

# Memorandum

## Charitable Giving in Response to the COVID-19 Crisis

April 16, 2020

### CARES Act

- The recently enacted Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) includes enhanced charitable income tax deduction provisions for cash donations made in 2020 to certain public charities and private operating foundations. In addition to providing a \$300 deduction to non-itemizers, the CARES Act increases the annual deduction limit for cash donations by individuals to public charities and private operating foundations from 60% to 100% of the taxpayer’s AGI for 2020, with a five-year carryforward for contributions that exceed such limit, as is the case under current law. The deduction limit for corporations for such donations is increased from 10% to 25% of taxable income. You should consult your accountant to determine if these special provisions can be used to lower your 2020 income tax liability. (Note that these new higher limits apply only to cash gifts.)
- Because the CARES Act was intended to encourage donations that provide immediate benefit to charities that carry out direct charitable activities, donations to donor advised funds, private non-operating foundations (i.e., grant-making foundations) and supporting organizations do not qualify for any enhanced charitable income tax deduction treatment.

### Supporting Charities Impacted by COVID-19

- The COVID-19 crisis has significantly impacted the nonprofit sector and the often vulnerable populations it serves. Charities that support medical and mental health needs or provide food and other basic necessities and services are experiencing significantly increased demand. Many charities have had to reformat or reimagine programming to virtually reach the individuals they support. Nonprofits that rely on admissions and program revenue are sustaining significant financial losses, as are those who have had to cancel fundraising events that routinely provide a large portion of annual revenue, or who have seen significant declines in their invested reserve funds. There is no segment of the nonprofit sector that is unaffected.
- In lieu of waiting until year end, you may want to consider making donations now to the charities you regularly support to help them through this crisis. You may also want to consider making donations equal to the amount you would have spent on spring and summer gala tables and sponsorships, silent auctions or performance tickets. Many charities have updated their websites to detail their COVID-19 response plan and associated needs.
- If you wish to fund a broad array of organizations that are directly responding to the crisis through a single donation, you can consider making a donation to one of the many COVID-19 specific response funds that have been established. These include:
  - New York focused funds (e.g., [UJA Federation New York](#), [New York Community Trust](#));

- Nationally focused funds (e.g., [United Way](#), [Feeding America](#) );
  - Internationally focused funds (e.g., [World Health Organization](#), [King Baudouin Foundation United States](#)); and
  - Funds that support a combination of local, national and international needs (e.g., [Center for Disaster Philanthropy](#); [Goodnation](#)).
- An organization known as Candid, a widely respected nonprofit that provides charitable funders with research and analysis tools and best practice guidance and training, has created a [website](#) at which you can find many resources, including information about funders and funding opportunities. The site includes a growing database of COVID-19 relief funds, which can be filtered by geographic area served.

### **Additional Considerations for Private Foundations**

- There have been calls to the philanthropic community, including private foundations, to change certain practices and policies to help the nonprofit sector weather this crisis. Over 600 foundations and other philanthropic organizations have signed an [online pledge](#), coordinated by the Council on Foundations, to take steps that include suspending reporting requirements, accelerating payment schedules, converting restricted grants to general operating support and expanding funding to include organizations created and led by the communities most affected.
- Private foundations may want to be prepared to respond to both immediate and long-term needs of charities, particularly given the possibility of a prolonged economic downturn. Foundations might consider reaching out to their grantees to understand how they can best support their grantees, to ensure that they can continue to carry on the charitable work that is important to the foundation and to its community.

### **Providing Support to Individuals**

- Gifts you make personally to specific individuals do not entitle you to an income tax charitable deduction, even if those individuals are in financial distress.
- Likewise, if you make a personal donation to a charity with a direction that the donation be used to support a specific individual (known as “earmarking”), the donation will be treated as a gift to the individual, and not as a tax-deductible donation to the charity.
- If you wish to personally support specific individuals in need, annual gifts of up to \$15,000 per recipient qualify for the annual gift tax exclusion, and you can make unlimited direct medical-expense and tuition payments for another individual (i.e., paid directly to the third-party provider, not the individual) without triggering a gift tax. (You will not owe a gift tax on these kinds of gifts, but you will not get a charitable income tax deduction for them either.)

Distributions can be made from private foundations to provide disaster assistance grants to individuals, as long as the foundation’s governing documents allow such grants, the relevant IRS rules are followed to ensure the process is open and nondiscriminatory, and the recipients are genuinely in need. Because of the required formalities and recordkeeping, most family foundations find it more efficient to make grants to one or more public charities that operate effective disaster assistance programs in lieu of operating their own programs. However, if you would like to discuss the possibility of making disaster assistance or similar grants, please contact your Schulte Roth & Zabel attorney.

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This is a fast-moving topic and the information contained in this *Memorandum* is current as of the date it was published.

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