Loss Workbook

Publication 1600—Disaster Losses—Help from the IRS

Publication 3833—Disaster Relief: Providing Assistance through Charitable Organizations

[See section *Forms and Resources Available* for more information, pp.6-8.]

Introduction

Disasters occur in Nebraska from time to time and can cause a multitude of legal problems when they occur. Regardless of the form disasters take, the legal problems they cause for survivors can be difficult to navigate and overcome. Tax issues are among the legal problems that can impact disaster victims. Fortunately, federal tax laws include some relief provisions for victims experiencing tax issues in the wake of a disaster.

The Internal Revenue Code¹ (“the Code”) provides some relief for disaster casualties,² and provides additional relief in the event of a “qualified disaster”³ or Stafford Act disaster.⁴ For federal tax purposes, Stafford Act disasters are considered qualified disasters. The Internal Revenue Service (“the Service”) will issue notices if it designates a disaster as a qualified disaster.

A Stafford Act disaster is defined in the Code as a “major disaster.” A “major disaster” includes any natural catastrophe (such as a hurricane or tornado) as well as fires, floods, or explosions in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance and for the federal government to supplement the available resources of states, local governments, and disaster relief organizations.⁵

This guide explores basic federal tax issues practitioners may encounter when assisting disaster victims. The primary goal of this guide is to help practitioners with little tax legal experience to identify and understand tax legal issues that may impact low-income disaster victims.⁶

Pre-Disaster Preparation

Practitioners with little or no experience practicing before the Service are recommended to begin their preparation by reading (*what is commonly known as*) Circular 230.⁷

According to the governing regulations,

'Practice before the IRS comprehends all matters connected with a presentation to the Service of a client's rights, privileges, or liabilities under laws or regulations administered by the Service.⁸ Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.'⁹

[Note: Authorization to practice before the Service is automatic for any attorney or certified public accountant licensed and in good standing under the laws of a state.]

Forms and Resources Available

Practitioners assisting disaster victims with tax legal issues will most likely need to communicate with the Service at some point during the course of the representation. The Service maintains its own unique forms that practitioners should become familiar with, and the appropriate circumstances in which to use them.¹⁰ The following is a list of some forms practitioners should familiarize themselves with in preparation for assisting disaster victims with their federal tax issues.

[Note: Current and prior versions are available at: <https://www.irs.gov/forms-pubs>]

- ▶ Form 8821: *Authorization to Disclose Confidential Tax Information*;
- ▶ Form 2848: *Power of Attorney and Declaration of Representative*;
- ▶ Form 56: *Notice Concerning Fiduciary Relationship*;
- ▶ Form 8822: *Change of Address*;
- ▶ Form 4506-T: *Request for Transcript of Tax Return*;
- ▶ Form 1040X: *Amended U.S. Individual Income Tax Return*;
- ▶ Form 911: *Request for Taxpayer Advocate Service Assistance*;
- ▶ Form 12277: *Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien*;
- ▶ Form 14134: *Application for Certificate of Subordination of Federal Tax Lien*;
- ▶ Form 433-F: *Collection Information Statement for Wage Earners and Self-Employed Individuals*.

Representation of a taxpayer requires a valid Form 2848, *Power of Attorney and Declaration of Representative*. For situations where Form 2848 representation may be unnecessary or the need for representation is unclear, practitioners may consider utilizing Form 8821, *Tax Information Authorization*, which grants limited authority that allows an authorized party to inspect and/or receive an individual's confidential tax information. Form 8821 allows an authorized party to investigate tax matters and/or obtain confidential taxpayer information from the Service but doing so without taking on a representative capacity before the Service.

[Note: Separate forms are required for each spouse in the event of joint representation of married taxpayers. If a fiduciary relationship exists, use Form 56, *Notice of Fiduciary Relationship*, in conjunction with Forms 8821 and 2848.]

In addition to forms, the Service also maintains publications concerning a wide-variety of tax matters, including disaster-related content. The following is a list of some of the Service's disaster-related publications.¹¹

[Note: Current and prior versions are available at: <https://www.irs.gov/forms-pubs>]

- ▶ Publication 2194: *Disaster Resource Guide for Individuals and Businesses*;
- ▶ Publication 547: *Casualties, Disasters, and Thefts*;
- ▶ Publication 584: *Casualty, Disaster, and Theft Loss Workbook*;
- ▶ Publication 584B: *Business Casualty, Disaster, and Theft Loss Workbook*;
- ▶ Publication 1600: *Disaster Losses-Help from the IRS*;
- ▶ Publication 3833: *Disaster Relief: Providing Assistance through Charitable Organizations*.

