

# Henderson & Caverly Purn LLP

## NONPROFIT ORGANIZATIONS NEWSLETTER

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### CHARITABLE ORGANIZATIONS PROVIDING DISASTER RELIEF



Many charitable organizations desire to assist victims of disasters or those in emergency hardship situations, such as the victims of Hurricane Florence.

Providing aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form. Charitable organizations, including churches, are frequently able to administer relief programs more efficiently than individuals acting

on their own.

There are tax advantages when a charitable organization provides relief. When an organization is exempt from federal income tax, more of its resources are available to provide relief. Contributors to qualified charitable organizations may be eligible to claim tax deductions for their donations, and the value of these contributions is not subject to gift tax, regardless of the amount. Also, individuals receiving assistance are not generally subject to federal tax on the value of assistance they receive from a charity to meet their personal needs.

### HELPING THROUGH AN EXISTING CHARITABLE ORGANIZATION

When a tragic event occurs there is often an overwhelming desire on the part of the community to come to the aid of the victims. In the immediate aftermath of a disaster or emergency, those who wish to provide help may overlook existing charities and spend precious time and resources establishing a new charitable organization.

It may be more practical to combine resources with an existing charity to provide immediate relief, or see whether an existing charity operating in a related area may be interested in establishing a special program to address a particular disaster or emergency hardship situation. Community-based organizations and charities with a local presence often know best what assistance is needed and understand the social and cultural context of a disaster. Working with and supporting these existing organizations may prove to be a more efficient use of disaster relief resources.

### Federal Tax Law

Under federal law, an existing qualified charity generally must be given full control and authority over the use of donated funds, and contributors may not earmark funds for the benefit of a particular individual or family. Contributions to qualified charities may, however, be earmarked for flood relief, hurricane relief or other disaster relief.

## **State Law Considerations**

Many state and local authorities that regulate charitable solicitation rules have imposed regulations that provide that if a charity represents that funds will be used for the relief of the victims of a particular disaster, the funds may not be used for other programs of the organization.

## **ESTABLISHING A NEW CHARITABLE ORGANIZATION**

When no existing charity appears to have the capability to carry out an effective disaster relief or emergency hardship program, or when the potential organizers of the charity have long-term goals extending beyond the immediate crisis, it may be appropriate to consider establishing a new charitable organization. An organization qualifies as an exempt charitable organization if it is organized and operated exclusively for charitable purposes, serves public rather than private interests, and refrains from participating or intervening in any political campaign or engaging in substantial amounts of lobbying activity.

A new disaster relief or emergency hardship organization may request expedited handling of its application for exemption. An application will not be expedited simply because the organization may serve disaster victims. The organization must demonstrate that it is meeting an immediate need of disaster relief or emergency hardship victims and that its ability to provide immediate assistance to such victims will be adversely impacted in a material way if the application is not reviewed expeditiously. Requests for expedited handling are infrequently approved, and even if consideration of the application is expedited, there is no guarantee that tax-exempt status will be granted. See the IRS' [website](#) regarding expedited processing of exemption applications.

If you or your organization desires to form a new charitable organization, please contact our office.

## **HOW CHARITABLE ORGANIZATIONS HELP VICTIMS**

### **Aid to Individuals**

Organizations may provide assistance in the form of funds, services, or goods to ensure that victims have the basic necessities, such as food, clothing, housing (including repairs), transportation, and medical assistance. Disaster relief organizations are generally in the best position to determine the type of assistance that is appropriate.

### **Aid to Businesses**

Disaster assistance may also be provided to businesses to achieve the following charitable purposes:

- to aid individual business owners who are financially needy or otherwise distressed,
- to combat community deterioration, and
- to lessen the burdens of government.

An exempt charity can accomplish a charitable purpose by providing disaster assistance to a business if:

- the assistance is a reasonable means of accomplishing a charitable purpose, and
- any benefit to a private interest is incidental to the accomplishment of a charitable purpose.

