taxnotes
DOC 2026-23191

Disaster Tax Relief Certainty Act Leaves Uncertainty Over Insurance Payments

Posted on Aug. 18, 2026

By Andrew Gradman

To the Editor:

As a Los Angeles resident who lives among and represents fire victims, I am glad the Doug LaMalfa Federal Disaster Tax Relief Certainty Act (H.R. 5366) is headed to President Trump for his signature.[1] But I am disappointed that Congress fumbled a chance to resolve an ambiguity that has made some victims reluctant to claim full relief.

The problem lies in the definition of qualified wildfire relief payment, the thing excluded from income. This refers to payments for some wildfire disaster losses, "but only to the extent the losses, expenses, or damages compensated by such payment are not compensated for by insurance or otherwise." This language first appeared in the Federal Disaster Tax Relief Act of 2023 (P.L. 118-148). It persists verbatim in H.R. 5366 as passed by the House and Senate.

The question is whether an insurance recovery can qualify for exclusion. On one reading, "not compensated for by insurance" makes insurance proceeds categorically ineligible. On the other reading, the clause is an anti-duplication rule: Any payment, including insurance proceeds, is excludable so long as the same loss has not already been compensated from another source.

To many of us practicing in this area, the latter reading is clearly correct — insurance payments can be excluded, so long as they aren't double compensation. If "compensated for by insurance" disqualified insurance proceeds, then "or otherwise" would disqualify every other payment and the exclusion would apply to nothing. Congress probably meant to say "not otherwise compensated," just as it did in section 139, the exclusion for qualified disaster relief payments.[2]

However, there is plenty of commentary on the internet taking the opposite view. This causes return preparers to feel unsure — so they ask for backup. As a result, what should have been a straightforward tax reporting position instead requires an expensive tax opinion. Or the client chooses to be cautious and walks away from the relief, perhaps settling for a section 1033 rollover or paying needless taxes.

How much grief these suffering people could have been spared if Congress had just added another "otherwise," made it retroactive, and explained why in a committee report.

Sincerely,

Andrew Gradman
Law Office of Andrew L. Gradman APC

Los Angeles
Aug. 11, 2026

FOOTNOTES

[1] *See* Cady Stanton, "Senate Passes Disaster Tax Relief Extension Through 2026," *Tax Notes Federal*, Aug. 17, 2026, p. 1322.

[2] *See* H.R. Rep. No. 118-348 (misquoting section 139 to omit "otherwise," which suggests that P.L. 118-148 contained the same scrivener's error). *See also* IRS, "Instructions for Form 4684" (2025); IRS Publication 547, "Casualties, Disasters, and Thefts" (2025); and IRS Publication 225, "Farmer's Tax Guide" (all using "otherwise compensated" to describe qualified wildfire relief payments, which suggests the IRS does not view the change from section 139 as significant).

END FOOTNOTES