

Model Disaster Relief Documents For Employer-Controlled Charities

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Providing aid to victims of civil or natural disasters has historically been a critical function of charitable organizations. Following the terrorist attacks against the United States on September 11, 2001, and the subsequent attacks involving anthrax, numerous charities,¹ including many that had been formed specifically in response to those events, assisted victims through cash grants and the provision of services. The response of the charitable sector raised numerous questions regarding the treatment of disaster-relief assistance under federal tax law. One area of uncertainty was the appropriate treatment of disaster relief provided by private foundations and public charities controlled by an employer, particularly when the employer-controlled charity assists the controlling corporation's employees.²

The Victims of Terrorism Tax Relief Act of 2001 (the "Victims Relief Act"), signed into law on January 23, 2002, clarifies the ways in which employer-controlled charities, such as company foundations, can provide gifts to employees who are victims of a qualified disaster, such as Hurricane Katrina.

GOVERNING LAWS

Relief grants received by individuals which are intended to pay or reimburse certain expenses, such as housing, transportation or medical expenses arising from a qualified disaster are not includible in the employee's gross income. Section 139 of the Internal Revenue Code of 1986 (as amended) clarified this point.

Revenue Ruling 2003-12 (2003-1 CB 283) provides helpful precedential guidance for recipients living in affected areas. IRS Publication 3833, Disaster Relief: Providing Assistance Through Charitable Organizations, also explains in detail the post 9/11 rules for employer-controlled charities. In particular, the IRS will presume that qualified disaster payments made by an employer-controlled charity are consistent with the organization's charitable purposes and do not give rise to taxable income to the employees assisted by the charity if:

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- ¹ As used in this memorandum, the term "charities" refers to organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and classified as either public charities or private foundations within the meaning of Code section 509(a).
 - ² As used in this memorandum, unless context suggests otherwise, the term "employees" refers to those persons employed by a company that has a company-controlled private foundation or public charity that may assist those persons employed by the affiliated company from time to time.

- the class of beneficiaries eligible for assistance from the charity is “large or indefinite”;
- the recipients are selected based on an objective determination of need; and
- the selection is made using either an independent selection committee or adequate substitute procedures. A selection committee is independent if a majority of its members are not in a position to exercise “substantial influence” over the affairs of the employer.

MODEL DOCUMENTS

To assist employer-controlled charities in making the required objective determination of need, we have created three model documents:

- Sample Request Form for Assistance from Disaster Relief Fund
- Sample Guidelines for Distribution Committee of a Disaster Relief Fund
- Sample Mission Statement for a Disaster Relief Fund

We attach those models as a starting point for adaptation to particular needs.

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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Model Request Form for Assistance From Disaster Relief Fund

REQUEST FOR DISASTER RELIEF³

Name of Recipient: _____

What is your monthly mortgage or rental payment? _____

What is your monthly car payment? _____

What are your other monthly expenses (e.g., food, utilities, telephone)?

Are you requesting additional relief (e.g., payments for medical care or counseling services, funeral expenses, tuition assistance, temporary housing, etc.)? If so, please specify type and amount.

Date(s) When Relief Required: _____

Please indicate if any of the above amounts are reimbursable by insurance, to the extent you have this information: _____

Note: If any of the relief requested is for payment of third party invoice(s) received by Recipient, please attach a copy of the invoice(s).

Date: _____

³ These questions are intended to serve as an example and may be modified as necessary in light of the nature of the disaster.

MODEL INFORMATION QUESTIONNAIRE

I. General Information

Name of Relief Recipient: _____

Home Address: _____
(Street) (City)

(State or Province) (Country) (Zip or Postal Code)

Telephone Number(s): _____
(Weekdays) (Nights/Weekends)

Name of Disaster Victim (if not Recipient) / Recipient's Relationship to Disaster Victim:

Recipient's Employer: _____

Work Address: _____
(Street) (City)

(State or Province) (Country) (Zip or Postal Code)

Recipient's Occupation/Title: _____

Annual Gross Household Income Prior to Disaster: _____

Annual Gross Household Income Following Disaster: _____

Number of Dependents (excluding Recipient): ____; Ages of Dependents: _____

If Request for Disaster Relief Form indicates that any amounts requested are covered by insurance, indicate reason that additional relief is warranted:

II. Additional Information - Complete Only if Long-Term Assistance is Requested*

*Please provide the additional information indicated in this Part II if the relief requested consists of long-term assistance (such as long-term health care costs, long-term housing assistance, future college tuition expenses, etc.)

Additional sources and amounts of relief expected to be received by recipient in connection with disaster (including insurance proceeds and relief from other disaster assistance organizations):

Value of Liquid Assets Owned by Recipient(s):

Bank Accounts: _____

Other: _____

Model Guidelines for Distribution Committee of A Disaster Relief Fund

1. INTRODUCTION.

The Board of Directors of [NAME OF CHARITY] (the "Charity") has established the Disaster Relief Fund (the "Fund"). In furtherance of the Fund's Mission Statement, the Fund will provide assistance to people affected by the [INSERT DESCRIPTION OF DISASTER] or any future natural or civil disaster. The Board has appointed a Distribution Committee to review requests for assistance, select recipients and disburse funds. The following guidelines shall govern the Committee's review of applications, selection of recipients and disbursements of funds.

2. CONTRIBUTIONS.

The Charity will accept contributions to the Fund from interested individuals, corporations and other organizations, including employees of [NAME OF COMPANY] (the "Company"). Because of Federal tax rules, the Charity cannot accept contributions to the Fund that are earmarked for specific individuals.