Once a damaged business has been restored to viability or a newly attracted business is self-supporting, further assistance from a charity is no longer appropriate. Charities that aid businesses should have criteria and procedures in place to determine when aid should be offered and discontinued.

## **Charitable Class**

The group of individuals that may properly receive assistance from a charitable organization is called a “charitable class.” A charitable class must be large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance. For example, a charitable class could consist of all the individuals in a city, county or state. Such a charitable class is large enough that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community. Donors may not earmark contributions to a charitable organization for a particular individual or family.

## **Needy or Distressed Test**

Generally, a disaster relief or emergency hardship organization must make a specific assessment that a recipient of aid is financially or otherwise in need. Under established rules, charitable funds cannot be distributed to individuals merely because they are victims of a disaster. An organization’s decision about how its funds will be distributed must be based on an objective evaluation of the victims’ needs at the time the grant is made. The scope of the assessment required to support the need for assistance may vary depending upon the circumstances.

## **Short-Term and Long-Term Assistance**

Often charitable organizations (or programs of existing charities) are established as a result of a particular disaster where both short-term and long-term assistance might be required. The following types of assistance, if based on individual need, would be consistent with charitable purposes:

- assistance to allow a surviving spouse with young children to remain at home with the children to maintain the psychological well-being of the family,
- assistance with elementary and secondary school tuition and higher education costs to permit a child to attend school,
- assistance with rent, mortgage payments or car loans to prevent loss of a primary home or transportation that would cause additional trauma to families already suffering, and
- travel costs for family members to attend funerals and to provide comfort to survivors.

## **DOCUMENTATION**

A charitable organization must maintain adequate records to show that the organization’s payments further the organization’s charitable purposes and that the victims served are needy or distressed. Charities must also maintain records to show they have made distributions to individuals after making appropriate needs assessments based on the recipients’ financial resources and their physical, mental, and emotional well-being.

Generally, documentation should include:

- a complete description of the assistance provided,
- costs associated with providing the assistance,
- the purpose for which the aid was given,
- the charity’s objective criteria for disbursing assistance under each program,
- how the recipients were selected,
- the name, address, and amount distributed to each recipient,
- any relationship between a recipient and officers, directors, or key employees of, or substantial contributors to, the charitable organization, and
- the composition of the selection committee approving the assistance.

## **Documentation of Short-Term Emergency Aid**

A charitable organization that is distributing short-term emergency assistance would only be expected to maintain records showing the type of assistance provided, criteria for disbursing assistance, date, place, estimated number of victims assisted (individual names and addresses are not required), charitable purpose intended to be accomplished, and the cost of the aid. Examples of such short-term emergency aid would include the distribution of blankets, hot meals, electric fans, or coats, hats and gloves. An organization that is distributing longer-term aid should keep the more-detailed type of records described above.

## **REPORTING**

If a public charity carries on disaster relief activities as one of its three largest programs, it must describe the services provided in the Statement of Program Service Accomplishments on IRS Form 990 or Form 990-EZ. A public charity also may be required to complete Schedule I for grants or other assistance to individuals.

Similarly, if a private foundation carries on disaster relief activities as one of its four largest programs, it must describe the services provided in its summary of direct charitable activities on IRS Form 990-PF.

## **INCOME TAX TREATMENT OF QUALIFIED DISASTER PAYMENTS**

Internal Revenue Code section 139 provides that qualified disaster (as defined in section 139) relief payments from any source, including employers, reimbursing or paying individuals' specified expenses in connection with qualified disasters are not taxable as income and are not subject to employment taxes or withholding.

Qualified disaster relief payments include payments received (regardless of the source) for the following expenses:

- reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence due to a qualified disaster (a personal residence can be a rented residence or one you own), and
- reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster.

Qualified disaster relief payments do not include:

- payments for expenses otherwise paid for by insurance or other reimbursements, or
- income replacement payments, such as payments of lost wages, lost business income, or unemployment compensation

For the IRS' latest updates regarding tax relief for those affected by Hurricane Florence, check the [Hurricane Florence](#) website. For additional information regarding a charitable organization providing disaster relief, please see IRS [Publication 3833](#). If you have questions regarding your organization providing disaster relief, please [contact](#) our office.

