AICPA

October 27, 2023

The Honorable Ron Wyden, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jason Smith, Chairman
House Committee on Ways & Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Crapo, Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal, Ranking Member
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

RE: 2023 AICPA Disaster Relief Tax Legislative Proposals

Dear Chairmen and Ranking Members:

As Congress considers tax changes, the American Institute of CPAs (AICPA) suggests for your consideration our updated list of fourteen disaster tax relief related proposals, many of which were included in our 2023 AICPA Compendium of Tax Legislative Proposals – Simplification and Technical Proposals ("Compendium").

These updated disaster tax relief proposals are suggested changes to provide permanent and uniform provisions to aid taxpayers in disaster relief situations.

Our fourteen disaster tax relief recommendations are:

1. Provide Permanent, Uniform, Disaster Tax Relief that Includes a 120 Day Mandatory Filing Extension Period and Takes Effect Immediately when Individual or Public "Disaster Assistance" is Available in a Federal Emergency Management Agency (FEMA) "Disaster Declaration" Area or Upon the Written Request of a Governor of a State with a State-Declared Emergency or Disaster
2. Waive the Individual Casualty Loss Limitations, Add a Casualty Loss Deduction to Standard Deduction, and Suspend the Charitable Deduction Contribution Limit
3. Until Permanent, Uniform Disaster Relief is Enacted, Enact Timely, Consistent Tax Relief for Each Disaster
4. Modify the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Disaster Related Extension or Additional or Disregarded Time for Timely Filing a Tax Return
5. Allow an Employee Retention Credit
6. Allow the Establishment of a Disaster/Catastrophic Event Savings Account
7. Allow the Deduction of Unreimbursed Legal Fees Paid in Connection with Disaster Relief Claims
8. Allow a Discharge of Indebtedness Income Exclusion
9. Permit the Use of Prior Year Income to Calculate the Earned Income Tax Credit, Child Tax Credit, and Premium Tax Credit
10. Extend the Net Operating Loss Carryback to Three Years and Waive the Excess Business Loss Limitation

11. Standardize the Property Replacement Period to Four Years
12. Allow a Housing Exemption for Displaced Individuals
13. Waive the Rules Requiring Employees to Recognize Compensation Income Upon Charitable Donation or Sharing of Paid Time Off for Disaster Relief
14. Direct Treasury to Update Regulations under Section 7508A

Background

Currently, the federal government deals with disasters as individual events, and relief offered through the tax system can vary with each occurrence and by geographic region. 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 SECURE 2.0 Act[1] established permanent relief for the rules governing retirement plan distributions and loans in the event of a federally declared disaster by adding section 72(t)(11).[2] We commend Congress for addressing this aspect of disaster tax relief and urge you to address permanent relief in the additional areas discussed herein.

Recommendations

We recommend Congress enact the following fourteen tax provisions:

1. *Provide Permanent, Uniform, Disaster Relief that Includes a 120 Day Mandatory Filing Extension Period and Takes Effect Immediately when Individual or Public "Disaster Assistance" is Available in a FEMA "Disaster Declaration" Area or Upon Written Request of a Governor of a State with a State-Declared Emergency or Disaster*
   Enact permanent, uniform tax legislation that would include a 120 day mandatory filing extension period and would take effect immediately when an individual or public declaration of a federal disaster occurs, rather than providing delayed tax relief through separate individual bills following each disaster.[3] We have previously submitted comments[4] on the need for

---

[1] Enacted as Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328.
[2] All references to "section" or "§" are to the Internal Revenue Code of 1986, as amended, and all references to "Treas. Reg. §" and "regulations" are to U.S. Treasury regulations promulgated thereunder.
[3] There are at least three separate bills introduced already in the 118th Congress that would provide disaster tax relief, including: H.R. 318, the Protecting Home-owners from Disaster Act of 2023, which was introduced by Rep. Julia Brownley (D-CA) and would repeal the limitation on deductions for personal casualty losses starting in 2023; H.R. 1331, which was introduced by Rep. Gregory Steube (R-FL) and would treat Hurricane Ian as a qualified disaster for purposes of determining the tax treatment of certain disaster-related personal casualty losses; and S. 764, the Hurricane Tax Relief Act, which was introduced by Sen. Rick Scott (R-FL) and Sen. Marco Rubio (R-FL) would provide special tax rules for casualty losses incurred by reason of Hurricane Ian, Hurricane Nicole, and Hurricane Fiona.
[4] See AICPA letters on "Tax Reform Proposals on Individuals, Families and Tax Administration," July 17, 2017, and "Request for Permanent Tax Provisions Related to Disaster Relief," November 22, 2013; and brochure on "Natural Disaster: the Case for Permanent Tax Relief," published September, 2015; and written testimony of AICPA Tax Executive Committee Chair before the Senate Committee on Finance, November 18, 2014.

