

## **Rising From the Ashes: How Nonprofits and Donors Can Help California Wildfire Recovery Efforts**

In the wake of the Los Angeles wildfires that have destroyed tens of thousands of acres and leveled entire communities, there is a significant and growing need for funding recovery, rebuilding, and resiliency efforts. The full impact of the wildfires remains uncertain, and the coming weeks and months will present tremendous challenges for California and the entire country. Charitable organizations are well positioned and have a unique opportunity to help those affected by the wildfires. Over the years, the Internal Revenue Service has provided useful guidance on how 501(c)(3) organizations can provide aid during times of disaster. That guidance tends to evolve as society faces different types of disasters, and the needs of individuals differ depending on whether a disaster takes the form of a wildfire, as compared to a pandemic or terrorist attack, for example. The summary below is based on guidance developed to date but may evolve as charitable organizations and the federal government develop innovative and vital approaches responding to the current crisis and its unique impacts.

### **Who can receive aid?**

501(c)(3) organizations may provide disaster relief to individuals who are needy or otherwise distressed because they are members of a “charitable class.” A charitable class is a group that is sufficiently (i) large or (ii) indefinite, such that providing aid to members of the class will benefit the community as a whole. A charity cannot limit its assistance to a specific or particular individual or family. For example, a charitable organization cannot create a disaster relief program for a single family who have lost their home in the wildfires. However, it can create a program that will provide aid to individuals, families, and businesses affected by the wildfire crisis now and in the future.

### **How does an organization decide who is needy or distressed?**

Disaster assistance must be provided on the basis of an objective determination of need. No potential aid recipient has an automatic right to charitable support. Instead, a charity must establish an objective standard that can be applied to potential aid recipients. In developing a process for determining need, the organization must consider its charitable purposes and the specific needs and resources of victims, as well as the effects of the disaster. To be eligible for aid, an individual need not be destitute, but must lack resources to obtain necessities or otherwise be in distress or need. The objective standard may depend on the nature of the disaster and may evolve over the course of the disaster. Organizations may develop different standards for short-term needs (such as immediate provision of food and water) as opposed to longer-term needs (such as resources to help victims of the fires to rebuild their lives following long-term illness or loss of employment). As charities develop standards in the context of the current crisis, they can focus on those that are reasonable, responsive to contemporary needs, and can be clearly explained, and they can also look to peer institutions and current practice in the community for guidance.

### **What sort of documentation does a charitable organization need to maintain?**

An organization needs to document the amount of aid it provides, including amounts paid, the purpose of the payments, and information demonstrating that distributions were made to meet charitable purposes and the needs of victims. In addition, the documentation should indicate the objective criteria used for disbursing aid, how the recipients were selected, and any relationship between the aid recipient and officers, directors, or key employees of, or substantial contributors to, the charitable organization.

The IRS allows a charitable organization that is distributing short-term emergency assistance to determine not to maintain records of the name, address, and amount distributed to each recipient.

However, the organization should still maintain records that describe the date, place, and estimated number of victims assisted. In any case, recordkeeping should be both reasonable and practical under the circumstances.

### **Can charitable organizations support businesses as well as individuals?**

Generally, charitable organizations may support businesses if, in doing so, they accomplish a charitable purpose such as combatting community deterioration, alleviating distress, or lessening the burdens of government. The California wildfires have already destroyed thousands of structures, including those of businesses, which will have a dramatic impact on the communities they serve and people they employ. Charities have an opportunity to help strengthen their communities and prevent unemployment and further economic upheaval (particularly for those that are most vulnerable) by supporting businesses in need at this moment.

The IRS has made available useful information regarding disaster relief programs including on its [website](#) and in [Publication 3833: Disaster Relief: Providing Assistance Through Charitable Organizations](#). In addition, in the past, the IRS has issued special guidance regarding particular disasters (such as the September 11 terrorist attacks or Hurricane Katrina).

### **Can employers provide disaster relief to their employees?**

Special rules are relevant to employers that wish to provide hardship support to their current and former employees in the aftermath of the California wildfires.

Employers that wish to provide support using tax-exempt vehicles—including public charities, private foundations, and funds held at community foundations or donor-advised fund sponsoring organizations—need to structure their programs in ways that avoid providing impermissible private benefit to the employers themselves. In addition to ensuring that their giving programs serve a charitable class (as we described above), employer-sponsored relief programs should not be structured to advance employee recruitment and retention or for senior executives to exercise complete control over the selection of aid recipients. Applicable rules vary depending on the tax-exempt vehicle employers use to provide disaster relief.

