



COUNCIL *on* FOUNDATIONS

January 15, 2010

Via Mail and Facsimile

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
3000 IR
Washington, DC 20224

Dear Commissioner Shulman:

The American people are showing their compassion and generosity in contributing to the relief effort in the wake of the deadly earthquake in Haiti. Yesterday, President Obama pledged \$100 million in aid to support what he called one of the largest international relief efforts in history. In order that private foundations may have greater flexibility in contributing to that long-term effort, I am writing to you today to ask you to declare the earthquake as a "qualified disaster" pursuant to section 139(c)(3) of the Internal Revenue Code.

Section 139(c), enacted as part of the Victims of Terrorism Tax Relief Act of 2001, defines a "qualified disaster" to include, inter alia, "(3) any disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature." (Emphasis supplied.) In Notice 2008-57; 2008-28 I.R.B. 80, under authority delegated by the Secretary, you declared a qualified disaster in the case of the 2008 China earthquake. Similarly, Commissioner Mark Everson declared the East Asian tsunami a qualified disaster in Notice 2005-23; 2005-1 C.B. 732.

IRS Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*, carried out a directive in the legislative history to the Victims of Terrorism Relief Act by providing guidance on the circumstances under which employer-sponsored private foundations may make qualified disaster payments to employees affected by qualified disasters and to members of their families. Similarly, Notice 2006-109, 2006-2 C.B. 1121 creates a safe harbor for employer connected funds held by public charities to provide assistance to employees in the case of qualified disasters. The declaration of a qualified disaster is a necessary predicate for these foundations and funds to help employees.

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Regrettably, some U.S. companies have employees who have been adversely affected by the earthquake. These companies would like to assist their employees by making qualified disaster payments from company foundations. Accordingly, I ask you to exercise your authority under section 139(c) of the Internal Revenue Code to formally declare the earthquake in Haiti a "qualified disaster" as soon as possible. I believe that doing so is urgently needed to enable private foundations and employer-connected funds at public charities to continue to respond to immediate needs and to begin focusing on the long-term needs of the victims.

If you or members of your staff have any questions regarding our concerns or our suggestions, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Gunderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Gunderson
President and CEO

Copies: Sarah Hall Ingram, Commissioner, Tax Exempt and Governmental Entities
Lois Lerner, Director, Exempt Organizations