permanent disaster relief tax provisions that are triggered when a taxpayer resides, or has a principal place of business located, in a FEMA "Disaster Declaration"[5] area for which individual "Disaster Assistance"[6] is available.[7] We also suggest that the IRS be allowed to start the filing extension as soon as there is either individual or public "disaster assistance" available in a FEMA "disaster declaration" area or upon written request of a governor of a state in which a state emergency or state disaster has been declared, and that the IRS provide a 120 day mandatory filing extension period instead of the current 60 days. We note that covering individual assistance and public assistance and governor declarations will include counties that have to prepare for evacuation as they may have filing issues due to preparing for evacuation. In addition, we suggest adjusting annually for inflation, any dollar amount provided for in permanent disaster relief.

2. *Waive the Individual Casualty Loss Limitations, Add a Casualty Loss Deduction to Standard Deduction, and Suspend the Charitable Deduction Contribution Limit*
   Waive the casualty loss floor of 10% of adjusted gross income (AGI) (section 165(h)(2)) and the $100 per loss floor (section 165(h)(1)) for losses attributable to a disaster event. Also, allow a casualty loss deduction as an addition to the individual's standard deduction. The purpose of this provision is to extend additional relief to most taxpayers under section 165(h).

   In addition, eliminate the charitable contribution deduction AGI percentage limitations for certain contributions to qualified disaster relief efforts if the taxpayer elects to do so. In the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer's contribution base exceeds total allowable deductions for other charitable contributions (essentially, 100% of AGI). Qualified contributions in excess of the amount that can be currently deducted would be carried forward for five years. In the case of a corporation, the deduction for qualified contributions is allowed up to the amount by which the corporation's taxable income (as computed under section 170(b)(2)) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

3. *Until Permanent, Uniform Disaster Relief is Enacted, Enact Timely, Consistent Tax Relief for Each Disaster*
   Until permanent uniform relief (see recommendation 1, above) is enacted, Congress should enact consistent disaster tax relief for each disaster on a timely basis, similar to the consistent relief provided in the Disaster Tax Relief and Airport Extension Act of 2017,[8] the Taxpayer

---

[5] Federal Emergency Management Agency's Disaster Declarations are available at https://www.fema.gov/disaster.
[6] FEMA Disaster Assistance information is included in the Disaster Assistance and Emergency Relief Program for Individuals and Businesses information that is available at: https://www.disasterassistance.gov/.
[7] H.R. 3574 and S. 2748, Filing Relief for Natural Disasters Act, in the 117th Congress would authorize the Internal Revenue Service to postpone federal tax filing deadlines upon the written request of a governor of a state in which an emergency or disaster has been declared and also extend current mandatory extensions from 60 to 120 days. See AICPA letter "S. 2748, the Filing Relief for Natural Disasters Act," September 15, 2021, supporting S. 2748.
[8] Pub. L. No. 115-63.

Certainty and Disaster Tax Relief Act of 2019[9] (TCDTRA 2019), and the Taxpayer Certainty and Disaster Tax Relief Act of 2020[10] (TCDTRA 2020).[11] These three pieces of legislation provided the same "special rules" for casualty loss deductions attributed to a qualified disaster, as follows:[12]

- Waiver of the 10% of AGI limitation;
- Setting the per-casualty floor to $500 (vs. the standard $100) (AICPA suggests waiving the per-casualty floor per item 2 above); and
- Addition of a casualty loss deduction to the individual's standard deduction.

Addendum A provides sample model legislation that Congress can enact to provide timely, consistent tax relief for a federally declared disaster, that would be substantially the same as the tax relief granted intermittently from 2017 through 2020 via the Acts mentioned above. In other words, if Congress continues to provide tax relief for federally declared disasters on a case-by-case basis (rather than permanent uniform relief as we suggest in recommendation 1 above), it would be helpful for the relief to be the same each time it is granted.

---

[9] Enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94.

[10] Enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260.

