

January 22, 2019

The Honorable Charles P. Rettig  
Commissioner of Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

RE: Request for Guidance on the Treatment of Leave-based Programs to Aid Individuals Impacted by the Partial U.S. Government Shutdown

Dear Commissioner Rettig:

On behalf of the Professional Services Council and our nearly 400 member companies<sup>1</sup> this letter requests that you issue guidance to allow employers to establish leave sharing programs to aid employees affected by the government shutdown and not subject the employee donating leave to taxation on the donation. The IRS has done so in the past.

The U.S. government has been in partial shutdown since December 22, 2018. Since numerous U.S. government agencies are no longer funded, large numbers of federal government employees and employees of government contractors are either working without pay or furloughed without pay. The timing of the resolution of the government shutdown is unknown and many of the furloughed employees of our member companies are facing financial hardships, and it is becoming more severe the longer the shutdown lasts.

To assist employees who are experiencing financial distress as a result of the government shutdown, many of our member companies are considering allowing non-furloughed employees to elect to forgo vacation, sick, or personal leave either to give directly to fellow employees who have exhausted their accrued personal leave or in exchange for cash payments that the employer would make to qualified charitable organizations that would provide charitable relief. Such programs are commonly used to provide aid to employees who are experiencing financial hardship or distress due to medical emergencies or natural disasters.

Under general tax rules, an employee who elects to forgo vacation, sick or personal leave (“donated leave”) is nonetheless deemed to be in constructive receipt of the related gross taxable wages and subject to tax withholding. The IRS has provided exceptions to this general rule for employers who offer leave-sharing plans for their employees who suffer medical emergencies (Rev. Rul. 90-29, 1990-1 C.B. 11) and in connection with natural disasters such as Hurricane Michael (IRS Notice 2018-89). In these instances, the IRS has stated that if certain factual conditions are met, an employee who surrenders leave to the

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<sup>1</sup> PSC is the voice of the government technology and professional services industry, representing the full range and diversity of the government services sector. As a trusted industry leader on legislative and regulatory issues related to government acquisition, business and technology, PSC helps build consensus between government and industry. Our nearly 400 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Together, the trade association’s members employ hundreds of thousands of Americans in all 50 states.

employer or deposits leave in a leave bank does not realize any income and incurs no deductible expense or loss either on the surrender or deposit of the leave or on its use by the need-based recipient.

On behalf of our member companies, we respectfully request that, at a minimum, the IRS issue expedited guidance to allow employers to establish leave sharing programs (similar to medical emergency leave sharing programs) and charitable donation programs (similar to natural disaster leave donation programs) whereby employees who elect to donate leave for the benefit of fellow employees suffering financial distress from this unprecedented and extraordinary partial U.S. government shutdown will not be required to include the donated leave value in their taxable wages. This will result in employers and charitable organizations receiving and deploying the full value of the donated leave to assist those experiencing financial distress, rather than just the net after-tax amount.

There may be other variations of these employee leave-sharing programs that should be encouraged and that would benefit from the same tax treatment; we urge the IRS to be as flexible as possible in providing for this treatment.

As you are aware, federal employees have access to voluntary leave bank and voluntary leave transfer programs, as established by each agency under guidance from the Office of Personnel Management. We are asking that private-sector employers and their employees be provided the same flexibilities when dealing with the record-setting partial government shutdown.

Thank you for your attention to this urgent request. If you have any questions or if I can provide any additional information, please do not hesitate to let me know. I can be reached at (703) 875-8059 or at [chvotkin@pscouncil.org](mailto:chvotkin@pscouncil.org).

Sincerely,



Alan Chvotkin, Esq.  
Executive Vice President and Counsel

cc:

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