

Leave-Based Donations

Cross References

- Notice 2017-48
- Notice 2017-52

Some employers have adopted leave-based donation programs to help victims of the recent hurricanes. Under a leave-based donation program, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations providing charitable relief for victims of a disaster. The IRS recently issued guidance on the tax consequences of this type of program.

The IRS will not assert that cash payments made by employers to IRC section 170(c) organizations in exchange for vacation, sick, or personal leave that employees elect to forgo constitute gross income or wages of the employees if the payments are:

- 1) Made to a IRC section 170(c) organization for the relief of victims of Hurricane Harvey, Tropical Storm Harvey, Hurricane Irma, Tropical Storm Irma, and
- 2) Paid to the IRC section 170(c) organizations before January 1, 2019.

The opportunity to make such an election does not result in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction with respect to the value of forgone leave excluded from compensation and wages. Cash payments are not included in box 1 or box 3 or box 5 of Form W-2. Employers can deduct these payments as business deductions under IRC section 162 rather than under the charitable contribution rules of IRC section 170.

Author's Comment

The IRS often issues this type of guidance for natural disasters that have been designated as federally-declared disaster areas. For the tax treatment to apply, the IRS must specifically issue a notice that identifies a specific disaster. Without specific IRS guidance, leave-based donation arrangements are considered taxable wages to the electing employee, and the employee in turn may claim a charitable contribution deduction, provided all of the rules under IRC section 170 are satisfied.