

Tax Compliance & Planning TRENDS

New Tax Rules for Charitable Contributions for Haiti Earthquake Relief

On January 22, President Obama signed into law H.R. 4462 (the Act, P.L. 111-126), which allows taxpayers to claim a charitable contribution deduction in tax year 2009 for donations made through March 1, 2010, for the relief of victims in areas affected by the January 2010, earthquake in Haiti. This option is available only if the contribution is in cash and otherwise meets the requirements for charitable contribution deductions under Code Section 170.

Ordinarily, charitable contributions are deductible in the year that they are made. However, in this case, if taxpayers think the deduction will be more valuable this year, they may claim it when filing their 2009 income tax returns. As with all charitable contributions, donations to Haiti earthquake relief must be itemized, and records must be kept.

Recordkeeping for Donations by Text Message

Those who donated by text message, can use their telephone bill for a record of the contribution, as long as it shows the name of the organization that received the contribution, the date of the donation, and the amount. For other types of contributions, keep a bank record such as a cancelled check or a receipt from the charity.

Observations, Recommendations & Notations

Recommendation on Deferring Tax Deduction: Anyone who is contemplating making a contribution to help victims of the earthquake in Haiti should consider doing so before March 1, 2010. If the taxpayer is an individual who itemizes, he will then be in a position to deduct the contribution in either 2009 or 2010, whichever produces the greater tax savings. While tax savings will be realized sooner if 2009 is chosen, a taxpayer may not want to choose 2009 if more taxes would be saved in 2010, taking into account his highest marginal tax bracket in each year. A taxpayer should try to determine whether his income will be much higher (or other deductions much lower) this year than in 2009. Bear in mind that a big capital gain in 2010 could push a taxpayer into a higher bracket even though the gain itself may qualify to be taxed at a maximum rate of 15%. If the adjusted net capital gain would otherwise be taxed at a rate below 25% or if it were ordinary income, it is taxed at a zero percent rate.

New Tax Treatment: A charitable deduction is generally only available for the tax year in which the contribution is made. Thus, for a calendar year taxpayer, the tax benefit of a charitable contribution made in January or February often isn't realized until the following calendar year when the tax return is filed. The Act allows taxpayers to treat charitable contributions of cash made after January 11, 2010, and before March 1, 2010 as contributions made on Dec. 31, 2009, if the contributions were for the purpose of providing relief to victims in areas affected by the earthquake in Haiti that occurred on January 12, 2010. (Act §1(a), (b); JCX-2-10, Jan. 20, 2010)

The IRS advises that the general rules on claiming tax deductions for charitable donations still apply: Taxpayers must itemize their deductions on Schedule A. Those claiming the standard deduction, including all short-form filers, aren't eligible. IRS also emphasizes that taxpayers can choose to deduct qualifying Haiti earthquake relief donations on either 2009 or 2010 returns, but the same item can't be claimed for both years.

Recommendation on Recordkeeping: Donors should keep Haiti earthquake relief contribution records for which 2009 deductions are chosen with their 2009 tax documents. This should help prevent the taxpayer from inadvertently attempting to take a double deduction by taking those same contributions in 2010.

Observation on Limitations & Carryover Rules: The Act doesn't change the charitable contribution percentage limitations and carryover rules. If a taxpayer takes advantage of the law, the 2009 percentage limitations of the taxpayer apply to the contribution and any excess amount is treated as a carryover of a contribution made in 2009.

Observation on Allocations: Presumably, taxpayers can't allocate a portion of a contribution to more than one tax year. A taxpayer who makes multiple contributions may treat each one separately. For example, a taxpayer making three separate gifts of \$100 each may treat two gifts as made on Dec. 31, 2009, and one gift as made on the actual date of gift (for example, January 15, 2010).

Caution on State Tax Treatment: While taxpayers in states that mirror federal tax law should expect the same tax treatment for Haiti relief contributions, taxpayers are advised to verify that this state tax treatment in fact applies.

Notes on Cash Contributions: The law doesn't specifically define "cash contribution." However, this generally includes contributions made by text message, check, credit card or debit card. Presumably it also includes money contributions and those made by money order. Further, a check mailed by March 1, 2010 will qualify for the 2009 deduction even though the charity doesn't cash it until after that date.

Notes on Recordkeeping: The Act clarifies that for a cash contribution the recordkeeping requirement can be satisfied by a telephone bill if it shows the name of the receiving organization, the date of the contribution, and the amount of the contribution. (Act § 1(c)) Thus, for example, in the case of a charitable contribution made by text message and chargeable to a telephone or wireless account, a bill from the telecommunications company containing the relevant information will satisfy the recordkeeping requirement. (JCX-2-10, Jan. 20, 2010) For cash contributions made by other means, taxpayers should keep a bank record, such as a cancelled check, or a receipt from the charity showing the name of the charity and the date and amount of the contribution.

Notes on Contributions that Qualify for the Election: The contributions must be made specifically for the relief of victims in areas affected by the January 12 earthquake in Haiti. It appears that only contributions fully earmarked for the Haiti earthquake relief qualify for the election. The election only applies to contributions after January 11, 2010, (i.e., after the earthquake). Further, a contribution made to a fund that generally provides relief for earthquake victims and victims of other disasters may not qualify.

Caution on Contributing to Qualified Charities: The IRS advises taxpayers to be sure their contributions go to qualified charities. It notes that most organizations eligible to receive tax-deductible donations are listed in a searchable, online database available under "Search for Charities" (<http://www.irs.gov/charities/article/0,,id=96136,00.html>). But some organizations, such as churches or governments, may be qualified even though they're not listed on IRS's website. Also, the IRS website reminds donors that contributions to foreign organizations generally aren't deductible.

Note on Eligible Donors: The election is not limited to individuals. Corporations and other entities also can choose to deduct otherwise deductible earthquake relief contributions as though they were made on December 31, 2009.

Source: Research Institute of America - Checkpoint