



# TaxNewsFlash

## United States

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### **Notice 2017-70: Leave-based donation payments, 2017 California wildfires**

The IRS today released an advance version of Notice 2017-70 as guidance on the treatment of leave-based donation programs to aid victims of the California wildfires that began October 8, 2017.

**Notice 2017-70** explains that in response to the extreme need for charitable relief for victims of the 2017 California wildfires, 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 (section 170(c) organizations).

Today's notice provides guidance for income and employment tax purposes on the tax treatment of cash payments made by employers under leave-based donation programs for the relief of victims of the 2017 California wildfires. The notice states that:

- The IRS 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 section 170(c) organizations for the relief of victims of the 2017 California wildfires; and (2) paid to the section 170(c) organizations before January 1, 2019.
- The opportunity to make such an election will not result in constructive receipt of gross income or wages for employees.
- Electing employees cannot claim a charitable contribution deduction with respect to the value of forgone leave excluded from compensation and wages.

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

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