

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of the California Wildfires that Began on October 8, 2017

Notice 2017-70

This notice provides guidance on the treatment of leave-based donation programs to aid victims of the California Wildfires that began on October 8, 2017 (2017 California Wildfires).

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of the 2017 California Wildfires, employers may have adopted or may be considering adopting leave-based donation programs. Under leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations described in § 170(c) of the Internal Revenue Code (§ 170(c) organizations). This notice provides guidance for income and employment tax purposes on the treatment of cash payments made by employers under leave-based donation programs for the relief of victims of the 2017 California Wildfires.

The Internal Revenue Service (the Service) will not assert that cash payments an employer makes to § 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the

employees if the payments are: (1) made to the § 170(c) organizations for the relief of victims of the 2017 California Wildfires; and (2) paid to the § 170(c) organizations before January 1, 2019.

Similarly, the Service will not assert that the opportunity to make such an election results in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction under § 170 with respect to the value of forgone leave excluded from compensation and wages.

The Service will not assert that an employer is permitted to deduct these cash payments exclusively under the rules of § 170 rather than the rules of § 162. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of the Form W-2.

For further information, please contact Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718 (not a toll-free call).