



Connecting lawyers, nonprofits, and communities

Providing Disaster Relief

As New York City's nonprofit sector mobilizes in response to Hurricane Sandy Lawyers Alliance is ready to assist. With over 10 years of disaster relief experience Lawyers Alliance has helped nonprofits with disaster relief legal matters related to fundraising and grant-making, expansion and downsizing, real estate contingencies, and compliance with tax-exempt organizations law. If your organization has questions about assisting relief efforts or victims of Hurricane Sandy, contact Lawyers Alliance for support.

Existing Charitable Organizations

Question: Does an existing charitable organization, need to take any special legal steps to establish a disaster relief program or engage in disaster relief activity?

Answer: If the disaster relief program will be ongoing, rather than a one-time fundraiser to benefit a local disaster relief program, the Board of Directors or Executive Director should check the organization's certificate of incorporation to ensure that the planned activities fall within the organization's current corporate purposes. If not, the organization may need to amend its certificate, which requires Board action and court approval upon notice to the state Attorney General, in order to change or add to the purposes. The Board may also seek to establish resolutions authorizing disaster-related activity. If the organization plans to distribute funds for disaster relief, the Board should adopt resolutions establishing such a disaster relief program, an appropriate mission statement and guidelines for distributing funds. Most organizations have the authority to organize a one-time disaster relief program such as a penny collection to benefit the Red Cross without amending organizational documents.

Question: How does an organization determine who is eligible for charitable assistance?

Answer: As a general rule, charitable organizations support individuals who are financially needy or otherwise distressed. In the immediate aftermath of a disaster it is not necessary for charitable organizations to conduct a needs based assessment. For example, all victims of flooding will need dry clothing and food in the days immediately following the event. As time passes, however, and individuals with financial means are able to use their own resources to recover from the disaster the charitable organizations resources should be directed towards those without sufficient resources to help themselves. See, IRS Disaster Relief publication www.irs.gov/pub/irs-pdf/p3833.pdf.

Question: Can a charitable organization provide support to a local business impacted by Hurricane Sandy?

Answer: Charitable organizations are able to disaster relief support to businesses when aid is provided to individual business owners who are financially needy or otherwise distressed or when the aid lessens the burdens of government. For example, if Hurricane Shady flooded a



Lawyers Alliance for New York

Connecting lawyers, nonprofits, and communities

local shopping district or caused a power outage a charitable organization could provide economic support to businesses clean out their stores. Ongoing charitable support for a viable business would not be appropriate. Charities that aid businesses should have criteria and procedures in place to determine when aid should be discontinued. See, IRS Disaster Relief publication www.irs.gov/pub/irs-pdf/p3833.pdf.

Question: Our agency is providing direct cash assistance to Hurricane Sandy victims. Do we have to issue a 1099 to evidence those payments?

Answer: No, assuming the person to whom the cash assistance is being given is a member of a charitable class entitled to assistance, a 1099 does not have to be issued. That is because the payments are not being made in exchange for services in the course of the agencies' business. Generally, non-employee compensation is reported on a Form 1099. This type of compensation includes interest, dividends, rents, royalties, commissions, non-employee compensation and certain other payments. The General Instructions for Forms 1099 indicate that "payments for services performed for a trade or business by people not treated as its employees" are reported on a Form 1099-MISC. See, The General Instructions for Forms 1099, 1098, 5498 and W-2G, page Gen-13. The 2012 Instructions for Form 1099-MISC state that non-employee compensation must be reported when "(1) you made the payment to someone who is not your employee; (2) you made the payment for services in the course of your trade or business (including government agencies and nonprofit organizations); (3) you made the payment to an individual, partnership estate, or, in some cases a corporation; and (4) you made the payments to the payee of at least \$600 during the year." The 2012 Instructions for Form 1099-MISC. Therefore, because the payments are not being made in exchange for services, the agency does not have to issue a 1099.

Question: Will recipients of our cash assistance grants have to pay federal income tax on the funds they receive from us?

Answer: Probably not. The Internal Revenue Code excludes gifts from income. The IRS has recognized that need-based payments by charities are excludible from income as gifts. Further, the new Tax Relief Act sets forth the exclusion for disaster relief payments. Specifically, the Tax Relief Act enacts a new IRC § 139, which excludes "qualified disaster relief payments" from income. Such payments include amounts paid to an individual to reimburse or pay reasonable living expenses for housing, food, clothing, transportation, medical care and funeral expenses. Payments must be made on account of a Presidentially declared disaster, one triggered by terrorism or military action, or one declared under state or local law. There is no dollar limit on the amount that can be excluded under this provision, nor a restriction on who may be the payor.



Connecting lawyers, nonprofits, and communities

Newly Forming Charitable Organizations

Question: How can I form a new charitable organization to provide relief to victims of Hurricane Sandy and apply for federal tax exemption?

Answer: First, at the state level, the organization must be created in the form of a nonprofit corporation, trust or unincorporated association. In New York, charitable organizations generally must register with the state's charities bureau (in the Attorney General's office) before soliciting funds. The organization also must qualify to do business in any state in which it intends to do business. So, for example, if you form a corporation in New York but expect to provide services in New York and New Jersey it will be necessary to qualify to do business in New Jersey. At the federal level, the entity must submit an application to the IRS for recognition of its tax exempt status on Form 1023, and it must seek classification as a public charity or private foundation.

