

Part III – Administrative, Procedural and Miscellaneous

Treatment of Certain Amounts Paid to Section 170(c) Organizations under Certain Employer Leave-Based Donation Programs

Notice 2005-68

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

Notice 2001-69, 2001-2 C.B. 491, as modified and superseded by Notice 2003-1, 2003-1 C.B. 257, provided similar guidance in view of the extreme need for charitable relief following the September 11, 2001, terrorist attacks. This guidance is provided in view of the extraordinary damage and destruction caused by Hurricane Katrina.

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 Katrina; and (2) paid to the § 170(c) organizations before January 1, 2007.

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 will be only permitted to deduct these cash payments 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.

For further information, please contact Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4920 (not a toll-free call).