

IRS Announces Tax Relief for Leave Donations to Aid 2023 Hawaii Wildfire Victims

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IRS Notice 2023-69 (Sept. 28, 2023)

Available at <https://www.irs.gov/pub/irs-drop/n-23-69.pdf>

The IRS has announced special tax relief for leave-based donation programs set up by employers to aid victims of the State of Hawaii wildfires that began on August 8, 2023. Under a leave-based donation program, an employer may permit employees to give up their vacation, sick, or personal leave in exchange for cash payments by the employer to qualified charitable organizations. Ordinarily, leave-based charitable donations are included in a donating employee's wages or income.

Like similar recent guidance, this notice provides for temporary exceptions to the general tax rule for leave-donation programs. First, employer leave-based donations that employers make to qualified tax-exempt organizations to aid victims of the 2023 Hawaii wildfires will not constitute income to employees of the employer if the payments are made before January 1, 2025. Second, the mere opportunity to make a leave donation will not result in constructive receipt of income for employees. The amount of such payments should not be included in Box 1, 3, or 5 of electing employees' Form W-2s. Electing employees may not deduct the value of the donated leave on their income tax returns as charitable contributions. [EBIA Comment: Deductions by electing employees would result in "double-dipping" because the donated leave will already have been excluded from their income.] Employers will be permitted to deduct the contributions as charitable contributions or trade or business expenses if applicable requirements are met.

EBIA Comment: Employers that have adopted, or are considering adopting, leave-based donation programs to aid the victims of the 2023 Hawaii wildfires will welcome the favorable tax treatment. For more information, see EBIA's Fringe Benefits manual at Sections XXII.B.2 ("Tax Trap: Giving Employees the Choice to Cash Out Vacation/PTO Days Can Create Tax Problems") and XXII.E ("Leave-Sharing and Other Donation Programs"). See also EBIA's Cafeteria Plans manual at Sections III.B ("The Constructive Receipt Doctrine and the Code § 125 Safe Harbor") and III.G ("Constructive Receipt and Cash-Out of Unused Vacation Days").

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