Finally, the Internal Revenue Manual (“IRM”) may provide practitioners with useful insight into the operations of the Service.¹² The IRM is essentially the Service’s employee handbook. It provides guidance to Service employees and is the only official compilation of Service policies, delegated authorities, procedures, instructions and guidelines relating to the organization, functions, administration and operations.¹³

Common Tax Issues that Result from Disaster

Disaster victims often will have an urgent need to access money. In order to access the money they need, disaster victims may need assistance with acquiring information from the Service that may have been lost or destroyed. Information that disaster victims may need include past tax returns or tax return transcripts for use on loan applications. Prior year tax information is frequently needed to receive insurance payments and other disaster assistance. Self-employed disaster victims may need the same type of information to apply for and receive disaster unemployment insurance.¹⁴

Tax return filing compliance can be a condition precedent to qualifying for disaster loans and grants from federal agencies, so in certain situations practitioner assistance in this area is critical. If disaster victims are non-compliant with their tax return filing requirements, they may need help acquiring tax transcripts from the Service and assistance reconstructing lost records to help get into filing compliance.

Reconstructing records for tax purposes can be complicated, and may be compounded by the psychological trauma that results from a disaster. Practitioners should advise taxpayers to maintain paperless records whenever possible in case of emergency where paper copies may not be accessible. Creating these electronic copies of financial records can drastically reduce the burden of recreating a record when the only copy becomes unavailable in the event of a disaster or loss. Many financial institutions offer bank statements and other account-related documents by e-mail. Eliminating reliance on paper versions of important documents can save time and frustration in the event of disaster.

Property loss is another common issue among disaster victims. For victims that have personal property losses or business use property losses, there is a mechanism to seek relief sooner than later. Generally, losses of personal or business use property are deducted on a federal income tax return for the year of the loss.¹⁵ However, disaster victims may be able to receive a refund as a result of their losses by filing a claim of loss retroactively.

Disaster victims wishing to file a retroactive claim for losses caused by a disaster should file a 1040X, Amended U.S. Individual Income Tax Return, and elect to deduct the disaster losses for the taxable year immediately preceding the taxable year in which the federally declared disaster occurred.¹⁶ Typically, filing an amended tax return for the purpose of a refund applies in situations where the disaster victim paid taxes in the tax year immediately preceding the taxable year that the federally declared disaster occurred. To differentiate their filings, disaster victims should write the name of the disaster in red ink across the top of their amended tax return to alert the Service. Designating the disaster is an important step because the Service expedites processing of amended tax returns for federally-declared disaster victims.

In the event of a disaster, victims may receive assistance from a variety of sources and will need to be advised of the potential tax consequences that may result from the payments they receive. In general, all income from any source is included in an individual's gross income, unless it is excluded under the law.¹⁷ Qualified disaster relief payments are generally excluded from an individual's gross income.¹⁸ However, such payments are not excluded from income if paid by a government for losses the disaster victim already had reimbursed or already deducted as losses in a prior tax year.¹⁹ The law defines what constitutes a qualifying disaster relief payment.²⁰ An example of a common disaster relief payment is Federal Emergency Management Agency ("FEMA") assistance. To be excluded from the victim's income, the disaster relief payment must have been made to a victim of a qualified disaster, which is defined broadly under the law.²¹ For disaster relief payments that do not fit under the qualified disaster exclusion, practitioners should be aware that these disaster victims may still qualify to exclude the payments from their income under the Service's general welfare exclusion rule. The general welfare exclusion rule excludes from the victim's income any disaster relief payments from any government unit for the promotion of general welfare.²²

Lower-income disaster victims receiving public benefits may be concerned about negative consequences of receiving disaster assistance because some federal benefit programs, like Medicaid and SSI, are means-tested for eligibility. Practitioners assisting public benefit recipients who are victims of a disaster should advise these clients that some assistance (e.g., FEMA assistance), is not counted toward their income or resources for means-tested federal benefit programs.²³ Unfortunately there is the potential for a negative collateral impact for some low-income disaster victims who may see a decrease in the amount of their Earned Income Tax Credit due to earning less taxable income.

In addition to the types of income that have been addressed up to this point, disaster victims may also receive other types of income that could trigger tax consequences. Gifts that disaster victims receive are generally not considered taxable income.²⁴ In contrast, Disaster Unemployment Insurance benefits are generally subject to income tax.²⁵ Practitioners should identify the types of income received by the disaster victim and conduct research to determine the taxability of each type of income that they have received.

Common Pre-Existing Tax Issues that Are Aggravated by Disasters

Occasionally disaster victims present with pre-existing tax problems that are aggravated by a disaster. For example, a disaster might highlight a victim's issue with tax return filing non-compliance, which could impede their ability to access money. Likewise, disaster victims whom the Service is actively pursuing with collection efforts may experience undue hardship if the collection activity were to continue. However, it should be noted that the Service has previously extended temporary relief by suspending collection activities in past disasters, even going so far as suspending installment agreement payments that are due.²⁶

In the event that a disaster victim owes pre-disaster tax liability and the Service has not suspended collection activities, consider making a request to the Service to have the disaster victim's delinquent accounts placed into "Currently Not Collectible" ("CNC") status for all years that have an outstanding balance. The Service makes CNC status determinations based on a financial analysis.²⁷ Generally, a request to have an account placed into CNC status is approved if the Service determines that moving forward with collection activities would cause undue hardship to the taxpayer by rendering them unable to meet necessary living expenses.²⁸ The approval of CNC status immediately stops wage levies.²⁹ Although CNC status is a useful means to obtain temporary relief, practitioners should advise disaster victims that it does not resolve the underlying tax liability and that interest and penalties continue to accrue on delinquent account balances.³⁰

[Note: Most low-income individuals are good candidates for qualifying for CNC status.]

The Service has the ability to offset tax refunds to satisfy unpaid federal taxes in the event that a taxpayer owes tax.³¹ In some situations, a disaster victim who owes a pre-existing tax debt and files a tax return requesting a refund may be able to avoid offset of their refund claiming a disaster loss by requesting that the Service not apply the offset and instead issue the refund to the taxpayer.³² The best way to make this type of refund request to the Taxpayer Advocate Service

("TAS")³³ is by filing Form 911, *Request for Taxpayer Advocate Service Assistance*, together with the original, unfiled tax return.³⁴ TAS generally issues manual refund requests when it determines that not issuing the manual refund will cause significant hardship to the taxpayer.³⁵

The federal tax lien presents yet another concern for disaster victims who owe pre-disaster tax debt.³⁶ A federal tax lien may encumber damages, awards, or impede other relief. Thus dealing with a federal tax lien can become a high priority when assisting disaster victims. To remove a tax lien, disaster victims can request the Service exercise its discretion and withdraw a filed tax lien.³⁷ The lien withdrawal request must be made in writing and must include the information set forth under the applicable regulation.³⁸

The Service may withdraw a tax lien if the disaster victim shows that any of the following circumstances exist:

1. The filing of the notice of federal tax lien was premature or otherwise not in accordance with administrative procedures of the Service;
2. The taxpayer has entered into an installment agreement to fully satisfy the tax liability;
3. The withdrawal of the notice of federal tax lien will facilitate the collection of the tax liability; or
4. The National Taxpayer Advocate³⁹ determines that withdrawal would be in the best interest of the taxpayer and the Commissioner determines that withdrawal would be in the best interest of the Service.

Depending on the situation, the appropriate course of action may be to request the Service subordinate its lien to another creditor's lien, rather than withdraw it.⁴⁰ To request lien subordination, use Form 14134, *Application for Certificate of Subordination of Federal Tax Lien*. The law sets forth two bases for requesting subordination:⁴¹

1. The taxpayer tenders payment to the Service of an amount equal to the lien or interest to which the lien is being subordinated.
2. The taxpayer shows that subordination will ultimately facilitate collection of the tax liability.

Additional Tips for Effective Assistance

Each disaster victim will have a unique situation, so the assistance they will need from a practitioner varies from case to case. Post-disaster, it is recommended that practitioners begin their preparations to aid disaster victims by first checking for tax guidance from the Service. Soon after a federally-declared disaster, the Service provides tax guidance through the issuance of a Disaster Relief Memorandum, notices and news releases. Practitioners should continue to regularly check for updated guidance from the Service, especially because it may provide for extensions of tax deadlines.⁴² In addition to checking for updated guidance, practitioners should explore some of the other helpful resources the Service offers, including a Disaster Assistance Hotline at 866-562-5227, and an online Disaster Relief Resource Center for Tax Professionals on its website.⁴³

Eventually the time for interviewing disaster victims will come. During the interview, try to gather sufficient information to determine the disaster victim's immediate and future needs, potential tax issues that could be problematic and how to resolve these issues. Practitioners should take this time to inquire about prior tax issues the disaster victim may have had and about their history of tax return filing compliance. The information derived from the interview should help yield a roadmap for assistance of the disaster victim. Once the interview is complete, the practitioner can file the appropriate authorization form with the Service. Nebraska residents should fax to 855-214-7522 or mail to:

Internal Revenue Service
1973 Rulon White Blvd. MS 6737
Ogden, UT 84201

To assist disaster victims with accessing free tax return transcripts either call the Service's disaster assistance hotline at 866-562-5227 or file Form 4506-T, *Request for Transcript of Tax Return*. Alternatively, disaster victims may attempt to obtain their tax return transcripts from the Service online.⁴⁴

To assist disaster victims with accessing copies of filed tax returns file Form 4506, *Request for Copy of Tax Return*, with the Service. Although there is a fee of \$50 per return, disaster victims may avoid paying the fee by writing the assigned “Disaster Designation” in red ink across the top of Form 4506.⁴⁵

A noteworthy but overlooked detail concerns the disaster victim’s mailing address. Because notices from the Service may contain time-sensitive information, disaster victims should update their address with both the United States Postal Service and the Service to avoid losing any of their rights. Address changes can be accomplished by calling the Service’s Disaster Assistance Hotline at 866-562-5227 or by filing Form 8822, *Change of Address*.

