



HAITI EARTHQUAKE RELIEF

Special Report

Highlights

- ✓ Accelerated Tax Benefit
- ✓ Monetary Contributions Only
- ✓ February 28 Donation Deadline
- ✓ Relaxed Substantiation for Texting Donations

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New Law Allows 2010 Haiti Relief Contribution Deductions On 2009 Returns

Taxpayers making charitable cash contributions in early 2010 to help Haiti after the devastating January 12 earthquake can claim a deduction on their 2009 federal tax returns. The House of Representatives unanimously passed H.R. 4462 on January 20 to allow taxpayers to claim a charitable deduction on their 2009 returns for qualified Haiti disaster relief contributions made after January 11, 2010 and before March 1, 2010. The Senate approved the measure on January 21, and President Obama promptly signed it into law on January 22.

Impact *The new law gives taxpayers an immediate benefit for their generosity rather than having to wait until they file their 2010 returns in 2011. Of course, taxpayers can turn down this option and elect not to accelerate their deductions for qualified contributions to charities providing earthquake relief in Haiti. However, the same contribution cannot be deducted on a taxpayer's 2009 and 2010 returns.*

Comment Additional tax incentives to help Haiti may be in the pipeline. One proposal in Congress would extend an expired provision that allows an enhanced deduction for donations of food inventory.

Comment The new law is an incentive to individuals who itemize their deductions. It does not provide an incentive to indi-

viduals who do not itemize their deductions and consequently cannot claim a deduction for their charitable contributions. Charitable contributions by corporations are also covered under the new law.

CONTRIBUTIONS

Generally, contributions to qualified charitable organizations are deductible by individuals only for the tax year in which the contribution was made. For example, individuals who itemize their deductions normally may deduct only qualified charitable contributions made in 2009 on their 2009 returns filed in 2010.

HAITI CONTRIBUTIONS

The new law makes a special exception to the general rule for cash donations to help Haiti recover from the January 12 earthquake. Taxpayers who make a cash contribution to a qualified charitable organization after January 11, 2010 and before March 1, 2010 may claim the contribution as a deduction on their 2009 or 2010 federal income tax returns. Taxpayers may not deduct the same contributions on both their 2009 and 2010 returns.

Impact *For tax years beginning after 2009, the limitation on itemized deductions for higher income individuals is repealed. For the 2009 tax year, the limitation is reduced by two-thirds.*

Consequently, some individuals may find it more beneficial to claim their Haiti earthquake relief contribution on their 2010 returns filed in 2011 rather than claiming the contribution as a deduction on their 2009 returns.

Comment Contributions must be made specifically for relief of victims in areas affected by the January 12 earthquake.

The contribution must be “cash” (as opposed to property) to qualify for this special treatment. Qualifying “cash” donations for this purpose include payment in cash, check, credit card, debit card, or text message. Contributions of marketable securities or other property, however easily convertible into cash, cannot be accelerated. Also, this law does not waive the normal percentage limitation and carryover rules for charitable deductions.

Caution Qualifying contributions must be made to a domestic charitable organization that is assisting Haiti. Under the Code, as long as a U.S. charity collects the funds and has full control and

discretion over them, use of the funds outside the U.S. is irrelevant for charitable deduction purposes. Contributions to foreign relief organizations without U.S. affiliation are not deductible. Similarly, contributions to benefit specific individuals or families are not deductible. Unfortunately, as in past disasters, con artists reportedly are trying to profit on this tragedy; such “contributions” will not qualify, irrespective of the good intentions of the contributor.

SUBSTANTIATION

Contributions to qualified charities assisting Haiti must be substantiated. Generally, a taxpayer must have a bank record or written communication from the qualified Code Sec. 501(c)(3) charitable organization showing the name of the charity and the date and amount of the contribution.

The new law allows one additional method of substantiation. Individuals who make cash contributions through their cellular telephones via text message may substantiate their contributions with their telephone bills. The

telephone bill must show the name of the charitable organization, the date of the contribution and the amount of the contribution.

IRS GUIDANCE

In Notice 2010-16, the IRS designated the Haiti earthquake as a qualified disaster for purposes of Code Sec. 139. Under Code Sec. 139, any amount received by an individual as a qualified disaster relief payment is excluded from the individual’s gross income.

Comment Designation of the Haiti earthquake as a qualified disaster permits employer-sponsored private foundations to provide relief to their employees or their family members who are victims of the disaster. Otherwise, the payments could be treated as prohibited self-dealing and result in taxable compensation to the employees. In this case, the IRS will presume that qualified disaster relief payments made by a private foundation to employees and their families in areas affected by the Haiti earthquake are consistent with the foundation’s charitable purpose.