



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

OFFICE OF THE CHIEF COUNSEL

December 13, 2012

Number: **2013-0008**  
Release Date: 3/29/2013

CONEX-149575-12

UILC: 61.00-00, 102.00-00

The Honorable Mark Udall  
United States Senate  
Washington, DC 20510

Dear Senator Udall:

I am responding to your inquiry dated November 15, 2012. You, Senator Michael Bennet, and Congressman Ed Perlmutter asked about the tax treatment of payments from \_\_\_\_\_ Fund to assist victims of \_\_\_\_\_, and their family members.

Based on the information provided, the payments may constitute gifts that are excludible from the recipients' gross income.

You indicated that \_\_\_\_\_ Foundation, a section 501(c)(3) organization, had created the Fund to provide a vehicle for donors to assist the victims and their families. We understand that the Foundation established the Fund \_\_\_\_\_ and funded the Fund with donations from the public.

Gross income means all income from whatever source derived, except where otherwise provided by law (section 61(a) of the Internal Revenue Code (Code)). Under section 102(a) of the Code, property received by gift is excludible from gross income. While section 102 does not define the term "gift," the Supreme Court has held that a gift is a transfer made out of "detached disinterested generosity." *Duberstein v. Commissioner*, 363 U.S. 278, 285 (1960). In general, a payment that is not compensatory and does not proceed from "any moral or legal duty" to the recipient is motivated by detached and disinterested generosity. *Id.*

The Fund was funded with donations from the public. The Fund payments appear to have been made in response to the victims' and their families' needs and not out of any moral or legal duty that the Foundation or any particular donor may have had. In those

circumstances, the Fund payments will be excludible from the recipients' gross income as gifts.

I hope this information is helpful. I am also sending letters to Senator Bennet and Congressman Perlmutter. If you have any questions, please contact (Identification Number ) or me at .

Sincerely,

William A. Jackson  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)



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The Honorable Ed Perlmutter  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Perlmutter:

I am responding to your inquiry dated November 15, 2012. You and Senators Mark Udall and Michael Bennet asked about the tax treatment of payments from Fund to assist victims of , and their family members.

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United States Senate  
Washington, DC 20510

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