



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Herb Kohl
United States Senator
14 West Mifflin Street, Suite 207
Madison, WI 53703

Attention:

Dear Senator Kohl:

I am responding to your inquiry of February 8, 2010, on behalf of a constituent who asked whether employees may donate accumulated leave through an employer-sponsored leave-based donation program to assist the relief effort in Haiti. Employer-sponsored leave-based donation programs are agreements whereby employees agree to forego accumulated leave if their employer donates cash equal to the value of that leave to charitable organizations. Under these programs, the employees do not include the value of the foregone leave in gross income or wages and the employer deducts its payments to the charities as business expenses.

Generally, however, an employee who assigns to another person his or her right to receive compensation for personal services must pay income tax on the assigned income. See *Lucas v. Earl*, 281 U.S. 111 (1930), and Rev. Rul. 58-495, 1958-2 C.B. 27. Thus, as a general rule, an employee must include compensation in income where, under an agreement or understanding, the employee provides services to his or her employer to benefit a charity and the employer pays the compensation for those services to the charity. See section 1.61-2 of the Income Tax Regulations.

Consequently, the IRS has approved employer-sponsored leave-based donation programs in only two instances. See Notice 2001-69, 2001-2 C.B. 491, modified and superseded by Notice 2003-1, 2003-1 C.B. 257 and Notice 2005-68, 2005-2 C.B. 622.

At this time, the 2009-2010 Priority Guidance Plan published by the IRS and the Treasury Department does not contain a project addressing employer-sponsored leave-based donation programs for the Haiti Earthquake. If you have any additional questions, please contact me or _____ at _____.

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax and Accounting)