

Presented:
31st Annual Nonprofit Organizations Institute

January 16-17, 2014
Austin, Texas

Disaster Relief

Ashley Allison, Waco Foundation
MariBen Ramsey, Austin Community Foundation
Carolyn O. “Morey” Ward, Ropes & Gray LLP

Author contact information:
Carolyn O. “Morey” Ward
Ropes & Gray LLP
Washington, DC

Morey.Ward@ropesgray.com
202-508-4645

Providing aid to victims of natural or civil disasters is a traditional charitable activity. The federal tax law requirements applicable to Internal Revenue Code Section 501(c)(3) organizations providing relief to victims of disasters changed significantly following the outpouring of assistance to charities after the terrorist attacks of September 11, 2001. In particular, Congress and the IRS changed the rules regarding employer-sponsored charitable organizations in order to eliminate obstacles to providing assistance. Certain core legal principles for charities that provide disaster aid or emergency hardship relief were not altered following the events of September 11, 2001. This outline provides an overview of the legal framework for charities providing disaster relief and reviews the rules that changed after September 11, 2001.

I. General Legal Principles of Disaster Relief

A. Charitable Class Requirement

Charities must be organized and operated for charitable purposes, and may not engage in significant non-exempt activities.¹ Providing assistance to victims of disasters is an exempt activity. However, the group of individuals that may properly receive assistance from a charitable organization – the “charitable class” of beneficiaries – must be large enough or indefinite enough to satisfy the IRS that providing aid to members of the class benefits the community as a whole.² Because of this requirement, an organization cannot limit its assistance to a single individual, a particular family, or a few individuals injured in a specific event.

Similarly, donors are not permitted to earmark contributions to an organization for a particular individual or group of individuals.³

B. Evaluation of Financial Need

Charity includes “relief of the poor and distressed.”⁴ The IRS has stated that once a charitable class of beneficiaries is defined, a charitable organization must select recipients based on an objective determination of need. An individual who is eligible for assistance because the individual is a victim of a disaster or emergency hardship has no automatic right to a charity’s funds.⁵ The IRS has also explained that who qualifies as needy or distressed may change as the focus shifts from providing aid immediately after a disaster to meeting longer-term needs of victims:

¹ As used in this outline, the term “charities” refers to both public charities and private foundations that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

² See, e.g., Rev. Rul. 67-325, Rev. Rul. 67-367, Rev. Rul. 56-403.

³ *Thomason v. Comm’r*, 2 T.C. 441 (1943).

⁴ Treas. Reg. sec. 1.501(c)(3)-1(d)(2).

⁵ Internal Revenue Service, *Disaster Relief: Providing Assistance through Charitable Organizations* (Pub. 3833) (the “Disaster Relief Publication”) (2009).

A charity may provide crisis counseling, rescue services, or emergency aid such as blankets or hot meals in the immediate aftermath of a disaster without a showing of financial need. Providing such services to the distressed in the immediate aftermath of a disaster serves a charitable purpose regardless of the financial condition of the recipients. However, as time goes on and people are able to call upon their individual resources, it may become increasingly appropriate for charities to conduct individual financial needs assessments. For example, if a charity intends to provide three to six months of financial assistance to families to pay for basic housing because of a disaster or emergency hardship, it would be required to make an assessment of financial need before disbursing aid. While those who may not have the resources to meet basic living needs may be entitled to such assistance, those who do not need continued assistance should not use charitable resources.⁶

II. Employer-Sponsored Disaster Relief Entities Prior to September 11, 2001

At the time of the 2001 terrorist attacks, the future of employer-sponsored charitable assistance programs seemed bleak. The IRS had favorably addressed disaster-relief programs established by employer-sponsored private foundations in two private letter rulings issued in 1995. In 1999, however, the IRS reversed its position and revoked these two rulings.⁷ The IRS stated that it considered the disaster-relief programs similar to other types of employee-benefit programs that serve the private interests of the employer and its employees, rather than the interests of the broader public.

The IRS took a more lenient position with respect to public charities related to particular employers. In informal guidance issued in 1999, it indicated that if certain conditions are met, a public charity may be able to make disaster relief and hardship payments to employees without being deemed to serve the interests of the employer.⁸ The guidance listed 14 conditions to be used in assessing employer-related disaster relief and emergency hardship assistance programs.

III. Victims of Terrorism Tax Relief Act

A. Introduction

In response to the September 11, 2001, attacks, Congress enacted the Victims of Terrorism Tax Relief Act of 2001⁹ (the “Victims Relief Act”), which, among other things, changed the landscape for employer-sponsored assistance programs. The Victims Relief Act amended the Code by inserting a new Section 139, which defines “qualified disasters” and provides that “disaster relief payments” for victims of qualified disasters are excluded from the victims’ gross

⁶ Id. at 11-12.

⁷ LTR 199914040 (April 12, 1999); LTR 199917077 (May 3, 1999).

⁸ Internal Revenue Service, 1999 Exempt Organizations Continuing Professional Education Technical Instruction Program.

⁹ Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2001).

Also available as part of the eCourse

[2022 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
39th Annual Nonprofit Organizations Institute session

"(10:50 a.m.) MASTER CLASS: Disaster Relief Funds: An Overview of Potential Structures,
Related Tax Issues, and Practical Considerations"