

PERSONAL INCOME TAX BULLETIN 2005-01

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Treatment of Certain Amounts Paid to Section 170(c) Organizations under Certain Employer Leave-Based Donation Programs

In view of the extreme need for charitable relief in the aftermath of Hurricane Katrina, employers may have adopted or may be considering adopting leave-based donation programs to aid victims of this hurricane. Under these programs employees elect to forgo vacation, sick, or personal leave in exchange for cash payments an employer makes to organizations described in § 170(c) of the Internal Revenue Code (§ 170(c) organizations) for the relief of victims of Hurricane Katrina. This Bulletin provides guidance on the treatment of these cash payments for personal income and withholding tax purposes. This guidance is provided in view of the extraordinary damage and destruction caused by Hurricane Katrina and the announcement of the Internal Revenue Service published at Notice 2005-68 I.R.B. 2005-40 (September 8, 2005).

The Department of Revenue joins with the Internal Revenue Service in its support of leave-based donation programs to aid victims of Hurricane Katrina. The department also will not assert that cash payments an employer makes to § 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute compensation of the employees if the payments are: (1) made to the § 170(c) organizations for the relief of victims of Hurricane Katrina; and (2) paid to the § 170(c) organizations before January 1, 2007. Similarly, the Department of Revenue will not assert that the opportunity to make such an election results in constructive receipt of compensation for employees. Moreover, the department will not assert that an employer is not permitted to deduct these cash payments as an ordinary business expense.

For further information, please contact the Taxpayer Service and Information Center at (717) 787-8201.