To qualify as exempt under Section 501(c)(3) of the IRC, the organization, among other things, must be organized and operated for charitable purposes and serve public, rather than private, interests. Generally, disaster relief programs are exempt on the ground that they are formed for the relief of the distressed, but an organization also may seek to establish that is charitable on other grounds. Disaster relief organizations also must have in place a set of objective criteria to make distributions. In addition, the organization must serve a large or indefinite group rather than particular, pre-selected individuals.

Generally, Section 501(c)(3) organizations that provide cash assistance to disaster victims must make a specific determination of need prior to distributing funds to individual victims. However, in the immediate aftermath of a disaster, a charity can provide support to victims without doing needs based analysis. As the IRS notes, after a flood all victims need safe housing, food and clean clothing. As time passes however, and some victims are able to draw on their own personal resources to aid in recovery it becomes appropriate to conduct a needs based assessment. <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Disaster-Relief:--Meaning-of--Needs-Based-Test>.

Question: How can our organization receive expedited review of its Form 1023 application for recognition of tax-exempt status?

Answer: It typically takes the IRS approximately four months to review an application. However, in response to prior disasters the IRS has instituted a special expedited review and approval process for new organizations seeking tax-exempt status to provide disaster and hardship relief to victims. Check the IRS website, www.irs.gov, in advance of filing the application for federal tax exemption.



Connecting lawyers, nonprofits, and communities

Question: Where can I get more background information about forming a disaster relief organization?

Answer: Check the IRS website at <http://www.irs.gov> for updates and review the IRS Disaster Relief publication available at www.irs.gov/pub/irs-pdf/p3833.pdf.

CHARITABLE CONTRIBUTIONS

Question: When is a contribution to help in disaster relief efforts tax-deductible?

Answer: An individual or corporation will be eligible to claim a federal income tax deduction only if the contributions are made to an organization deemed "charitable" within the meaning of Section 170(c)(2) of the Internal Revenue Code ("IRC"). This includes some, but not all, organizations that are exempt from federal taxes. It includes organizations exempt under IRC section 501(c)(3) (charitable organizations), 501(e) (cooperative hospital service organizations), 501(f) (cooperative service organizations of certain educational organizations), and 501(k) (nonprofit childcare organizations). It does not include, for example, organizations exempt under IRC section 501(c)(4) (advocacy, lobbying, and political organizations) or 501(c)(5) (labor unions and agricultural associations). Organizations claiming exemption under section 501(c)(3) must seek recognition of their exemption by filing Form 1023 and will receive a "determination letter" confirming exempt status. Churches, temples, synagogues, mosques and certain other religious organizations are not required to seek recognition of exempt status from the IRS to qualify to receive deductible contributions. A donor will also be eligible to claim a tax deduction for charitable contributions made to a state or local government. However, a donor will not be able to claim a tax deduction for a gift made directly to the family of a victim of Hurricane Sandy, or a fund established to benefit a specified individual or family, because a gift to a specified individual or family is not "charitable" within the meaning of the federal tax law.

Exempt organizations should maintain their determination letters on file for inspection by donors, especially those who will need confirmation of that exempt status for their records (e.g., private foundation grantors). IRS Publication 78 contains a cumulative list of all 501(c)(3) exempt organizations and you can call the IRS at 800-829-1040 to inquire whether an organization is qualified.

Question: What are a not-for-profit organization's obligations regarding documentation of charitable contributions?

Answer: Taxpayers may not deduct individual contributions of \$250 or more unless they have received a contemporaneous written acknowledgment from the exempt organization that received the donation (IRC §170(f)(8)). The obligation is imposed only upon the donor, not the exempt organization, to request and obtain the acknowledgement for charitable contributions over \$250. However, charities are often compelled to initiate documentation in the interest of good donor relations. For quid pro quo contributions (that is, contributions in exchange for which the donor receives some benefit), the charitable organization must give the donor a written



Lawyers Alliance for New York

Connecting lawyers, nonprofits, and communities

statement if the payment is over \$75 and is partly a contribution and partly in exchange for goods or services.

The acknowledgment must be written and should include: the amount contributed if cash, or a description of the property if non-cash; the date; a statement as to whether the charity gave anything in exchange for the contribution; and a description and good faith estimate of the value of any goods or services provided by the charity in exchange for the contribution. Additional procedures apply for non-cash contributions with a fair market value greater than \$500. In addition, the written statement to donors making a quid quo pro payment over \$75 must include a statement that the donor can deduct only the amount by which the contribution exceeds the value of any goods or services received.

Question: Is there a gift tax if someone gives a gift directly to an individual or through a nonqualified organization?

Answer: Donors may choose to give gifts directly to individual victims or through non-qualified organizations, even though such assistance does not qualify as a tax-deductible contribution. According to the IRS Advanced Text, individual recipients of gifts are not subject to tax on the value of the gift, unless an employer provides the assistance for the benefit of an employee. Persons who provide gifts directly to individuals may be subject to gift tax if the value of the gift exceeds \$10,000 to a person in a particular year. The \$10,000 amount is periodically adjusted for inflation.

Question: Where can I find out more details about income-tax deductions for charitable contributions?

Answer: The IRS's Publication 526, entitled "Charitable Contributions," summarizes the rules relating to the federal income-tax deduction. IRS Publication 171, "Charitable Contributions (for exempt organizations)- Substantiation and Disclosure Requirements," contains detailed information about what a charity is required to include in the written acknowledgments. These documents can be downloaded from the IRS website, www.irs.gov, or ordered free through the IRS at (800) 829-3636.

This alert is meant to provide general information only, not legal advice. Please contact Linda Manley at Lawyers Alliance for New York at (212) 219-1800 x 239 or lmanley@lawyersalliance.org or visit our website <http://www.lawyersalliance.org> for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.