3. ELIGIBILITY.

Victims of any natural or civil disaster and their families, as well as others who experience suffering as a result of such a disaster, are eligible for assistance from the Fund. Employees of the Company and their families, and others who experience suffering as a result of a natural or civil disaster are eligible. The Fund may also make grants to charitable organizations that are assisting those affected by the [INSERT DESCRIPTION OF DISASTER] or any future natural or civil disaster. The Fund may also provide assistance to states or municipalities affected by such a disaster, to help rebuild or repair damaged or destroyed infrastructure and to meet other public needs.

4. TYPE OF ASSISTANCE.

The Fund may provide assistance in many forms and assistance may be both short-term and long-term. For example, the Fund may provide emergency, short-term financial assistance to meet a variety of needs, including physical and mental-health care, housing and education. The Fund may also provide ongoing assistance with longer-term needs, including housing, childcare, tuition, and physical and mental-health care.

5. REQUEST FORM.

Request forms must be completed for individuals seeking assistance. In addition to biographical and other basic information, the request form must describe the type of assistance sought (e.g., medical, housing, childcare, tuition) and the amount of assistance requested. The form must also elicit information and documentation regarding the applicant's personal financial circumstances and

level of need and/or distress. The extent of documentation required will depend upon the type and amount of assistance sought. Federal tax rules require that applicants for long-term assistance submit more detailed documentation than applicants for shorter-term assistance.

6. EVALUATION OF APPLICATIONS AND SELECTION OF RECIPIENTS.

Relief requests will be considered at each meeting of the Committee. Factors to be considered by the Committee in selecting recipients will include (i) the extent to which the applicant is needy or distressed at the time of the request, (ii) the type of assistance sought (e.g., short-term vs. long-term) and (iii) the amount requested. None of race, national origin or gender shall be considered a factor in the selection of recipients.

(a) Level of Need and Distress.

Federal tax rules do not permit charitable funds to be distributed to persons merely because they are the victims of a disaster. Therefore, the Committee will consider the following factors, among others, to determine the level of need and/or distress of an applicant:

- (1) Extent of damage or suffering experienced as a result of the disaster;
- (2) Income prior to, and immediately after the disaster;
- (3) Number, ages and needs of dependents of the applicant; and
- (4) Other sources of income or aid available to the applicant, including insurance, benefits and charitable aid.

Further, applicants do not need to be destitute to be eligible for assistance. For example, applicants for emergency short-term medical care or housing may not be required to demonstrate as significant a level of financial hardship as applicants for longer-term or ongoing assistance, such as tuition or long-term housing.

Pursuant to Federal tax rules, distribution decisions must be based on an objective evaluation of the victim's needs at the time of the award. With respect to short-term emergency assistance, the Committee may take into account needs likely to arise in the immediate future as well as current needs. The Committee may also set aside funds for anticipated long-term needs. In this circumstance, Federal tax rules require that when an award is made out of the set-aside funds, it must be based on needs that exist at that time.

(b) Type of Assistance and Amount of Award.

The amount of short-term versus long-term assistance provided by the Fund shall be determined by the Committee in its discretion. Similarly, the amount of assistance awarded to a recipient will be determined by the Committee in its discretion. There is no maximum or minimum amount of assistance that may be awarded to a recipient.

7. COMPOSITION OF THE COMMITTEE AND TERM OF MEMBERS.

The Committee shall consist of at least five members. No more than two members may be executive officers or key employees of the Company. The Members of the Committee shall be appointed by the President of the Charity, it being understood that the members shall serve at the pleasure of the Board of Directors of the Charity. Federal tax rules require that Company employees who are Committee members reflect a broad range of employees not limited to executives and that these employees act in a personal capacity as agents of the Charity rather than as representatives of the Company.

[Committee members shall serve for a term of one year and may not serve for more than [three] consecutive one-year terms.]

8. ACTION BY THE COMMITTEE.

The Committee will select a Chairperson and Secretary from among its members. Committee meetings will be held when called by the Chairperson and the Chairperson will preside at all Committee meetings.

Decisions by the Committee will require the affirmative vote of at least a majority of Committee members.

The Secretary of the Committee will document all decisions taken by the Committee and, along with all documentation collected with respect to an applicant, shall provide such documentation to the Secretary of the Charity. The Board of Directors of the Charity shall ratify the Committee's decisions but shall have no authority to distribute amounts from the Fund.

Sample Mission Statement For A Disaster Relief Fund

In light of the terrorist [INSERT DESCRIPTION OF DISASTER], [NAME OF CHARITY] has established the Disaster Relief Fund (the "Fund"). The Fund will provide assistance to people affected by [INSERT DESCRIPTION OF DISASTER] or any future natural or civil disaster.

The Fund will provide assistance to victims of any such natural or civil disaster and their families, and to others who experience suffering as a result of such a disaster. The Fund's assistance will take many forms and will be both short-term and long-term in nature. For example, the Fund will provide emergency, short-term financial assistance to meet a variety of needs, including physical and mental-health care. The Fund will also provide on-going assistance with longer-term needs, including housing, childcare, tuition, and physical and mental health care, just to name a few. Employees of the [NAME OF COMPANY], their families, and others who experience suffering as a result of a natural or civil disaster are eligible for assistance.

In addition, the Fund may make grants to other charitable organizations that are assisting those affected by the [INSERT DESCRIPTION OF DISASTER] or any future natural or civil disaster. The Fund may also provide assistance to states or municipalities affected by such a disaster, to help rebuild or repair damaged or destroyed infrastructure and to meet other needs.

A Distribution Committee will be responsible for reviewing requests for assistance and for selecting recipients.