American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

November 22, 2013

The Honorable Max Baucus, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dave Camp, Chairman
House Committee on Ways & Means
328 Cannon House Office Building
Washington, DC 20515

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sander M. Levin
Ranking Member
House Committee on Ways & Means
1236 Longworth House Office Building
Washington, DC 20515

RE: Request for Permanent Tax Provisions Related to Disaster Relief

Dear Chairmen Baucus and Camp, and Ranking Members Hatch and Levin:

The American Institute of Certified Public Accountants (AICPA), like you and many others in our country, is all too familiar with the devastating consequences of disasters, such as Hurricanes Sandy and Isaac and more recently, the severe storms, fires, floods, landslides, and mudslides in Colorado.[1] Therefore, we are sensitive of the need to include permanent tax provisions in the Internal Revenue Code (IRC or "Code") that will quickly aid affected taxpayers who are recovering from the impacts of future natural disasters.

We propose permanent disaster relief tax provisions that are triggered when a taxpayer resides, or has a principal place of business located, in a Federal Emergency Management Agency's (FEMA) "Disaster Declaration"[2] area for which individual "Disaster Assistance"[3] is available.

AICPA Proposal

The AICPA supports permanent provisions to aid taxpayers in disaster relief situations. Although we cannot prevent disasters from occurring, predict when or where they will occur, or predict the scope of damages that will result, we know disasters occur annually and regularly throughout the country. We have witnessed each year the far-reaching effects of these events, which frequently extend across state borders, impacting hundreds of thousands of people throughout the United States. Presently, the federal government

[1] IR-2013-75, "IRS Provides Tax Relief to Victims of Colorado Storms," September 16, 2013.
[2] Federal Emergency Management Agency's Disaster Declarations are available at: http://www.fema.gov/disasters.
[3] FEMA Disaster Assistance information is included in the Disaster Assistance and Emergency Relief Program for Individuals and Businesses information that is available at: http://www.disasterassistance.gov/.

deals with each of these occurrences as an individual event, and relief offered through the tax system varies, for the most part, with each event. This process results in taxpayers receiving different treatment for similar losses and not knowing what tax treatment they will receive until Congress enacts some form of relief, which frequently occurs long after the disaster.

The AICPA proposes permanent disaster relief tax provisions that would take effect immediately when a triggering event occurs. Specifically, we recommend that this trigger occurs when a taxpayer resides, or has a principal place of business located, in a Federal Emergency Management Agency's (FEMA) "Disaster Declaration" area for which individual "Disaster Assistance" is available. In developing this proposal, the AICPA reviewed previously enacted and proposed legislation such as the Katrina Emergency Tax Relief Act of 2005[4], the Hurricane Sandy Tax Relief Acts of 2012[5] and 2013[6], and the Investment Savings Access After Catastrophes Act of 2013[7] which was proposed in response to Hurricane Isaac. We request that Congress consider the following legislative proposals for tax provisions, which if enacted, would take effect upon the occurrence of the above mentioned trigger:

1) Waive the casualty loss floor of 10 percent of adjusted gross income (AGI) (section 165(h)(i))[8] and the $100 per loss floor (section165(h)(2)) for losses attributable to a disaster event. The purpose of this provision is to extend additional relief to most taxpayers under section 165(h)(i).

2) Allow a five-year carryback period for net operating losses (NOLs) attributable to a disaster event under section 172(b)(2). By allowing a five-year carryback period for NOLs attributable to a disaster event, the impacted taxpayer would have the benefit of an extended carryback (increase of three years) from the normal NOL carryback period of two years.

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[4] H.R. 3768, "Katrina Emergency Tax Relief Act of 2005" is available at: http://thomas.loc.gov/cgi-bin/bdquery/z?d109:hr3768:.

[5] H.R. 6683, "Hurricane Sandy Tax Relief Act of 2012" is available at: http://thomas.loc.gov/cgi-bin/bdquery/z?d112:hr6683:.

[6] H.R. 2137, "Hurricane Sandy Tax Relief Act of 2013" is available at: http://thomas.loc.gov/cgi-bin/bdquery/z?d113:hr2137:.

[7] H.R. 453, "Investment Savings Access After Catastrophes Act of 2013" is available at: http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.453:.

[8] All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated there under, unless otherwise specified.

3) Increase section 179 expensing limits under section 179(b)(1) in either the year of the disaster event or the following year by the lesser of a specified amount ($100,000) or the cost of "qualified property," as described in section 179(e)(1). "Qualified property" replaces or rehabilitates property damaged by the "disaster event." This provision is intended to provide immediate tax relief for unanticipated capital expenditures caused by the disaster event.

4) Allow a five-year replacement period (increased from two) under section 1033(a)(2)(B) for property damaged or destroyed by a disaster event. For certain disasters that have occurred, a five-year replacement period is already in place. This provision simply makes five years a standard replacement period. Also, allow this revision to the replacement period to cover trade/business property, real property, and/or principal residences that are involuntarily converted during a disaster event.

