

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of the Coronavirus Disease (COVID-19) Pandemic

Notice 2020-46

Subsequent to the March 13, 2020, emergency declaration issued by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121 et seq.) in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, the President issued major disaster declarations under the authority of the Stafford Act for each of the 50 states, the District of Columbia, and five U.S. territories (affected geographic areas).¹ This notice provides guidance under the Internal Revenue Code (Code) on the federal income and employment tax treatment of cash payments made by employers under leave-based donation programs to aid victims of the ongoing COVID-19 pandemic in the affected geographic areas.

EMPLOYER LEAVE-BASED DONATION PROGRAMS

In response to the need to provide relief to victims of the COVID-19 pandemic throughout the affected geographic areas, 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

¹ See <https://www.fema.gov/coronavirus/disaster-declarations>.

for cash payments that the employer makes to charitable organizations described in section 170(c) of the Code (section 170(c) organizations).

TREATMENT OF EMPLOYER LEAVE-BASED DONATION PAYMENTS

Cash payments an employer makes to section 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo will not be treated as wages (or compensation, as applicable) to the employees or otherwise be included in the gross income of the employees if the payments are: (1) made to the section 170(c) organizations for the relief of victims of the COVID-19 pandemic in the affected geographic areas; and (2) paid to the section 170(c) organizations before January 1, 2021. Similarly, employees electing to forgo leave will not be treated as having constructively received gross income or wages (or compensation, as applicable). The amount of cash payments to which this guidance applies should not be included in Box 1, 3 (if applicable), or 5 of the Form W-2. Electing employees may not claim a charitable contribution deduction under section 170 with respect to the value of forgone leave.

An employer may deduct these cash payments under the rules of section 170 or the rules of section 162 if the employer otherwise meets the respective requirements of either section.

DRAFTING INFORMATION

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