

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of Hurricane Michael

Notice 2018-89

This notice provides guidance on the treatment of leave-based donation programs to aid victims of Hurricane Michael.

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of Hurricane Michael, employers may have adopted or may be considering adopting leave-based donation programs. Under leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations described in § 170(c) of the Internal Revenue Code (§ 170(c) organizations). This notice provides guidance for income and employment tax purposes on the treatment of cash payments made by employers under leave-based donation programs for the relief of victims of Hurricane Michael.

The Internal Revenue Service (the Service) will not assert that cash payments an employer makes to § 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees if the payments are: (1) made to the § 170(c) organizations for the relief of

victims of Hurricane Michael; and (2) paid to the § 170(c) organizations before January 1, 2020.

Similarly, the Service will not assert that the opportunity to make such an election results in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction under § 170 with respect to the value of forgone leave excluded from compensation and wages.

The Service will not assert that an employer is permitted to deduct these cash payments exclusively under the rules of § 170 rather than the rules of § 162. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of the Form W-2.

DRAFTING INFORMATION

For further information, please contact Suzanne R. Sinno of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718 (not a toll-free call).