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**Steve Leimberg's Charitable Planning**
**Email Newsletter Archive Message #293**

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**Subject: Jason Havens, Kelly Hellmuth & Peter Blumeyer - Charitable Giving Tips to Provide Help and Hope During the COVID-19 Crisis**

*"The COVID-19 pandemic likely will cost far more economically than any contemporary hurricane or other natural disaster, and tragically, it is anticipated that COVID-19 also will claim more lives. Fortunately, the U.S. tax code offers some of the most significant charitable giving provisions in the world to encourage business entities and private clients to provide valuable help. This newsletter looks at several ways that charities, businesses and individuals can provide aid to others to relieve human suffering and get through this time of crisis."*

We close the week with large dose of charitable giving positivity provided by **Jason E. Havens**, **Kelly L. Hellmuth** and **Peter T. Blumeyer**.

**Jason E. Havens, Partner, Holland & Knight,** is a highly experienced business and tax attorney who uses creative problem solving and strategic insight to achieve planning objectives for high-net-worth individuals, families, and charitable organizations. He specializes in complex estate and charitable gift planning (domestic and international), wills and trusts, probate and trust administration, and probate and trust litigation. Since 2009, The Florida Bar has certified Mr. Havens as a Board Certified Specialist in Wills, Trusts and Estates Law. Since 2010, the Estate Law Specialist Board has certified Mr. Havens as an Estate Planning Law Specialist in Tennessee, as listed on the Roll of Certified Legal Specialists of the Tennessee Commission on Continuing Legal Education. He also is a Fellow of The American College of Trust and Estate Counsel (ACTEC).

**Kelly Hellmuth**, is **Senior Counsel** in **Holland & Knight**'s Jacksonville office where she focuses on charitable and nonprofit issues on a national scale. She represents public charities, private foundations, trustees of charitable trusts, religious institutions, trade associations and other tax-exempt organizations, in addition to donors. Since 2019, The Florida Bar has certified Ms. Hellmuth as a Board Certified Specialist in Tax. Ms.

Hellmuth guides her clients through all aspects of the complex world of nonprofit law and tax exemption. She assists with structuring tax-exempt entities, obtaining exemption from federal income tax, complying with tax rules, adopting good governance principles and best practices, and planning and substantiating gifts. She has significant experience with issues including unrelated business taxable income, private inurement and private benefit, excess benefit transactions, self-dealing, excess business holdings, taxable expenditures, minimum distributions, fundraising regulations, and endowments. Ms. Hellmuth also provides advice regarding estate planning, probate administration, trust administration and charitable gift planning, including through the traditional use of charitable trusts, bargain sales, charitable gift annuities and conservation easements, as well as innovative tax strategies.

**Peter Blumeyer** is an attorney based in **Holland & Knight**'s Jacksonville office and a member of the firm's Private Wealth Services Group. He regularly represents individuals, families, charitable organizations and corporate fiduciaries throughout the country on issues of both Florida and federal law. He focuses his practice on trust and estate litigation, estate planning and administration, and the law of tax-exempt/nonprofit organizations. In doing so, he combines a mix of training as a litigator and business lawyer to both help preserve wealth and protect his clients' interests. As a member of the Private Wealth Services Group's Dispute Resolution Team, Mr. Blumeyer is well-versed in the litigation of complex trust, estate and guardianship disputes. He has significant experience in will and trust interpretation and administration actions, contested guardianships, and breach of fiduciary duty claims. Mr. Blumeyer is admitted to practice, and has appeared in, both state and federal courts.

Here is their commentary:

## EXECUTIVE SUMMARY:

The COVID-19 pandemic likely will cost far more economically than any contemporary hurricane or other natural disaster, and tragically, it is anticipated that COVID-19 also will claim more lives.  Fortunately, the U.S. tax code offers some of the most significant charitable giving provisions in the world to encourage business entities and private clients to provide valuable help. This newsletter looks at several ways that charities, businesses, and individuals can provide aid to others to relieve human suffering and get through this time of crisis.

## COMMENT:

The coronavirus pandemic causing the disease known as COVID-19 is dramatically impacting nearly all countries around the globe, and now is spreading within the United States. This pandemic likely will cost far more economically than any contemporary hurricane or other natural disaster, and tragically, it is anticipated that COVID-19 also will claim more lives, although it is hoped that effective treatment and a vaccine will be developed and made widely available as soon as possible.

Meanwhile, federal and state governments have mobilized *en masse* in an effort to suppress the virus' ongoing spread. Local governments, in conjunction with significant help from the private sector, are supplying equipment, medical supplies and other daily items – from food to paper products to utilities – throughout the country. Healthcare providers, first responders, grocery store workers and others are generously providing frontline assistance. For those sheltering at home, the U.S. tax code offers some of the most significant charitable giving provisions in the world to encourage business entities and private clients to provide valuable help.

There are many ways in which charities, businesses, and individuals can provide aid to others to relieve human suffering and get through this time of crisis. IRS Publication 3833 (Disaster Relief: Providing Assistance through Charitable Organizations) serves as an excellent overview of some of the philanthropic vehicles available during disasters and other catastrophic events, discussing specific steps that a business entity or a private client would pursue in order to create a new charitable organization with a disaster relief program. The publication also gives guidance to existing charitable organizations that want to help victims of disasters, including "Aid to Individuals" and "Aid to Businesses" that are in need.

