



THE POWER OF BEING UNDERSTOOD

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY HURRICANES IRMA AND/OR MARIA

Year 2018 Issue #3

On September 29, 2017, the United States Congress approved the “*Disaster Tax Relief and Airport Extension Act of 2017*” (the “Act”) with the purpose of providing tax benefits to taxpayers that were affected by Hurricanes Irma and María. The Act provides an employee retention benefit (“Benefit”) to those employers that were unable to operate due to the damages caused by said hurricanes and continued paying wages (“Qualified Wages”) to their employees (“Qualified Employees”). The Benefit provided by the Act was extended to employers in Puerto Rico.

On June 8, 2018, the Puerto Rico Treasury Department (“PRTD”) issued Internal Revenue Circular Letter No. 18-11 (“CC 18-11”) with the purpose of establishing the eligibility requirements to employers in Puerto Rico and the procedure to claim said Benefit.

I. Eligibility Requirements

In general, an employer will be eligible to receive the Benefit if it meets *all* of the following requirements:

1. Conducted an active trade or business at the moment Puerto Rico was impacted by Hurricanes Irma and/or María;
2. The business was inoperable as a result of damage sustained by reason of Hurricanes Irma and/or María;
3. Paid Qualified Wages to his employees during the Eligible Period. For these purposes, the “Eligible Period” is the period that begins on the date on which the business became inoperable after September 16, 2017 (or after September 4, 2017, in the case of Hurricane Irma), and which ends on the date on which the business resumed significant operations or on December 31, 2017, whichever occurred first;
4. Electronically filed all Wage and Tax Statements (Form 499R-2 / W-2PR), Employer Quarterly Income Tax Withholding Return (Form 499 R-1B), Quarterly Unemployment and Disability Insurance Declarations (Form PR- SD-10) and the Federal Employer Quarterly Returns (Form 941-PR) for taxable year 2017;
5. Is duly registered as a merchant with the PRTD and has a valid Merchant's Certificate.

II. Eligible Municipalities

A. Hurricane Irma

In the case of employers affected by Hurricane Irma, only businesses located in the municipalities of (1) Canóvanas, (2) Cataño, (3) Culebra, (4) Dorado, (5) Fajardo, (6) Loiza, (7) Luquillo, (8) Toa Baja, (9) Vega Baja, and (10) Vieques will be eligible to claim the Benefit.

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B. Hurricane María

In the case of employers affected by Hurricane Maria, businesses located in **any of the 78 municipalities** of Puerto Rico will be eligible to claim the Benefit.

III. Inoperable Business

A business is considered inoperable if said business could not carry out operations due to the passing of Hurricanes Irma and/or Maria and complies with **one or more** of the following factors, among others:

- The business was operating in an unstable manner;
- Operations were reduced due to lack of electricity service or potable water service;
- Operations were reduced due to instability or lack of telecommunications services;
- The business suffered damages to the structure where it carries out operations;
- The business was not physically accessible to employees or customers; or
- The business could not receive raw materials or inventory to operate.

IV. Resumed Significant Operations

The determination as to when the business resumed significant operations must be made based on the particular facts and circumstances of each eligible employer, taking into consideration the specific nature of the business. However, the term "significant operations" means that the business resumed at least eighty percent (80%) or more of the activities that the business carried out before the passing of Hurricanes Irma and/or Maria.

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i. Category 1 Employers

Employers with a net income subject to tax of ten million dollars (\$ 10,000,000) or more for taxable year 2017. Category 1 employers will be entitled to a benefit computed based on twenty-six percent (26%) of the first six thousand dollars (\$6,000) of Qualified Wages paid or incurred for each eligible employee during the eligible period. The maximum amount of Benefit available for Category 1 employers is \$1,560 (that is, \$6,000 x 26%) for each eligible employee.

ii. Category 2 Employers

Employers with less than ten million dollars (\$ 10,000,000) of net income subject to normal tax for taxable year 2017. Category 2 employers will be entitled to a benefit computed based on thirty-two percent (32%) of the first six thousand dollars (\$6,000) of Qualified Wages paid or incurred for each eligible employee during the eligible period. The maximum amount of Benefit available for Category 2 employers is \$1,920 (that is, \$6,000 x 32%) for each eligible employee.

VI. Procedure to Claim the Benefit

The Benefit can only be claimed electronically through the same platform that employers currently use to file the Employer Quarterly Income Tax Withholding Return. Said platform can be accessed through the PRTD's website: www.hacienda.pr.gov, under the "Hacienda Virtual" section. The platform will be available **until Monday, December 31, 2018**.

The following information is required in order to apply for the Benefit:

1. Merchant's Registration Number
2. Name and social security number of each eligible employee
3. Amount of qualified wages paid to each eligible employee
4. Date on which the business became inoperable
5. Date on which the business resumed significant operations

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It is important that the eligible employer ensures that the information that will be included in the application is correct, up-to-date and consistent with the information included in the following forms:

1. The Quarterly Unemployment and Disability Insurance Declaration filed with the Department of Labor and Human Resources for the quarters ended September 30, 2017 and December 31, 2017; and
2. The Withholding Declarations (Form 499R-2 / W-2PR) filed with the PRTD for taxable year 2017.

The Benefit will be paid only by direct deposit to the bank account indicated by the employer in the application.

At RSM Puerto Rico we are available to help our clients determine whether they are eligible or not to receive this Benefit. Please contact your tax advisor with any questions.

Reminders & Due Dates

- June 15, 2018 – Deposit of Income Tax withheld on salaries of those employers classified as monthly depositors
- June 20, 2018 – Monthly Sales & Use Tax Return
- July 10, 2018 – Monthly Declaration of Imports
- July 10, 2018 – Monthly Excise Tax Return
- July 10, 2018 – Deposit of Income Tax withheld on payments for services rendered

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