IRS Allows Employees to Donate Paid Leave to Charity in 2020

Aug 11, 2020

Categories:

Blogs
Publications
Tax Law Defined™ Blog

In Notice 2020-46 (the "Notice"), the Internal Revenue Service (IRS) created a new avenue for employers to assist their employees who want to donate to victims of the COVID-19 pandemic. Under the new guidance, an employer can establish a program allowing employees to donate their unused vacation, sick and personal leave to a charity that supports COVID-19 relief. The employer must make a cash payment equal to the value of the donated leave directly to the charity in 2020.

The Notice provides that the donated leave is not wages or compensation earned or constructively received by the employee, and therefore is not taxable income to the employee or subject to employment taxes. Accordingly, the amount of the donated leave should not be reported on the employee's 2020 W-2. Because the employee is not treated as having been paid for the leave, the employee is not entitled to claim a charitable deduction under Internal Revenue Code (the "Code") Section 170 for the value of the leave. However, employers can deduct the value of the cash payments as a charitable deduction under Code Section 170 or as a business expense under Code Section 162, provided the employer otherwise meets the requirements for those deductions. In addition, employers will not owe their share of employment taxes on the donated amounts.

The Notice requires that the value of the leave be donated to a Code Section 170(c) charitable organization for the relief of victims of the COVID-19 pandemic in one of the 50 U.S. states, the District of Columbia or five U.S. territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands). The Notice also requires that the employer make the cash payments to the charity (or charities) by January 1, 2021. If employees continue to donate leave after 2020, employees should be treated as receiving taxable wages for the value of the leave, although the amount of the donated leave may be deductible by the employee as a charitable contribution (and is deductible as compensation by the employer).

In addition to leave donation, we have discussed in previous articles several tax-favored programs that employers can create to help employees and others affected by the pandemic. *See*, Employers Can Provide Tax-Free Assistance to Employees Impacted by COVID-19 and Using Qualified Disaster Relief and Employer-Assisted Charities to Aid Employees Impacted by Financial Hardship and Natural Disasters.