[Note: Effective communication with the Service is an essential component for helping with the disaster victim’s tax legal issues. When communicating with the Service: (1) keep copies of any documents that are sent to the Service; (2) write the individual’s social security number on each document that is submitted; (3) use certified mail when necessary to protect deadlines; (4) citations to the Internal Revenue Manual (“I.R.M.”) or Service Publications are often more effective than citations to case law.]

At the conclusion of their assistance, practitioners should withdraw the authorization forms that have been submitted to the Service.⁴⁶ To withdraw authorization, the practitioner should simply write “withdraw” across the top of the first page of the authorization form filed with the Service, together with a current signature and date below the annotation, and by then submitting a copy to the Service by fax to 855-214-7522 or mail to or mail to:

**Internal Revenue Service
1973 Rulon White Blvd. MS 6737
Ogden, UT 84201**

Endnotes: Assisting Low Income Disaster Victims with Tax Legal Issues

1	Internal Revenue Code of 1986, as amended.	24	I.R.C. § 102.
2	E.g., I.R.C. § 165.	25	I.R.C. § 85.
3	I.R.C. § 139(c) (2015).	26	I.R.M. 25.16.1.6.2(1).
4	Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, §102, 88 Stat. 143, 144, amended by Pub. L. No. 100-707, § 102, 102 Stat. 4689, 5122.	27	I.R.M. 5.15.1-2, 5.15.1.7-10.
5	42 U.S.C. § 5122 (2).	28	I.R.M. 5.16.1.1, 5.16.1.2.9.
6	Experienced tax practitioners should consult Effectively Representing Your Client Before the IRS (ABA 6th ed. 2015).	29	I.R.C. § 6343(e); I.R.M. 5.16.1.2.9.
7	Codified at 31 C.F.R. subtitle A, Part 10, published June 12, 2014. Treasury Department Circular No. 230 is formally titled “Regulations Governing Practice before the Internal Revenue Service”.	30	I.R.C. §§ 6601, 6651.
8	31 C.F.R. § 10.2(a)(4).	31	I.R.C. § 6402.
9	See <i>Id.</i>	32	I.R.M. 21.4.6.5.5.
10	Publications, Forms and Instructions for current and prior years are available at https://www.irs.gov/forms-pubs	33	The National Taxpayer Advocate administers the Taxpayer Advocate Service, which is an independent organization within the IRS that assists taxpayers in resolving disputes with the Service and protecting the rights of taxpayers. See I.R.C. § 7803(c).
11	See <i>supra</i> note 9.	34	I.R.M. 13.1.7.2.
12	Available at http://www.irs.gov/irm/index.html	35	I.R.C. § 7811.
13	I.R.M. 1.4.1.7.	36	I.R.C. § 6321.
14	See <i>supra</i> note 4.	37	I.R.C. § 6323(j).
15	I.R.C. § 165.	38	26 C.F.R. §§ 301.6323(j)-1(d)(1).
16	See <i>Id.</i> at (i).	39	The current National Taxpayer Advocate is Nina E. Olson.
17	I.R.C. § 61.	40	I.R.C. § 6325(d).
18	I.R.C. § 139(a).	41	I.R.C. §§ 6325(d)(1)-(2).
19	See <i>Id.</i> at (b)(4), I.R.C. § 111(a).	42	I.R.M. 25.16.1.3.3(1)(B); I.R.C. § 7508.; I.R.C. § 7508(a)(1).
20	I.R.C. § 139(b).	43	Available at https://www.irs.gov/tax-professionals/disaster-relief-resource-center-for-tax-professionals
21	I.R.C. § 139(c).	44	Available at https://www.irs.gov/individuals/get-transcript
22	Rev. Rul. 2003-12, 2003-1 C.B. 283.	45	I.R.M. 25.16.1.11(5)(E).
23	42 U.S.C. § 5155(d).	46	Available at https://www.irs.gov/instructions/i2848/ch01.html#d0e204

A top-down view of a desk with various items. In the foreground, a hand is writing on a form with a pen. The desk is covered with several forms, including one titled '2017' and another with '2017' and '17' visible. A pair of glasses is resting on a form in the upper middle. A pen lies on a form in the lower right. A small white object, possibly a eraser, is on the right side. The background is a light-colored surface.

disaster.legalaidofnebraska.org

Visit online or call the toll-free hotline **1.844.268.5627**
from M-Th: 9am-noon & 1-3pm CST, F: 9am-Noon CST.

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