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March 25, 2020

**VIA FEDEX and EMAIL**

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue N.W.  
Washington, D.C. 20220

**Re: Impact of the COVID-19 Pandemic on Tax-Exempt Organizations**

Dear Secretary Mnuchin:

As tax advisors to numerous tax-exempt organizations and philanthropists, we share the view expressed by other advocates in recent days that the nonprofit sector must be included in all effective economic recovery and stimulus policies. Charities and other nonprofit organizations are on the front lines of our communities' response to the COVID-19 pandemic, providing critical safety net services, grants, and other support to those most in need. We write today to bring to your attention the need for specific guidance for corporate-sponsored charities, to ensure that they can deliver emergency aid to employees without adverse tax consequences.

On March 13, 2020, President Trump declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "**Stafford Act**") (the "**Emergency Declaration**"). We respectfully request guidance from the U.S. Department of Treasury ("**Treasury**") and the Internal Revenue Service ("**IRS**") confirming that the Emergency Declaration triggers tax relief for individuals receiving "qualified disaster relief" payments within the meaning of section 139 of the Internal Revenue Code of 1986, as amended (the "**Code**"). Section 139 relief would allow both corporations and company-sponsored charities to provide tax-free payments to company employees to help their families weather this national crisis.

For employer-sponsored charitable organizations—public charities, donor-advised funds, or private foundations—there are numerous special tax considerations, explained succinctly in the IRS's helpful Publication 3833.<sup>1</sup> As you know, following the September 11 attacks, Congress enacted legislation that

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<sup>1</sup> IRS Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*, available at <https://www.irs.gov/pub/irs-pdf/p3833.pdf>.

permits employer-sponsored charities to provide assistance to employees or their family members affected by a qualified disaster, as long as certain safeguards are in place to ensure that such assistance is serving charitable purposes rather than the business purposes of the employer. Company-sponsored private foundations, in particular, might be hesitant to commence grant programs to benefit company employees without assurance that these grants will not constitute prohibited “self-dealing” under section 4941 of the Code.

## Legal Framework

Section 139 of the Code excludes from an individual’s gross income any “qualified disaster relief” payments, to the extent that any expenses covered by these payments are not otherwise compensated by insurance or other reimbursements.<sup>2</sup> Qualifying payments are not subject to income tax, self-employment tax, or employment taxes (Social Security, Medicare, and federal unemployment taxes) even if the payments are made directly from an employer.<sup>3</sup>

Specifically, a “qualified disaster relief payment” means any amount paid to or for the benefit of an individual (1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; (2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster; (3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster; or (4) if such amount is paid by a federal, state, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.<sup>4</sup>

Section 139(c) defines a “qualified disaster” to include a “federally declared disaster” as defined in section 165(i)(5)(A) of the Code. Section 165(i)(5)(A), in turn, defines a federally declared disaster as “any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act” (again, the Stafford Act).<sup>5</sup> In this case, the Emergency Declaration was made under the Stafford Act, albeit employing the phrase “national emergency” instead of “disaster.”

We note that the IRS has previously expressed the view that the terms national “emergency” and “disaster” ought to be treated as synonymous for purposes of section 165(i). In Rev. Rul. 2003-29,<sup>6</sup> the IRS considered whether a taxpayer suffered a loss attributable to a disaster under section 165(i) occurring in an area subsequently determined by the President of the United States to warrant assistance by the federal

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<sup>2</sup> I.R.C. § 139(a).

<sup>3</sup> IRS Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*, available at <https://www.irs.gov/pub/irs-pdf/p3833.pdf>.

<sup>4</sup> I.R.C. § 139(b).

<sup>5</sup> Section 165(i) generally relates to losses attributable to federally declared disasters.

<sup>6</sup> 2003-1 C.B. 587.



government under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5204c (1988 & Supp. V 1993). The IRS found that the taxpayer could elect to claim a deduction for that loss on the taxpayer's federal income tax return for the taxable year immediately preceding the taxable year in which the disaster occurred, stating that "[f]or purposes of section 165(i), a disaster includes an event declared a major disaster or an emergency under the [Stafford] Act." The ruling further noted that "[a] determination by the President that an area warrants assistance by the Federal Government under the [Stafford] Act is also relevant to section 139(a) (regarding the exclusion from gross income of certain qualified disaster relief payments)." Subsequently, an IRS Chief Counsel Memorandum issued in 2019 concluded that ... "[a] federally declared disaster includes a major disaster declaration under section 401 of the Stafford Act and an emergency declaration under section 501 of the Stafford Act."<sup>7</sup>

### Request for Guidance

Based on the foregoing authorities, we respectfully request confirmation, in the form of an IRS Notice, that the Emergency Declaration made by the President triggered the tax relief granted under section 139. The IRS issued such a notice in 2014, designating the Ebola virus disease outbreak occurring in the West African countries of Guinea, Liberia, and Sierra Leone as a qualified disaster for purposes of section 139. As a result of the designation, company-sponsored foundations were able to provide disaster relief assistance to employees and their families affected by the Ebola outbreak in the three countries—tax-free for the employees, and without penalties under either section 4945 or section 4941 for the company-sponsored foundations.

In the coming months, our charitable, religious, educational, and health care organizations will step up, as they always have, to help see us through this crisis. They need and deserve clear guidance during this time in order to deploy their resources most effectively in the public interest.

Thank you for your attention to this matter.

Sincerely,

Diara M. Holmes  
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Marcus S. Owens  
Partner, Loeb & Loeb LLP

cc: Michael J. Desmond, Chief Counsel, U.S. Internal Revenue Service  
Margaret Von Lienen, Director, Exempt Organizations & Governmental Entities Division, U.S. Internal Revenue Service

<sup>7</sup> IRM 2019-08 (June 28, 2019), available at <https://www.irs.gov/pub/lanoa/pmta-2019-08.pdf>.