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Notice 2016-69: Employer leave-based donation programs, Hurricane Matthew relief

The IRS today released an advance version of Notice 2016-69 as guidance on the treatment of leave-based donation programs that are intended to aid victims of Hurricane Matthew.

[**Notice 2016-69**](#) [PDF 11 KB] explains that in response to the need for charitable relief for victims of Hurricane Matthew, employers may have adopted or may be considering adopting leave-based donation programs. Under these programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer then makes to charitable organizations.

Notice 2016-69 provides guidance for income tax and employment tax purposes on the treatment of such cash payments made by employers under leave-based donation programs when made for the relief of victims of Hurricane Matthew.

The IRS stated that it will not assert 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 constitute gross income or wages of the employees if the payments are: (1) made to the organizations for the relief of victims of Hurricane Matthew; and (2) paid to the organizations before January 1, 2018.
- The opportunity to make such an election results in constructive receipt of gross income or wages for employees.
- An employer is permitted to deduct these cash payments exclusively under the rules of section 170 rather than the rules of section 162.

Electing employees may not claim a charitable contribution deduction under section 170 with respect to the value of forgone leave excluded from compensation and wages. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of the Form W-2.

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