



Legal Guidelines for Corporate Grantmakers Providing Disaster Relief

By Jane Nober and Kelly Shipp Simone*

When disasters strike, corporate grantmakers reach out to address the needs of affected employees and the community at large. It is important grantmakers understand the legal rules that govern disaster grantmaking. Although the information below provides the legal context for corporate grantmakers' response to disasters, corporations and their foundations should always review their particular approach with knowledgeable legal counsel.

Public Charities: While this article focuses on corporate grantmakers, public charities, whether sponsored by the corporation or completely independent, such as a community foundation, may also make payments for disaster relief. The guidelines outlined below for company-sponsored private foundations should be closely adhered to in order to ensure that the grants are made for charitable purposes.

How Can Grantmakers Help?

1. Direct Corporate Giving

- **Grants to Public Charities.** Grants from corporate giving programs to Section 501(c)(3) public charities are eligible as charitable deductions and, in the event of a disaster abroad, may be given with the understanding that the funds will be used for the international activities of the U.S. based charity, including its activities in a single country. The rules for the deductibility of direct company contributions of products and cash are unchanged by any *qualified disaster* determination (see sidebar). Contributions of products and grants provided to charities and government bodies for the purpose of disaster relief will be deductible.

Note that contributions of inventory property held for sale to customers made to charities for the care of the ill, needy or infants generally qualify for greater deductibility than contributions of inventory for other purposes. Typically, companies may receive a charitable deduction of no more than the cost basis of inventory. However, companies donating inventory for the care of the ill, needy or infants may receive a charitable deduction for no more than twice the cost basis of the property. The term "needy" is defined to include a person who lacks the necessities of life as a result of temporary distress and includes victims of a natural disaster. At times, other types of inventory contributions have received similar deductions through

Qualified Disasters

What is a qualified disaster?

A qualified disaster is: (1) a disaster that results from a terrorist or military action (2) a presidentially declared disaster (3) a disaster resulting from an accident involving a common carrier (4) a disaster caused by any other event determined by the Secretary of the Treasury to be of a catastrophic nature.

What is a qualified disaster relief payment?

Qualified disaster relief payments include payments or reimbursements attributable to a qualified disaster for reasonable and necessary personal, family, living or funeral expenses and reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or the repair or replacement of its contents.

specific legislative actions. Companies should consult with their advisors to determine the amount of any deduction for contributions of inventory.

- **Grants to Non-U.S. Organizations.** In those cases where a disaster takes place outside the United States, grants from a corporate giving program to a non-U.S. organization without a Section 501(c)(3) designation will not be eligible for a charitable deduction but, if made by a foreign subsidiary, might be deductible under the foreign country's tax laws. As with other grants to organizations, particularly those overseas, the company should consider what steps it should take to comply with counter-terrorism measures. See www.usig.org for detailed information on this topic.
- **Grants to Non-Charities or Individuals.** Any relief grants to non-charities, such as a chamber of commerce, or to an individual, will not be deductible as a charitable contribution by a corporation. (See Section 4 below to learn how non-charitable grants may be made to employees in the case of a qualified disaster.)

2. Company-sponsored Private Foundation Giving

- **Grants to Public Charities.** Awarding grants to Section 501(c)(3) public charities targeted for disaster relief does not present any special challenges. Grants from company-sponsored private foundations will count as qualifying distributions. If the disaster is abroad, corporate foundation grants may be given with the understanding that they will be used for the international activities of the U.S.-based charity, including its activities in a single country.
- **Grants to Non-U.S. Organizations.** A company-sponsored private foundation may make grants to non-U.S. organizations with a Section 501(c)(3) designation so long as the foundation follows either the equivalency determination or the expenditure responsibility rules required for international grantmaking. More information on these rules and other considerations related to compliance with counterterrorism measures is available at www.usig.org and in *Beyond Our Borders: a Guide to Making Grants outside the U.S.*
- **Grants to Non-Charities or Individuals.** While most relief work is done by public charities and government instrumentalities, noncharities may also be involved in relief work, such as a chamber of commerce facilitating the support of evacuees. When making grants to noncharities, private foundations must follow the expenditure responsibility rules to ensure that the grants are used for charitable purposes. Included in the requirements of expenditure responsibility are the use of a written grant agreement and receipt of follow-up reports from the grantee on the use of the money. Many payments for disaster relief presumably will be charitable, but private foundations

Why is the "Qualified Disaster" designation important?

Legislation passed after September 11, 2001 (the Victims of Terrorism Tax Relief Act of 2001) defined qualified disasters and made it easier for corporations and corporate grantmakers to provide assistance in such situations. First, the legislation provided that qualified disaster relief payments do not count as wages or other income and recipients do not have to pay income taxes on them. Second, the act's legislative history directed the IRS to issue new guidance permitting company foundations to provide disaster relief to company employees, as long as certain safeguards are in place. IRS Publication 3833 includes the IRS response: As long as the disaster is a qualified disaster and specified criteria are met, a company foundation may offer disaster relief to employees. (Private company foundations may not assist company employees in a disaster that does not meet the definition of a qualified disaster, however, as the IRS reasons that such assistance is serving the business purpose of the corporation and therefore is not charitable).

must ensure that they follow the rules of expenditure responsibility to avoid incurring an excise tax. [Expenditure Responsibility Step by Step](#) contains additional information on those rules. Public charities have more flexibility in making grants to non-charities, but still need to ensure that any grant is used for charitable purposes.