Key Considerations

When creating a new disaster relief program, charities, businesses, and individuals should keep several important considerations in mind. For one, any charitable organization must benefit a sufficiently broad "charitable class." As described on page 9 of Publication 3833, "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." If the desired charitable class is limited to a smaller group, such as victims that are employees of a particular employer, the program must make that group indefinitely large by extending the time period for inclusion in the group. In other words, the disaster relief program must be open-ended and include not only those employees affected by the current disaster but also those who may be affected by future disasters. This program structure avoids the prohibition against targeting the disaster relief to specific individuals.

Another important consideration is whether a recipient of assistance will have to include any relief payments as taxable income. In order to exclude "qualified disaster relief payments" from an individual's or business entity's taxable income under Section 139 of the Internal Revenue Code, a "qualified disaster" is required. Section 139 of the Internal Revenue Code defines such a disaster as including a presidentially declared disaster. In the current crisis, President Donald Trump used the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) to declare the COVID-19 pandemic to be a national emergency.

A review of the Stafford Act indicates that this national emergency will be classified as a "qualified disaster," much like President Bill Clinton's use of the Stafford Act to confront the West Nile virus outbreak in 2000. While tax professionals would certainly welcome the comfort of a notice from Treasury Secretary Steven Mnuchin "confirming" this emergency as a qualified disaster, the absence of such a notice – at least to date – should not change that classification.

## Types of Assistance

In the face of this qualified disaster, a relief program can provide various types of assistance. Whereas most generally think of disaster relief involving expenses incurred for the repair or rehabilitation of a personal residence or the replacement of the contents of a personal residence, disaster relief payments also can include reasonable and necessary personal, family, living or funeral expenses incurred as a result of a qualified disaster, as well as any governmental payments to individuals and business entities affected by a qualified disaster. However, in order to be excluded from taxable income, disaster relief payments must not include: 1) payments for expenses otherwise paid for by insurance or other reimbursements; or 2) income replacement payments, such as payments of lost wages, lost business income or unemployment compensation.

In addition to qualified disaster relief payments, charitable organizations – including employer-sponsored assistance programs – may assist individuals suffering from certain personal hardships that are not necessarily related to a qualified disaster. For example, the sudden death of a family member can qualify as a personal hardship in this context. As explained in more detail in Publication 3833, an employer-sponsored assistance program's ability to make grants to individuals will depend on whether that program is being conducted through a donor-advised fund (DAF), a public charity that is not excessively controlled by the employer, or a private foundation. In each case, certain requirements must be met.

To provide some general information on those requirements, existing charities should evaluate whether their charitable purposes will accommodate the addition of a disaster relief fund and/or an emergency hardship fund. If not, an existing charity may create a separate charitable organization or open such a fund at another charity whose charitable purposes include these types of relief.

Small and large businesses may use a donor-advised fund or create a charitable organization that would either be classified as a private foundation or a public charity. If a business wants to benefit its own employees, the most flexible approach would be the creation of a public charity that serves a sufficiently broad charitable class.

The simplest approach would be a donor-advised fund; however, some public charities that offer donor-advised funds will not permit qualified disaster relief payments or similar grants that would benefit individuals, especially a business' own employees. A private (or "corporate") foundation also could accomplish these purposes, although the self-dealing rules and potential exposure to private foundation excise taxes make this option a more complex one.

Regardless of whether the charitable organization is a public charity or a private foundation, it is critical that the business use an independent selection committee in order to avoid an Internal Revenue Service position that the employer is receiving substantial private benefits (for example, inducing the recipient employees to follow a certain course of action or to relieve the employer of a legal obligation for employee benefits).

Individuals have the same options as businesses, without the consideration whether to benefit their employees, of course. Which vehicle to accomplish an individual's charitable objectives in this context will depend in part on the amount that an individual wants to contribute. Again, the simplest solution would be a donor-advised fund. Creating a charitable organization for an individual or family would require professional fees to create the nonprofit corporation or trust and to apply for exempt status using either the standard application (IRS Form 1023) or the abbreviated version (IRS Form 1023-EZ). Please note that as of January 31, 2020, federal tax law requires that the exemption application be completed and submitted electronically through the Pay.gov website, although there is a 90-day grace period that allows taxpayers and their professionals to submit hard copy applications (that perhaps will be extended due to the COVID-19 pandemic).

**Conclusion**

Due to the favorable philanthropic provisions of the Internal Revenue Code, existing charities, small and large business entities, and individuals may provide much-needed assistance to battle the COVID-19 pandemic, which now is classified as a "qualified disaster,". IRS Publication 3833 outlines the available options to provide that assistance, including donor-advised funds, public charities, and/or private foundations. Employers also may provide assistance to employees; however, special requirements must be followed in order to make either qualified disaster relief payments or emergency hardship payments to an employee. The authors would encourage any entity or person interested in helping to review IRS Publication 3833 and consult appropriate professionals if there is a decision to proceed.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!**

Jason E. Havens

Kelly L. Hellmuth

Peter T. Blumeyer

## CITE AS: