



TaxNewsFlash

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Notice 2021-42: Employer leave-based donation programs, extended for 2021 (COVID-19)

The IRS today released an advance version of Notice 2021-42 that extends the federal income and employment tax treatment previously provided in Notice 2020-46 with regard to cash payments made to charitable organizations described in section 170(c) after December 31, 2020, and before January 1, 2022.

[Notice 2021-42](#) [PDF 69 KB] extends the relief offered in response to the coronavirus (COVID-19) pandemic through December 31, 2021.

As explained in a related IRS release—[IR-2021-142](#)—the tax relief is extended for calendar year 2021 for employers that make cash payments to charitable organizations providing COVID-19 relief in exchange for sick, vacation or personal leave that employees forgo because of the COVID-19 pandemic. These cash payments will not be treated as compensation, and the employees will not be treated as receiving the value of the leave as income and cannot claim a deduction for the leave that they donated to their employer. Employers, however, may deduct these cash payments as a business expense or as a charitable contribution deduction if the employer otherwise meets the respective requirements of either section.

Background

Notice 2020-46 (June 2020) provided that employers that make cash payments to section 170(c) organizations in exchange for vacation, sick or personal leave that the employees elect to forgo will not be treated as wages (or compensation) to the employees (or otherwise be included in the gross income of the employees) if the payments are made to section 170(c) organizations for the relief of victims of the COVID-19 pandemic in the affected geographic areas, and paid to the section 170(c) organizations before January 1, 2021.

Employees electing to forgo leave will not be treated as having constructively received gross income or wages (or compensation). The amount of cash payments under Notice 2020-46 also are not to be included in Box 1, 3 (if applicable), or 5 of the Form W-2, and electing employees cannot claim a charitable contribution deduction under section 170 with respect to the value of forgone leave. However, an employer may deduct these cash payments as a business expense (under the rules of

section 170 or the rules of section 162) if the employer otherwise meets the requirements of either section. Read [TaxNewsFlash](#)

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