



PRO BONO MATTERS

## Tax Impacts of Natural Disasters

By **Andrew R. Roberson**, McDermott Will & Emery LLP, Chicago, Illinois

**“Even with all our technology and inventions that make modern life so much easier than it once was, it takes just one big natural disaster to wipe all that away and remind us that, here on Earth, we’re still at the mercy of nature.” – Neil deGrasse Tyson, Astrophysicist**

Natural disasters, such as the recent Hurricanes Harvey, Irma, Jose, and Maria (all Category 3 or higher), can wreak havoc on critical infrastructure, the economy, and the livelihood of scores of individuals. In the wake of such disasters, people from all over the world donate time, money, and services to assist those impacted. While the immediate thoughts are often on providing food, shelter, and medical care, the consequences of a natural disaster can continue for several years and affect individuals in many different areas. One such area relates to taxes.

Fortunately for those affected by a natural disaster, the IRS, various organizations, and tax volunteers are available to provide assistance. The remainder of this article looks at some of the assistance available to affected individuals and highlights the need for tax assistance long after the disaster occurs.

The IRS provides a variety of tax relief to those affected by natural disasters. The IRS provides helpful information for those affected on its website at <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>. The assistance includes, but is not limited to, extensions of time to file returns and make payments, abatement of penalties, and accelerated deductions for casualty losses.

The ABA and local organizations also provide extremely important services in response to natural disasters, both in general and in the area of tax assistance. In response to Hurricane Harvey, the ABA Tax Section created a resource page, available at [https://www.americanbar.org/groups/taxation/tax\\_pro\\_bono/disaster\\_resources.html](https://www.americanbar.org/groups/taxation/tax_pro_bono/disaster_resources.html), containing selected ABA resources and IRS resources. Another excellent resource for those interested in providing tax assistance is the “Assisting Victims of Disaster” chapter in the ABA’s “Effectively Representing Your Client Before the IRS” publication.

The Disaster Legal Services Program for the ABA Young Lawyers Division also compiles important resources and information to assist in meeting the legal needs of disaster survivors, available at [https://www.americanbar.org/groups/young\\_lawyers/disaster\\_legal\\_services.html](https://www.americanbar.org/groups/young_lawyers/disaster_legal_services.html). As of January 2017, the program has

responded to 157 declared disasters in 43 states and 2 U.S. territories. Assistance is provided in areas such as bankruptcy, contract and contractor problems, landlord/tenant, wills, and insurance.

Low-income taxpayer clinics (LITCs) are at the forefront of providing tax assistance in response to natural disasters. Four LITCs in Texas provided the following thoughts in the aftermath of Hurricane Harvey:

*(1) Please continue to volunteer on LITC cases. Complications caused by the hurricane impact the “regular” problems that low-income taxpayers face.*

- For taxpayers affected by the floods, there is a good chance that their records have been displaced or destroyed -- which will make it more difficult to prove their case to the IRS. This affects many types of cases including examinations, identity theft cases, innocent spouse cases, and collections cases.*
- Flood survivors may default on installment agreements because they need to pay other expenses. These taxpayers will need help arranging another collection alternative. Some survivors may now qualify for an offer in compromise due to loss of their assets, but they will need assistance with the process.*
- Taxpayers will have questions about the taxability of different forms of disaster assistance. Without advice, some people might confuse disaster unemployment assistance with FEMA assistance and end up with an underreporter notice down the road.*
- There is a particular need for practitioners who are near Beaumont, Conroe, Angleton or Galveston.*
- Not every case can be handled long-distance, but LITCs may refer cases to out-of-state practitioners in appropriate circumstances. Attorneys, EAs, and CPAs licensed in any state may represent taxpayers before the Internal Revenue Service and advise them on federal tax law issues.*

*(2) There will be a need for volunteer tax preparers equipped to deal with disaster-related tax issues. Both LITC-eligible survivors and those above the income limits will need tax preparation assistance.*

- The IRS has extended to January 31, 2018, the deadline for filing business and individual returns that otherwise would have been due on September 15 and October 16.*
- Taxpayers who experience personal casualty losses resulting from a federally declared disaster can elect to deduct the loss in the preceding tax year, which can produce an immediate, much needed refund. Whether or not the taxpayer makes this election, if the casualty loss exceeds the taxpayer’s income for the year of deduction, the taxpayer can carry the excess amount back as a net operating loss for the three preceding years, which also can generate a refund.*

To donate or volunteer, visit [ambar.org/harvey](http://ambar.org/harvey).