## **IRS WARNS OF SCAMS RELATED TO NATURAL DISASTERS**

In the wake of Hurricane Florence, the Internal Revenue Service is reminding taxpayers that criminals and scammers try to take advantage of the generosity of taxpayers who want to help victims of major disasters.

Fraudulent schemes normally start with unsolicited contact by telephone, social media, e-mail or in-person

using a variety of tactics.

- Some impersonate charities to get money or private information from well-intentioned taxpayers.
- Bogus websites use names similar to legitimate charities to trick people to send money or provide personal financial information.
- They even claim to be working for or on behalf of the IRS to help victims file casualty loss claims and get tax refunds.
- Others operate bogus charities and solicit money or financial information by telephone or email.



### Help for disaster victims

Comprehensive information on disaster-related tax issues, including provisions for tax relief, can be found on the disaster relief page on IRS.gov. In the case of a federally declared disaster, affected taxpayers may also call the IRS Special Services Help Line, 866-562-5227, with disaster-related tax questions. Details on available relief can be found on the [disaster relief](#) page on IRS.gov.

### Donate to real charities

To help taxpayers donate to legitimate charities, the IRS website, IRS.gov, has a search feature, [Tax Exempt Organization Search](#), which helps users find or verify qualified charities. Donations to these charities may be tax-deductible.

- Contribute by check or credit card. Never give or send cash.
- Don't give out personal financial information — such as Social Security numbers or credit card and bank account numbers and passwords — to anyone who solicits a contribution.

Taxpayers suspecting fraud by email should visit IRS.gov and search for the keywords “[Report Phishing](#).” More information about tax scams and schemes may be found at [IRS.gov](#) using the keywords “scams and schemes.”

## CALIFORNIA TAX-EXEMPT STATUS VERSUS FEDERAL EXEMPTION

Although most California laws deal with tax exemption patterned after the Internal Revenue Code (IRC), obtaining state tax-exempt status is a separate process from obtaining federal tax exemption. To obtain state tax-exempt status, an organization must submit one of the following to the Franchise Tax Board:



- [Form 3500](#), Exemption Application
- [Form 3500A](#), Submission of Exemption Request, if you obtained federal exemption under IRC Section 501(c)(3), (c)(4), (c)(5), (c)(6), (c)(7), or (c)(19).

If you do not obtain state tax-exempt status for your organization, it remains subject to the California Revenue and Taxation Code (R&TC) as a taxable entity.

All non tax-exempt corporations which are incorporated or qualified in California are required to pay at least the \$800 minimum franchise tax whether they are active, inactive, operate at a loss, or file a short-period return (less than 12 months).

The following types of nonprofit entities are required to obtain a federal determination letter prior to receiving California tax-exempt status with Franchise Tax Board (FTB):

- Foreign nonprofits (organized in states other than California).

- Qualified charitable trusts under R&TC Section [23701d](#) (IRC Section 501(c)(3)).
- Nonprofit cooperatives under R&TC Section [23701a](#) (IRC Section 501(c)(5)).
- Voluntary Employee Benefit Associations under R&TC Section [23701i](#) (IRC Section 501(c)(9)).

#### *Federal forms*

The IRS [website](#) provides information regarding applying for federal tax exemption. The following forms and publications may help:

- [Publication 557](#), Tax-Exempt Status for Your Organization
- [Form 1023](#), Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
- [Form 1024](#), Application for Recognition of Exemption Under Section 501(a)
- [Form 1120-H](#), U.S. Income Tax Return for Homeowners Associations

#### *State and federal differences*

California law may differ from federal law with regard to exempt organizations. For a chart of select major differences, please see the chart on the Franchise Tax Board's [website](#).

If you need assistance in obtaining tax exempt status for your organization in California or the IRS, please [contact](#) our office.

- [Visit our Nonprofit Organizations Group Website](#)
- [Subscribe to our monthly Newsletter](#)
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