[11] Currently, we do not have uniform tax relief for federally declared disasters. Some disasters get the "special rules," and some do not. The disasters that get the "special rules" do so because Congress enacts legislation granting the "special rules" treatment to a specific disaster or set of disasters occurring on certain dates. This current piecemeal process results in taxpayers receiving different treatment for similar losses and not knowing what tax treatment they will receive until and unless Congress enacts some form of relief, which frequently occurs long after the disaster. The tax treatment of disaster losses has been revised five times since 2017 as follows:

- Disaster Tax Relief and Airport Extension Act of 2017
- Tax Cuts and Jobs Act
- Bipartisan Budget Act of 2018
- TCDTRA 2019
- TCDTRA 2020

The "special rule" treatment ended on December 27, 2020. Since then, no federally declared disasters have received this preferential tax treatment. There have been multiple bills (e.g., H.R. 312, H.R. 318, H.R. 1331, H.R. 3861, and S. 764) introduced attempting to grant tax relief for certain disasters, but so far, none have come to fruition. Furthermore, the language in these bills is not consistent with the language in the Disaster Tax Relief and Airport Extension Act of 2017, TCDTRA 2019 and TCDTRA 2020. Therefore, even if the bills did pass, taxpayers would be dealing with different tax relief treatment (and thus more confusion for taxpayers and practitioners) than what has been granted consistently since 2017.

[12] See Addendum A for suggested sample model legislative language for recommendation 3 until permanent legislation is enacted. We also support H.R. 5343 and S. 2721, the Federal Disaster Responsibility Act, introduced on September 5, 2023, which would apply to qualified disasters occurring after December 27, 2020, and on or before December 31, 2023, and contains language that closely tracks our suggested model language. This legislation would address the inconsistent tax treatment taxpayers are experiencing, where some taxpayers (i.e., those with losses arising from Hurricane Zeta) were provided the "special rules" for their casualty loss, and other taxpayers (i.e., those with losses arising from Hurricanes Ida, Ian, and Nicole, and the Maui Wildfires) did not receive the "special rules." We applaud this legislation that would retroactively close the gap in tax relief. It would be helpful if this legislation is made permanent for fairness and consistency among taxpayers and qualified disasters.

4. *Modify the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Disaster Related Extension or Additional or Disregarded Time for Timely Filing a Tax Return*
Amend section 6511(b)(2) for the refund lookback period so that when the IRS extends a filing deadline due to a disaster declaration under section 7508A(a), taxpayers can recover amounts paid within three years *plus the period of the disaster related extension*, similar to the law for non-disaster related extensions of time to file.[13]

5. *Allow an Employee Retention Credit*
Allow a credit under section 38 of 40% of qualified wages (up to $8,800 in qualified wages per employee) for specified disaster-damaged businesses. Qualified wages are wages paid to employees who conducted an active trade or business and are unable to work because their employer's business was rendered inoperable due to damage from the disaster event. The Code would provide calculation of qualified wages for an employee 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 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. The credit should be computed and claimed on Form 5884-A. The credit should be treated as if it were listed in subsection (b) of the section 38 general business credit. In practice, this generally means the taxpayer must have income tax to be offset by this credit. An unused credit, if applicable, may be carried back to the previous tax year and carried forward to the 20 tax years after the unused credit year.

6. *Allow the Establishment of a Disaster/Catastrophic Event Savings Account*
Authorize individual taxpayers to establish a disaster savings account to pay for disaster recovery expenses, including insurance policy deductibles and other uninsured losses to the taxpayer's primary residence resulting from a qualified disaster. Allow a deduction from gross income (above-the-line deduction), adjusted annually for inflation, for cash payments to such accounts. Distributions from such accounts that are used to pay disaster recovery expenses should be excluded from gross income.

7. *Allow the Deduction of Unreimbursed Legal Fees Paid in Connection with Disaster Relief Claims*
Permit unreimbursed legal fees paid by taxpayers to obtain or increase disaster-related insurance reimbursement to net such payments against insurance proceeds. Allow insurance proceeds net of unreimbursed legal fees to be considered the insurance reimbursement on Form 4684. Taxpayers have increasingly found the need to employ attorneys to challenge or negotiate with their insurance providers regarding disaster claims. Insurance companies have been reluctant to provide insured taxpayers with the relief required under their insurance

[13] See AICPA letter, "Automatic Postponement Date Lookback Period for Allowing Tax Credits or Refunds for All Disasters," March 17, 2023, requesting that the IRS automatically provide the administrative relief afforded in Notice 2023-21 regarding the lookback period for allowing tax credits or refunds relief for all disasters going forward.

policies. Unreimbursed attorney fees can range between 10 and 40 percent of the amount recovered from the insurance company. Clarity is needed on the treatment of these unreimbursed attorney fee payments.

8. *Allow a Discharge of Indebtedness Income Exclusion*
   Individuals affected by a disaster may be unable to pay current debts, which could lead to taxable income from discharged debt. Currently, the Code provides only limited exclusions of income arising from the discharge of indebtedness. None of the exclusions are disaster related. We recommend that disaster-related debt relief for non-business debts be excludible from income under section 108 if a) the relief occurs within one year of the beginning date of the disaster event; and b) the discharging entity certifies that the discharge is a direct result of loss, property damage, or other factors caused exclusively by the disaster event.

