

Part III — Administrative, Procedural, and Miscellaneous.

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of the Further Russian Invasion of Ukraine

Notice 2022-28

The further invasion of Ukraine by the Russian Federation beginning on February 24, 2022 (further Russian invasion of Ukraine), has caused widespread loss of human life and other loss to the citizens and residents of Ukraine, including loss of shelter, food, medical care, and jobs. On March 2, 2022, the President of the United States announced a continuation of the national emergency with respect to Ukraine, as established in previous executive orders, because certain actions and policies of the Russian Federation further threaten the peace, stability, sovereignty, and territorial integrity of Ukraine.¹ On March 3, 2022, the Department of Homeland Security announced that it has designated Ukraine for Temporary Protected Status.²

The Department of the Treasury and the Internal Revenue Service are aware that employers may have adopted or may be considering adopting employer leave-

¹ Notice of March 2, 2022: Continuation of the National Emergency With Respect to Ukraine, 87 F.R. 12387 (March 3, 2022).

² <https://www.dhs.gov/news/2022/03/03/secretary-mayorkas-designates-ukraine-temporary-protected-status-18-months>.

based donation programs to aid citizens and residents of Ukraine; individuals working, traveling, or currently present in Ukraine; or refugees from Ukraine, collectively referred to in this notice as “victims of the further Russian invasion of Ukraine.” 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 further Russian invasion of Ukraine. This guidance is similar to the guidance provided in Notice 2001-69, 2001-46 IRB 491, as modified and superseded by Notice 2003-1, 2003-2 IRB 257, regarding charitable relief following the September 11, 2001, terrorist attacks.

EMPLOYER LEAVE-BASED DONATION PROGRAMS

Under employer leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for their employers making cash payments to charitable organizations described in section 170(c) of the Code (section 170(c) organizations). Cash payments made by an employer to section 170(c) organizations under an employer leave-based donation program are referred to as “employer leave-based donation payments.”

TREATMENT OF QUALIFIED EMPLOYER LEAVE-BASED DONATION PAYMENTS

Employer leave-based donation payments made by an employer before January 1, 2023, to section 170(c) organizations to aid victims of the further Russian invasion of Ukraine (qualified employer leave-based donation payments) will not be treated as gross income or wages (or compensation, as applicable) of the employees of the employer. Similarly, employees electing or with an opportunity to elect to forgo

leave that funds the qualified employer leave-based donation payments will not be treated as having constructively received gross income or wages (or compensation, as applicable). Employers should not include the amount of qualified employer leave-based donation payments in Box 1, 3 (if applicable), or 5 of the electing employees' Form W-2. Electing employees are not eligible to claim a charitable contribution deduction under section 170 for the value of the forgone leave that funds qualified employer leave-based donation payments.

An employer may deduct qualified employer leave-based donation payments under the rules of section 170 or the rules of section 162 if the employer otherwise meets the respective requirements of either section of the Code.

DRAFTING INFORMATION

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