At the recent ABA Tax Section meeting in Austin, Texas, a special section program was held on tax issues for disaster survivors. Areas of focus included claiming personal property casualty losses, how and when to exclude disaster relief payments from income (e.g., FEMA payments, property owner hazard mitigation payments, and HUD assistance), substantiation problems, filing deadlines, and post-disaster problems such as identity theft and unscrupulous return preparers. These materials, available at <https://www.americanbar.org/content/dam/aba/events/taxation/taxiq/fall17/taxiq-17fall-section-hurricane-matlock-slides.authcheckdam.pdf>, are a must-read for those interested in volunteering to help disaster survivors.

There is no shortage of opportunities to provide tax assistance to those impacted by natural disasters. While much of the focus is on immediate help, we should all remember that long-term help is just as important.

In the tax area, many of the individuals affected may face IRS audits involving questions of substantiation. The loss of supporting documentation and records is common in the aftermath of a natural disaster and low-income individuals often find themselves facing requests for supporting information that no longer exists. The failure to provide such information can lead to the denial of deductions and credits that taxpayers depend on to ensure their ability to meet their financial needs.

**“While natural disasters capture headlines and national attention short-term, the work of recovery and rebuilding is long-term.”**  
– Sylvia Mathews Burwell,  
President, American University

As tax practitioners know, deductions are a matter of legislative grace and the taxpayer has the burden of maintaining proper documentation to substantiate deductions. Most taxpayers are unaware of ways in which they can substantiate items outside of normal business records that may be lost in a natural disaster. Volunteers can help in this process by assisting taxpayers in obtaining records from third parties such as banks, credit card companies, and other businesses. IRS regulations and other guidance also provide substantiation guidance in situations where records are lost or destroyed due to circumstances beyond a taxpayer’s control. Additionally, the *Cohan* rule<sup>1</sup> allows certain deductions if there is a reasonable basis on which to estimate the amount of the deductions. The pertinent passage in the Second Circuit’s opinion is as follows:

*Absolute certainty in such matters is usually impossible and is not necessary; [a court] should make as close an approximation as it can, bearing heavily if it chooses upon the taxpayer whose inexactitude is of his own making. But to allow nothing at all appears to us inconsistent with saying that something was spent. True, we do not know how many trips Cohan made, nor how large his entertainments were; yet there was obviously some basis for computation, if necessary by drawing upon the [court’s] personal estimates of the minimum of such expenses. The amount may be trivial and unsatisfactory, but there was basis for some allowance, and it was wrong to refuse any, even though it were the traveling expenses of a single trip. It is not fatal that the result will inevitably be speculative; many important decisions must be such.*

The Tax Court has applied the *Cohan* rule in situations where a natural disaster has damaged a taxpayer’s property and he or she has no documentation to support the amount of the damage. For example, in *Zilberberg v. Commissioner*,<sup>2</sup> the Court allowed \$15,500 of a claimed casualty loss deduction of \$36,250

1 [Cohan v. Commissioner, 39 F.2d 540 \(2d Cir. 1930\).](#)

2 [T.C. Memo. 2011-5.](#)

based on the taxpayer's credible testimony and a list he created after records were lost in 2005, the year in which Key West was impacted by Hurricanes Wilma, Katrina, Rita, and Dennis.

Natural disasters are inevitable and we should all strive to help those affected by them. As detailed above, there are numerous opportunities for tax practitioners and volunteers to assist others, whether in the form of general legal services or tax services. For those of you interested in helping from the tax side, please remember that long-term tax assistance may be just as important as short-term tax assistance. ■

**“I think lawyers who engage in pro bono service to protect those who cannot help themselves are truly the heroes and the heroines of the legal profession.”**  
– Janet Reno, first female Attorney General of the United States

## Accepting Nominations for the 2018 Janet Spragens Pro Bono Award

Speaking of heroes and heroines, the Section of Taxation [Pro Bono Award Committee](#) is seeking nominations for the 2018 Janet Spragens Pro Bono Award.

This award was established in 2002 to recognize one or more individuals or law firms for outstanding and sustained achievements in pro bono activities in tax law. In 2007 the award was renamed in honor of the late Janet Spragens, who received the award in 2006 in recognition of her dedication to the development of low income taxpayer clinics throughout the United States.

The criteria for selection of an individual recipient of the award are that (i) the individual be a tax lawyer, whether living or deceased; (ii) the individual is or was a member of the Section of Taxation; and (iii) the individual has, through years of service, demonstrated an ongoing commitment to pro bono activities, particularly in the areas of federal and state taxation.

The criteria for selection of a law firm recipient are that (i) the law firm includes members of the Section of Taxation; and (ii) the law firm has, through years of service of its attorneys, demonstrated an ongoing commitment to pro bono activities, particularly in the areas of federal and state taxation.

Nominations should include a brief statement addressing how the nominee satisfies the above criteria and must be submitted by **Friday, December 8, 2017**, to [taxlserve@americanbar.org](mailto:taxlserve@americanbar.org). All nominations will be maintained in confidence by the Pro Bono Award Committee.