Private foundations may make grants to individuals for disaster relief on an objective and nondiscriminatory basis. However, private foundations may not provide assistance to disqualified persons (a term described below). In addition, any program to provide assistance to individuals affected by a disaster for study, travel or similar purposes will require preapproval by the Internal Revenue Service. Except in the circumstances outlined in Section 4, such assistance may not be limited to employees or their dependents.

3. Matching Gifts

Corporate giving programs and/or company-sponsored private foundations may match gifts made by U.S. or internationally-based employees targeted for disaster relief in accordance with the rules of the entity's matching gift program. If the rules of the matching gift program permit the matching of donations to organizations other than U.S.-based 501(c)(3) public charities, grants to internationally-based organizations may be made in accordance with the rules mentioned above.

4. Assisting Affected Employees

The rules for assisting employees in a disaster vary depending on whether the disaster is a "[qualified disaster](#)." Specifically, private foundations may not make grants to employees for hardship circumstances (e.g., house fire). Assistance to employees in similar hardship situations directly from the corporation are typically income to the employee. In contrast, a qualified disaster designation means that [qualified disaster relief payments](#) (see sidebars on previous pages) to affected company employees are deemed permissible, from the corporation or even from a company-sponsored private foundation, and do not count as wages or other income and recipients do not have to pay income taxes on them.

- **Direct corporate giving.** The easiest way for companies to assist employees affected by a qualified disaster is usually through direct company support. A program that uses corporate resources is not required to meet the special conditions that the company foundation must follow as described below. Whether provided by the company or the foundation, qualified disaster relief payments are not taxable income to employees and presumably the payments by the corporation under these circumstances would be deductible by the corporation as a business expense as well.
- **Company-sponsored private foundation giving.** When a qualified disaster occurs or has been declared, a company-sponsored private foundation may make disaster relief distributions to employees and their families as long as the following requirements are met (comments on the rules are in italics):

- **The class of beneficiaries must be large or indefinite.**

There is little conclusive guidance from the IRS as to how big a group must be to be deemed "large." A few affected employees would not be a charitable class, while a number in the hundreds probably would be. Private foundations can avoid uncertainty by creating programs that provide assistance not just to employees who are victims of one particular qualified disaster, but also to those who suffer losses in subsequent qualified disasters. Opening the program to future victims should satisfy the charitable class requirement because the class of beneficiaries is indefinite.

- **Recipients must be selected based on an objective determination of need.**

The process for determining need may vary depending upon the circumstances. Immediate needs for shelter and food, for example, may be met without a determination of financial need. Long-term assistance, such as financial assistance to pay for housing for a period of months, would require the foundation to determine the financial need of the individual. The foundation should maintain documentation that demonstrates individuals' needs. This documentation should include:

- a) A complete description of the assistance*
- b) The purpose for which aid was provided*
- c) The objective criteria the foundation used to provide assistance*
- d) The name and address of each recipient and the amount distributed to him or her*
- e) Any relationship between the recipient and officers, directors and key employees of the foundation or its substantial contributor (the company).*

- **The recipients must be selected by an independent selection committee** (or by other substitute procedures that ensure that any benefit to the employer is incidental and tenuous).

A committee is considered independent if a majority of the members of the committee are not in a position to exercise substantial influence over the employer. Members of the board of directors, the CEO and the CFO are examples of individuals typically in a position of substantial influence.

If a private foundation follows those requirements, the IRS will presume that any distribution is consistent with the foundation's charitable purpose and the payment will not be taxable wages for the assisted employee. Also, any distribution to employees other than individuals who are directors, officers or trustees of the foundation or members of the selection committee will be presumed not to violate the prohibition against self-dealing. (The self-dealing rules prohibit private foundations, including company foundations, from entering into a range of financial transactions with disqualified persons. Disqualified persons include substantial contributors to the foundation, as well as foundation directors and officers.)

Note that if a private foundation chooses to provide scholarships to assist in the aftermath of a disaster, it still must obtain advance approval of the grantmaking procedures and either follow the requirements for employer-related scholarships and education loans or be able to demonstrate that the scholarships for those affected by the qualified disaster are neither compensatory nor self-dealing. Grants to Individuals by Private Foundations contains more information about the requirements for scholarships. Contact Legal Staff for pertinent excerpts at legal@cof.org.

5. Facilitating and/or Encouraging Employees to Assist Affected Fellow Employees

While corporations may set up bank accounts to collect contributions for coworkers affected by a disaster, payments to such a bank account would not be charitable and, thus, the donor would receive no charitable deduction. However, employees may contribute to a disaster relief fund at a company-sponsored private foundation or public charity and receive a deduction.

Company-sponsored private foundations that typically only receive contributions from the corporation should be particularly aware of the substantiation rules. Generally, donors need receipts for any contributions over \$250 or cash contributions of any amount so that they may claim a charitable deduction. See IRS publication [Charitable Contributions Substantiation and Disclosure Requirements](#) for more information.

Company foundations should also take into account [state charitable solicitation laws](#) and consider whether they must register in states with such laws before accepting employee donations. Even if gifts from employees would permit the private foundation to be classed as a public charity, this would not happen unless the foundation applies to the IRS for reclassification.

Additional Resources

From the Council:

- *Grants to Government*
- *Assisting Corporate Employees with Charitable Dollars*

From the IRS:

- IRS Publication 3833: *Disaster Relief: Providing Assistance through Charitable Organizations*
- *Disaster Relief: Current Developments* - IRS FY 2003 Continuing Professional Education material
- *Disaster Relief: Providing Assistance Through Charitable Organizations*
- Presentation 13: *Disaster Relief Part II* (IRS EO Mini-Course): www.stayexempt.org

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