9. *Permit the Use of Prior Year Income to Calculate the Earned Income Tax Credit, Child Tax Credit, and Premium Tax Credit*
   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 Premium Tax Credit (section 36B). 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. *Extend the Net Operating Loss Carryback to Three Years and Waive the Excess Business Loss Limitation*
    Allow a three-year carryback period for net operating losses (NOLs) attributable to a disaster event under section 172(b)(2). For most taxpayers, NOLs arising in tax years ending after 2020 may only be carried forward. By allowing a three-year carryback period for NOLs attributable to a disaster event, the impacted taxpayer would receive quicker tax relief from losses occurring in the disaster year. Waive the excess business loss limitation in the year of the disaster to permit full deduction of business losses arising as a result of a disaster.

11. *Standardize the Property Replacement Period to Four Years*
    Allow a four-year replacement period (increased from two) under section 1033(a)(2)(B) for personal property damaged or destroyed by a disaster event. This provision creates a standard, four-year replacement period, and should also be made to cover trade/business property, real property, and/or principal residences that are involuntarily converted during a disaster event.

12. *Allow a Housing Exemption for Displaced Individuals*
    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 would be able to claim this exemption only once for each such persons and would

claim the exemption for the tax year that contains the latter of the 60th day or the day that the temporary housing period ends. The exemption amount would be calculated as the number of rent-free days (up to 365) provided divided by 365 and multiplied by the greater of a specified amount ($2,000) or the personal exemption allowed a single taxpayer during the applicable year.[14] 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.

13. *Waive the Rules Requiring Employees to Recognize Compensation Income Upon Charitable Donation or Sharing of Paid Time Off for Disaster Relief*

Congress should enact legislation waiving the rules requiring employees to recognize compensation income upon charitable donation or sharing of paid time off for disaster relief. In certain situations, the IRS has waived the rules that require employees to recognize compensation income when they donate the value of paid time off (PTO) to a charitable organization for disaster relief or surrender accrued PTO to a leave-sharing bank for use by fellow employees affected by a major disaster. For example, in Notice 2012-69, the IRS provided that employees who donated the value of PTO to a section 170(c) charitable organization for the relief of victims of Hurricane Sandy were not required to recognize compensation income for the value of the surrendered PTO.[15] Similarly, in Notice 2006-59, the IRS sets forth conditions that must be met by a major disaster leave-sharing plan in order for a donating employee to avoid recognition of compensation income for the value of unused PTO donated to the plan. The guidance provided by the IRS in these situations is a matter of administrative grace and is neither permanent nor uniformly applied to all federally declared disasters.

14. *Direct Treasury to Update Regulations under Section 7508A*

Congress should enact legislation instructing the Secretary to update the regulations under section 7508A to reference filing "extension" as now provided in the statute. The regulations currently use the term "postponement period,"[16] and this term should be changed to "extension" to align with the language now used in section 7508A.[17]

---

[14] The formula factors in the reduction of the personal exemption to zero for tax years 2018 through 2025 by the Tax Cuts and Jobs Act, Pub. L. No. 115-97.

[15] Additionally, see Notice 2023-69, which provides similar treatment with respect to donations of PTO made before 2025 to section 170(c) organizations to aid victims of the 2023 Hawaii Wildfires.

[16] See Treas. Reg. § 301.7508A-1.

[17] See AICPA letter, "Recommendations for Updated Guidance and Clarifications on Disaster Tax Relief," August 29, 2023, requesting further guidance and clarification from the IRS in several areas relating to disaster tax relief, including section 7508A.

Analysis

The AICPA acknowledges the prompt response and aid that Congress provides to individual, self-employed, and business taxpayers impacted by natural disasters each year. However, aside from the permanent rules in section 72(t)(11) relating to the use of retirement funds in the event of a federally declared disaster, the current system provides inconsistent tax relief and does not provide fair and reliable tax assistance for disaster victims. In the past, Congress has considered each disaster as an isolated event and restricted any special tax relief to such individual event. This process results in similarly situated taxpayers receiving different tax benefits for comparable losses. It is important that all victims – regardless of where they reside, and whether they endured a hurricane, a mudslide or other type of disaster – receive comparable relief. The rules should be consistent among the various disasters. Furthermore, individuals and small business owners do not know what tax relief they will receive until Congress enacts legislation, sometimes months or even years after the event. The uncertainty surrounding such delayed relief impedes recovery.

