

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224**

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July 28, 2000

The Honorable Olympia J. Snowe  
United States Senator  
Washington, D.C. 20510-1903

Dear Senator Snowe:

This letter is in response to your inquiry dated June 28, 2000, on behalf of your constituent, Ms. \*\*\*\*\*. She is concerned over reports she has heard about the Internal Revenue Service (IRS) deciding how the funds from a charity fund should be disbursed among the families of deceased fire fighters in \*\*\*\*\*.

Disclosure restrictions prevent us from commenting on the affairs of particular organizations. However, the following general information about tax code sections that could apply to the families of the firefighters may be of interest to you.

**Organization Must Serve Charitable Purposes**

Organizations set up exclusively for charitable purposes and which serve a public rather than a private interest are exempt from federal income tax. Charitable purposes include promoting social welfare designed to relieve the poor and distressed or underprivileged. People financially and/or emotionally unable to care for themselves as a result of sudden and severe or overwhelming financial or emotional burdens arising from events beyond their control are proper objects of charity. In appropriate circumstances, relieving their distress serves a public rather than a private interest. [Section 501(c)(3) of the Internal Revenue Code].

The type of aid appropriate to relieve distress in a particular case depends on the individual's needs and resources. For example, an organization that provides funds to benefit dependent widows and children of policemen and firemen who lose their lives in the line of duty may qualify for exemption as a charitable organization. The organization's directors select the recipients and amounts distributable to them (Revenue Ruling 55-406, 1955-1 C.B. 73). Also, an organization that provides counseling to widows during periods of grief and assists them in overcoming the legal, financial, and emotional problems caused by the death of their husbands qualifies as charitable by alleviating the widows' distress (Revenue Ruling 78-99, 1978-1 C.B. 152).

Charities must ensure their activities are conducted and their funds spent for charitable purposes. For example, the beneficiaries must be a charitable class and the organization must have established procedures and objective criteria for selecting recipients, awarding assistance, and ensuring private interests are not being served.

### **Charity Must Benefit an Indefinite Number of Persons**

A characteristic of a legal charity is that it benefits an indefinite number of persons. Where the beneficiaries are personally designated, the organization lacks that essential element of indefiniteness. An organization can usually avoid the "limited class" issue if its beneficiaries constitute a traditional charitable class and are indefinite either by virtue of their large numbers or by defining the class of beneficiaries in an "open ended" manner. Beneficiaries are defined in an open ended manner when the organization aids the victims of a particular disaster and also others who may be similarly situated in the future. For example, an organization or fund created to aid firemen and other victims of a specific fire is limiting the services to a particular group of pre-selected individuals. But if the organization or fund is created to aid those injured or killed while undertaking fire fighting efforts, the class of beneficiaries is open ended and will include current and future fire victims.

If a fund is set up for pre-selected individuals, the fund does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. Even though the beneficiaries may be objects of charity, they have been pre-selected and the organization is serving private rather than public interests.

Where a qualified charity assists victims of a disaster, it must be in a position to independently select the beneficiaries. Thus, beneficiaries cannot be pre-selected and the charity cannot accept donations earmarked for specific individuals. The existing charity must use its assets to assist victims generally based on an independent decision as to their needs and resources.

Making an individual whole or paying a lump sum for a loss caused by a disaster does not necessarily further charitable purposes. The amount needed to relieve the distress based on the individual's situation and the charity's resources should be the determining factor. Therefore, lump sum benefits or other similar arrangements not geared toward alleviating the specific distress would be inappropriate. An outright transfer of funds based solely on an individual's involvement in a disaster or without regard to meeting that individual's particular distress or financial needs could result in excessive private benefit.

I hope the information provided above is responsive to your inquiry. If I can be of further help, please call me at (202) 622-7762 or \*\*\*\*\* at (202) \*\*\*\*\*.

Sincerely,

Marvin Friedlander  
Manager, Exempt Organizations  
Technical Group 1