

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

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Contact Person:

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(202) *****

Dear Mr. *****:

This is in response to your letter to the President dated May 16, 2000 regarding the
*****.

You state that funds donated for the families of the firemen who died in *****
have not been distributed to such families due to the Internal Revenue Service's regulations.

Disclosure restrictions prevent us from commenting on the affairs of particular organizations.
However, the following general information may be of interest to you.

Funds collected by a community and disbursed directly to victims of a disaster or funds given by one individual directly to a victim of a disaster are examples of situations where neighbors assist each other in times of a crisis. However, when assistance is provided through a qualified charity, such as an organization which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, the charity as well as the contributors must comply with the laws regulating such organizations.

Section 501(c)(3) of the Code provides a statutory exemption from federal income tax for organizations organized and operated exclusively for charitable purposes and which serve a public rather than a private interest. Charitable purposes include the promotion of social welfare by organizations designed to relieve the poor and distressed or underprivileged. Persons who are financially and/or emotionally unable to care for themselves as a result of sudden and severe or overwhelming financial and/or emotional burdens arising from events beyond their control are proper objects of charity because they are considered to be "distressed." In appropriate circumstances, relieving their distress serves a public rather than a private interest. The type of aid that is appropriate to relieve distress in a particular case depends on the individual's needs and the individual's 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 where selection of recipients and amounts distributable to them are determined in the absolute discretion of the organization's directors. 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.

The general rule is that any charity must take appropriate steps to assure that its activities are conducted and its funds expended in a manner consistent with its charitable purposes. For

example, the beneficiaries must be a charitable class and the organization must have established procedures and specific objective criteria for the selection of recipients, the awarding of assistance, accountability and assurance that private interests are not being served.

One of the characteristics 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.

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

Where a qualified charity undertakes to assist victims of a disaster, it must be in a position to independently select charitable beneficiaries. In this regard, beneficiaries cannot be pre-selected and the charity may not accept donations earmarked for specific individuals. The existing charity must make it clear that it will 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 on account of 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 specifically geared toward alleviating the specific distress would not be appropriate. 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.

We trust that the general information provided above is responsive to your inquiry.

Sincerely,

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1