Both employer-sponsored public charities and employer-sponsored private foundations can provide aid to a charitable class consisting of a “large” or “indefinite” class of beneficiaries as long as recipients are selected based on an “objective determination of need.” In addition, in order to ensure that any benefit to the employer is incidental, the aid recipients need to be selected by an independent selection committee or procedures must be put in place that provide for such independence. To achieve independence, a majority of the members of any selection committee cannot be individuals who are in a position to exercise substantial influence over the affairs of the employer.

Additional rules apply to employer-sponsored private foundations. Such foundations:

- may only provide disaster relief funds to employees or their family members in connection with a “qualified disaster.” Section 139 of the Internal Revenue Code defines a qualified disaster as, among other things, a federally declared disaster (when the President signed a proclamation on January 7, 2025 declaring the California wildfires a major disaster, it was designated as a qualified disaster);
- remain subject to the restrictions on self-dealing under Code Section 4941, which means that assistance cannot be provided to disqualified persons such as directors, officers, and substantial donors (and certain family members of such persons), as well as members of the selection committee; and
- cannot use a disaster relief program to induce an employee to follow a particular course of action supported by the employer (such as recruiting) or to relieve the employer of a legal obligation with respect to employee benefits (such as a collective bargaining agreement or written plan providing insurance benefits).

Finally, employers may establish disaster relief funds at donor-advised fund sponsoring organizations and community foundations to provide aid to employees and their family members in connection with a qualified disaster. In general, a donor-advised fund includes all accounts and funds at a community foundation or other public charity over which the donor (or anyone appointed by the donor) has or reasonably expects to have advisory privileges. Further, distributions to individuals by donor-advised funds are generally subject to an excise tax under Section 4966 of the Code. However, under Code Section 4966(c)(2), the Internal Revenue Service and the Department of Treasury have exempted from the definition of donor-advised fund any employer-sponsored relief fund that meets the following requirements:

- the fund serves a single identified charitable purpose, which is to provide relief from one or more qualified disasters (including but not limited to a federally declared disaster);
- the fund serves a charitable class (which is “large” or “indefinite”);
- recipients of grants from the fund are selected based on “objective determinations of need”;
- the selection of recipients of grants from the fund is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous (as above, the selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer);
- no payment is made from the fund to or for the benefit of (i) any director, officer, or trustee of the sponsoring organization of the fund, or (ii) members of the fund’s selection committee; and
- the fund maintains adequate records that demonstrate the recipients’ needs for the disaster relief assistance provided.

Accordingly, an employer-sponsored relief fund housed at a sponsoring organization or community foundation that meets the above criteria will not be subject to excise taxes for making distributions to individual employees or their family members.

### **What are the tax implications for recipients of disaster relief assistance?**

Disaster relief assistance payments from a charitable organization will generally be considered a gift to the recipient and will not be included in their taxable income under Code Section 102. This includes payments by employers that are made through tax-exempt organizations as described above.

Payments made by employers directly (as opposed to through tax-exempt organizations) may also be excluded from recipients’ taxable income under Code Section 139, which covers “qualified relief payments” from any source (including from for-profit employers). A qualified relief payment that is excluded from taxable income is defined as any amount paid to or for the benefit of an individual:

- to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster;
- 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;
- 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
- 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.

Note, however, that qualified relief payments are excluded from taxable income only to the extent that (i) any expense compensated by such payment is not otherwise compensated for by insurance or otherwise and (ii) such payments do not constitute income replacement payments (such as payments of lost wages, business income, or unemployment compensation).

### What should a donor keep in mind when supporting wildfire relief efforts?

Donors who wish to make a deductible contribution to a 501(c)(3) organization should confirm that the recipient entity is listed as a tax-exempt charitable organization on the IRS's [Tax Exempt Organization Search Tool](#). The donor should ask the recipient entity for a contemporaneous written acknowledgment for the contribution. Donors should not earmark their donations to support a specific individual or family.

An individual may also choose to make a gift directly to a specific individual or family, but not by means of a charitable contribution. Because this would be a personal gift, and not a charitable gift, it could be subject to federal gift tax unless the total amount of gifts from the donor to each individual recipient during the year is equal to or less than the federal gift tax annual exclusion amount (which is \$19,000 per recipient in 2025). The gift ordinarily will not be treated as taxable income to the recipient. Personal giving should be reviewed in advance with professional advisors.

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