The implementation of timely, permanent, and uniform disaster relief provisions as foundational aid will allow disaster victims to have certainty, fairness, consistency, and the ability to promptly receive the relief they need after a natural disaster. Additionally, a set of standard disaster tax relief provisions will minimize the administrative burdens on the victims as well as the Internal Revenue Service.

We urge Congress to enact the above tax legislation that is timely, permanent, uniform, and triggered by a federal disaster declaration for individual assistance.

The AICPA is the world's largest member association representing the accounting profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. 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.

The AICPA urges you to consider these disaster tax relief proposals for inclusion in future tax legislation. If you would like to discuss any of these proposals in more depth or have any questions, please contact Peter Mills, AICPA Senior Manager, Tax Policy & Advocacy at (202) 434-9272, or Peter.Mills@aicpa-cima.com; Lauren Pfingstag, Director, Legislative Affairs, at (407) 257-0607 or Lauren.Pfingstag@aicpa-cima.com; Gerald Schreiber, chair of the AICPA Disaster Tax Relief Task Force at (504) 832-1819 or ghschreiber@schreibercpa.com; or me at (830) 372-9692 or Bvickers@alamo-group.com.

Sincerely,

Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation
The Honorable Janet Yellen, Secretary, Department of the Treasury
The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Tom West, Deputy Assistant Secretary for Tax Policy, Department of the Treasury
The Honorable Daniel I. Werfel, Commissioner, Internal Revenue Service
Mr. William M. Paul, Principal Deputy Chief Counsel, Internal Revenue Service
Ms. Amalia C. Colbert, Commissioner, Small Business/Self Employed Division, Internal Revenue Service

Enclosure

Addendum A – Suggested Sample Model Legislative Language for Recommendation 3 - Timely, Consistent Tax Relief for Each Disaster

TAXPAYER CERTAINTY AND DISASTER RELIEF ACT OF 20XX

Title XXX – DISASTER TAX RELIEF Sec. X01. DEFINITIONS

For purposes of this title—

(1) QUALIFIED DISASTER AREA.—

(A) IN GENERAL.—The term ‘‘qualified disaster area’’ means any area with respect to which a major disaster was declared, during the period beginning on MM/DD/YYYY, and ending on the date which is XX days after the date of the enactment of this Act, by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act if the incident period of the disaster with respect to which such declaration is made begins on or after MM/DD/YYYY, and on or before the date of the enactment of this Act.

(B) COVID–19 EXCEPTION.—Such term shall not include any area with respect to which such a major disaster has been so declared only by reason of COVID–19.

(2) QUALIFIED DISASTER ZONE.—The term ‘‘qualified disaster zone’’ means that portion of any qualified disaster area which was determined by the President, during the period beginning on MM/DD/YYYY, and ending on the date which is XX days after the date of the enactment of this Act, to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of the qualified disaster with respect to such disaster area.

(3) QUALIFIED DISASTER.—The term ‘‘qualified disaster’’ means, with respect to any qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area.

(4) INCIDENT PERIOD.—The term ‘‘incident period’’ means, with respect to any qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred (except that for purposes of this title such period shall not be treated as ending after the date which is XX days after the date of the enactment of this Act).

Sec. X02. SPECIAL RULES FOR QUALIFIED DISASTER-RELATED PERSONAL CASUALTY LOSSES.—

(1) IN GENERAL.—If an individual has a net disaster loss for any taxable year—

(A) the amount determined under section 165(h)(2)(A)(ii) of the Internal Revenue Code of 1986 shall be equal to the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of section 165(h)(2)(A) of such Code (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual,

(B) in the case of qualified disaster-related personal casualty losses, section 165(h)(1) of such Code shall be applied to by substituting ‘‘$500’’ for ‘‘$500 ($100 for taxable years beginning after December 31, 2009)’’,

(C) the standard deduction determined under section 63(c) of such Code shall be increased by the net disaster loss, and

(D) section 56(b)(1)(E) of such Code shall not apply to so much of the standard deduction as is attributable to the increase under subparagraph (C) of this paragraph.

(2) NET DISASTER LOSS.—For purposes of this subsection, the term ‘‘net disaster loss’’ means the excess of qualified disaster-related personal casualty losses over personal casualty gains (as defined in section 165(h)(3)(A) of the Internal Revenue Code of 1986).

(3) QUALIFIED DISASTER-RELATED PERSONAL CASUALTY LOSSES.—For purposes of this subsection, the term ‘‘qualified disaster-related personal casualty losses’’ means losses described in section 165(c)(3) of the Internal Revenue Code of 1986 which arise in a qualified disaster area on or after the first day of the incident period of the qualified disaster to which such area relates, and which are attributable to such qualified disaster.