

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 Hawaii Wildfires that Began on August 8, 2023 (2023 Hawaii Wildfires).

Notice 2023-69

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of wildfires beginning on August 8, 2023, in the State of Hawaii (2023 Hawaii Wildfires), employers may have adopted or may be considering adopting leave-based donation programs. This notice provides guidance under the Internal Revenue Code (Code)¹ on the federal income and employment tax treatment of cash payments made by employers under leave-based donation programs for the relief of victims of the 2023 Hawaii Wildfires. This guidance is similar to the guidance provided in Notice 2001-69, 2001-46 IRB 491, as modified and superseded by Notice 2003-1, 2003-2 IRB 257, regarding charitable relief following the September 11, 2001, terrorist attacks.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

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code.

to charitable organizations described in section 170(c) (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, 2025, to section 170(c) organizations to aid victims of the 2023 Hawaii Wildfires (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’ Forms W-2. Electing employees are not eligible to claim charitable contribution deductions 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).