5) Impose no tax on victims of a disaster event who withdraw up to a specified amount ($100,000) from a qualified plan or individual retirement account (IRA) and repay that amount within five years. Any amount not repaid within five years of the date of withdrawal is taxable income during that fifth year unless a taxpayer chooses to report the amount as income and pay the tax in any earlier year. Any income recognized under this section would not be subject to the 10 percent early withdrawal penalty under section 72(t) for distributions up to a specified amount ($100,000). Such favored distributions were previously allowed under section 1400Q(a) for "hurricane" disasters; however, this provision would include all federally declared "disaster events," including but not limited to hurricanes. One purpose of this provision is to allow affected taxpayers to access their own funds immediately while waiting for government assistance and insurance reimbursements that are not immediately forthcoming.

6) Allow a partial or full exemption (as defined under section 151(d)) to individuals who provide at least 60 days of temporary rent-free housing to a person dislocated by a disaster event. Taxpayers may claim this exemption only once for each such persons and shall claim the exemption for the tax year which contains the latter of the 60th day or the day that the temporary housing period ends. The exemption amount is calculated as the number of rent-free days (up to 365) provided divided by 365 and multiplied by the personal exemption allowed a single taxpayer during the applicable year. The maximum number of individuals for which a taxpayer may claim this exemption is four individuals per disaster event. Furthermore, no phase-out under section 151(d)(3) would apply to this exemption.

7) Allow victims of a disaster event to exclude from taxable income, under section 108, cancellation of debt income for non-business debts provided that the cancellation occurs within one year of the beginning date of the disaster event. The discharging entity must certify that the discharge is a direct result of loss, property damage, or other factors caused exclusively by the disaster event. Currently, the Code provides only limited exclusions for discharge of indebtedness income. This recommendation would allow for a much needed provision that recognizes that if individuals affected by a disaster are unable to repay their outstanding loans, they are also likely unable to pay tax on the phantom income.

8) Allow a credit under section 38 of 40 percent of qualified wages (up to $6,000 in qualified wages per employee) for specified disaster-damaged businesses. Qualified wages (as defined for Work Opportunity Credit purposes under section 51(a)) are wages paid to employees who are unable to work because their employer's business was rendered inoperable due to damage from the disaster event. The Code would provide that qualified wages for an employee are calculated based on their regular wages, not including overtime, for the lesser of the period the business is rendered inoperable or 16 weeks. Specified disaster-damaged businesses must have the affected place of business located within the declared disaster area, employ less than 200 full-time equivalent employees, and may only claim the credit for employees who were employed at the affected place of business for at least 30 days prior to the disaster event.

9) Allow affected taxpayers in the disaster area to use either their current year or previous year's income amounts for purposes of calculating the Earned Income Tax Credit (section 32), the Child Tax Credit (section 24) and the Health Care Premium Credit (section 368(a)). With this suggested provision, the affected taxpayer would have the opportunity to use a more beneficial income year, thus allowing the affected taxpayer the opportunity to benefit from various credits that might not have been available to the taxpayer because of the fluctuation of income caused by the disaster.

10) Eliminate the medical deduction floor percentage (as defined under section 213(a), generally 10 percent of AGI, and 7.5 percent for taxpayers over 65) for an individual who incurs deductible medical expenses directly related to an injury caused by the disaster event. This reduction is available only for the directly related expenses incurred for up to two tax years (the year of the event and the subsequent year). The purpose of this provision is to provide potential relief from

the deduction limitations for taxpayers incurring unexpected disaster related medical expenses.

<u>Conclusion</u>

The AICPA acknowledges the prompt response and aid that the federal government repeatedly provides to individuals, and self-employed and business taxpayers impacted by natural disasters each year. We believe that by implementing permanent disaster relief provisions as foundational aid, taxpayers will have certainty, fairness, and the ability to promptly receive the relief they need after a natural disaster, while significantly reducing the administrative burdens on the Internal Revenue Service (IRS) to react to unexpected disasters.

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The AICPA is the world's largest member association representing the accounting profession, with more than 394,000 members in 128 countries and a 125-year heritage of serving the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these important and needed permanent tax provisions and welcome the opportunity to discuss this issue further. Please feel free to contact me at (304) 522-2553, or jporter@portercpa.com; Jonathan Horn, Chair, AICPA Individual & Self-Employed Tax Technical Resource Panel, at (212) 744-1447, or jmhcpa@verizon.net; or Amy Wang, AICPA Technical Manager – Taxation, at (202) 434-9264, or awang@aicpa.org.

Sincerely,

Jeffrey A. Porter, CPA
Chair, Tax Executive Committee

cc: Mr. Daniel I. Werfel, Acting Commissioner, Internal Revenue Service
The Honorable William J. Wilkins, Chief Counsel, Internal Revenue Service
The Honorable Jacob J. Lew, Secretary of the Treasury, U.S. Department of the Treasury