



IRS Issues Guidance on COVID-19 Leave Donation Programs

The IRS has issued Notice 2020-46 to explain the tax consequences of employer-based COVID-19 leave donation programs.

Background

The IRS recognized that, in response to the need to provide relief to victims of the COVID-19 pandemic, many employers have adopted, or are considering the adoption of, leave-based donation programs. Under leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations as described in Section 170(c) of the Internal Revenue Code.


Notice 2020-46


In Notice 2020-46, the IRS stated that: “Cash payments made to charitable organizations in exchange for vacation, sick, or personal leave will not be treated as wages (or compensation, as applicable) to the employees or otherwise be included in the gross income of the employees if the payments are: (1) made to the section 170(c) organizations for the relief of victims of the COVID-19 pandemic in the affected geographic areas; and (2) paid to the section 170(c) organizations before January 1, 2021. Similarly, employees electing to forgo leave will not be treated as having constructively received gross income or wages (or compensation, as applicable).” The amount of the cash payments is not included in Box 1, 3, or 5 of Form W-2.

Electing employees may not claim a charitable contribution deduction with respect to the value of the forgone leave. However, the employer may deduct the cash payments made under the rules for charitable contributions or the business expense rules of Section 162 if the employer otherwise meets all other applicable requirements.

Notice 2020-46 is available at: <https://www.irs.gov/pub/irs-drop/n-20-46.pdf>


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