

# United States Senate

WASHINGTON, DC 20510-1104

March 2, 2023

Douglas O'Donnell  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Ave NW  
Washington, DC 20224

Dear Acting Commissioner O'Donnell:

I write today to urgently request your assistance for individuals and families who were adversely affected by the fuel leak at the U.S. Navy's Red Hill Bulk Fuel Storage Facility.

On May 6, 2021, a fuel leak occurred at the Red Hill Bulk Fuel Storage Facility in Honolulu, HI, which resulted in 19,000 gallons of jet fuel being spilled into a tunnel system near the Red Hill drinking water system, where the fuel remained until the drain pipeline ruptured on November 20, 2021. As a result, approximately 93,000 U.S. Navy water system users were impacted by the contaminated drinking water, many of whom relocated to temporary housing during the drinking water crisis. With no access to clean drinking water, these individuals were unable to return to their homes, businesses, and schools for almost four months.

As a result of this contamination, the Hawaii Department of Health (HDOH) issued two emergency orders directing the Navy to suspend operations at Red Hill, maintain the groundwater treatment system at Red Hill Shaft, and defuel and close the facility with oversight from the Environmental Protection Agency and the HDOH.

Part of the federal government's response to the Red Hill fuel leak was to provide affected individuals with per diem payments to cover their basic living expenses while they were displaced. While military servicemembers, spouses, and dependents received payments that the Department of Defense (DOD) has determined are not subject to federal income tax, it has been publicly reported that individuals who received payments but are not affiliated with DOD – and specifically those who received payments through the DOD's Emergency and Extraordinary Expense (EEE) authority – have since received tax forms (i.e. Form 1099-MISC) indicating their payments may be considered gross income and therefore may be subject to federal income tax.

Given the extraordinary nature of the fuel leak, individuals who received per diem payments to cover their basic living expenses while they were displaced by the fuel leak must not be required

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to pay federal income tax on those payments – regardless of whether these payments were provided through the EEE authority or by some other means. Under the IRS’s general welfare exclusion, there is precedent for your agency to exclude these kinds of payments from gross income. I strongly encourage you to clarify that these payments should be excluded.

Thank you for your consideration of this urgent request. I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Mazie K. Hirono". The signature is written in a cursive, flowing style.

Mazie K. Hirono  
United States Senator