

## Leave-Based Donation Program

A leave-based donation program is an employer-sponsored program whereby employees agree to not use their accumulated leave (e.g., vacation, sick or PTO hours) in exchange for the employer making a cash donation equal to the gross value of the accumulated leave to a charitable organization. Generally, the value of the leave is compensation income to the employee and a compensation deduction for the employer (even though the funds are sent to a charitable organization) [Reg. 1.61-2(c)]. However, the IRS can designate that cash payments an employer makes to Section 170(c) organizations in exchange for vacation, sick or personal leave that its employees elect to forgo are not considered income or wages to the employees.

The IRS has announced that cash payments an employer makes to Section 170(c) organizations in exchange for vacation, sick or personal leave that its employees elect to forgo will not constitute gross income or wages of the employees if the payments are: (1) made to the Section 170(c) organizations for the relief of victims of Hurricane Harvey and Tropical Storm Harvey and (2) paid to the Section 170(c) organizations before January 1, 2019. Electing employees may not claim a charitable contribution deduction for the value of forgone leave excluded from compensation and wages.

As for employers, the IRS won't assert that payments made under a leave-based donation program are deductible as charitable contributions under IRC Sec. 170 rather than deductible as business expenses under IRC Sec. 162. Thus, the employer will be able to deduct the payments without being subject to the various charitable contribution limits that apply under IRC Sec. 170 (Notice 2017-48, 2017-39 IRB, 09/05/2017).

Amounts representing leave-sharing donations need not be included in Box 1 (wages, tips, other compensation), Box 3 (Social Security wages) or Box 5 (Medicare wages and tips) of Form W-2.

