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COVID-19: Providing Disaster Assistance to Students

With educational campuses – including dormitories, school cafeterias, and locations of work study opportunities – closed due to the COVID-19 pandemic, institutions of higher education are seeking ways to support their students. In this alert, we highlight how tax-exempt institutions of higher education can provide tax-free emergency assistance to students.

Many universities have established private foundations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code for purposes of administering student emergency hardship grants. Other universities are supported by private foundations established for fundraising purposes but those foundations have not historically been used to administer emergency or disaster assistance to students. Still other universities are themselves exempt from taxation under Section 501(c)(3). All of these structures provide opportunities to provide tax-free disaster assistance to students.

Universities that are exempt from taxation under Section 501(c)(3) generally receive tax-exempt status by virtue of their operation exclusively for educational purposes. Private foundations established to support such universities are typically formed to advance the purposes of the universities they support and, thus, are also indirectly established for educational purposes. As a practical matter, providing emergency assistance to students in need, which enables them to stay enrolled in school, arguably furthers the educational purpose of educational institutions, and is therefore a permissible activity for institutions of higher education as a supplement to their primary, traditional educational functions.

For student emergency hardship or disaster assistance grants to qualify as a charitable activity for the university or foundation and be exempt from income tax for the student recipient, the following conditions must be met:

Charitable Class – The group of individuals that is eligible to receive charitable assistance from a tax-exempt university or

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its affiliated foundation must be sufficiently large or indefinite such that the community as a whole, rather than a pre-selected group of people, is a potential beneficiary of the disaster assistance fund. Where a university or its foundation limits potential recipients to a finite group, such as the university's students, the emergency or disaster assistance program must extend to emergencies and disasters beyond the COVID-19 outbreak to qualify as charitable. For the same reason, a charitable disaster assistance fund should not accept donations that are earmarked for a particular individual or family.

Needy or Distressed Recipients – Charitable emergency assistance may be provided only to individuals who need it, and only to the extent necessary to ensure that victims of disasters or unforeseen emergencies have basic necessities such as food, clothing, housing, transportation, and medical care. Accordingly, a university or foundation administering a charitable disaster or hardship relief program must make an objective evaluation of a recipient's need before distributing financial assistance. The scope of the assessment that is necessary in this regard may vary depending upon the circumstances and the immediacy of the need.

The COVID-19 outbreak presents an unprecedented type and scope of need and, accordingly, there is little guidance from the IRS on what degree of diligence is required before administering assistance or what type of need may qualify for a charitable grant. Ultimately, the type, duration and amount of aid that is appropriate depends on the individual's needs and resources. Depending on the particular circumstances and demonstration of need, the following are examples of the type of aid that tax-exempt universities and their affiliated foundations may be able to provide to students affected by the COVID-19 pandemic:

- Financial assistance to cover rent or alternative housing where the student's employment has been furloughed, terminated or reduced, or where the student normally resides on campus but cannot access the dormitory due to social distancing requirements;
- Financial assistance to students with children to help defray the cost of child care while schools are closed due to COVID-19;
- Food or financial assistance to purchase food for students who normally eat on campus and now face food scarcity due to closure of dining halls, or who otherwise struggle to afford food following loss of employment due to the pandemic;
- Computers and other equipment needed to participate in classes that have been moved to a virtual environment where the student otherwise lacks these resources and the means to obtain them;
- Other financial assistance that will enable a student to secure basic necessities where the student otherwise lacks the resources to do so on his or her own.

Documentation – Disaster assistance funds, whether administered through a university's private foundation or through a university that is itself exempt under Section 501(c)(3), must maintain records demonstrating that the emergency assistance payments further the organization's charitable purpose, that the recipients of assistance are needy or distressed, and that the university or foundation conducted an appropriate needs assessment before distributing assistance, as well as other specific records related to each grant.

A university or foundation that desires to establish a student emergency assistance program should adopt a written policy that describes the organization's objective criteria for disbursing assistance under the program, the process for selection of recipients, the scope of the program and other basic factors about the program. We encourage institutions of higher education and their affiliated foundations to consult with legal counsel in establishing the parameters and policies for student emergency assistance programs to ensure such programs comply with IRS requirements.

Emergency hardship and disaster assistance payments, if made with charitable intent, are generally not subject to federal income tax for the recipient. Accordingly, a university or its foundation does not typically need to issue a Form 1099 to the student recipient for charitable disaster or emergency assistance payments.

Considerations for Private Foundations

Because private foundations do not typically solicit funds from the general public, the IRS perceives them as, theoretically, subject to less public scrutiny and oversight than public charities. Accordingly, the federal tax code and accompanying regulations place certain restrictions on the ability of private foundations to give directly to individuals for certain purposes, including travel or study. Failure to abide by the strict tax rules and regulations surrounding private foundation operations can result in hefty self-dealing taxes and other unfavorable consequences to foundation. We therefore recommend that any private foundation seek legal counsel before providing financial assistance to individuals.

Provided the particular aid to individuals is otherwise permissible without IRS approval, private foundations organized to perform fundraising or investing activities for a university but not specifically established to provide student emergency assistance may nonetheless engage in most disaster relief activities without obtaining prior permission from the IRS. However, such foundations typically must report this new activity on their annual form 990-PF.

Other Considerations for Charitable Emergency Relief Payments

- If a charitable organization carries on disaster relief activities as one of its largest programs, and the organization is required to file a Form 990 with the IRS (not all universities are so required), it must describe the services provided in its annual IRS informational return. In most cases, student emergency assistance should be limited to an ancillary activity of a university with Section 501(c)(3) status. Institutions of higher education that operate student emergency assistance funds as a significant activity should consult with legal counsel familiar with tax and nonprofit matters to confirm the structure of the fund is appropriate.
- Before providing emergency and hardship assistance directly to individuals, a charitable organization (particularly a private foundation) must confirm this activity comports with, and is not prohibited by, its Articles of Incorporation, Bylaws, and any other governing documents.
- Contributions to charitable organizations may be earmarked specifically for COVID-19 or other disaster relief, but they may not be earmarked for the benefit of a particular individual or family.
- If a charity represents to donors that funds will be used for a specific purpose (e.g., for COVID-19 relief aid), state and local laws generally require that the funds raised in that solicitation be used only for that stated purpose. Likewise, if charitable funds were raised for a particular purpose, like scholarships, that money should not be used for student emergency or disaster assistance.

This alert provides a general overview of student emergency assistance programs, but the rules and regulations surrounding such programs administered through institutions of higher education are complex. We encourage any institution of higher education that is considering providing student hardship assistance to consult with legal counsel prior to doing so to ensure the program meets IRS requirements.

We welcome you to reach out to your Michael Best attorney, or our firm's COVID-19 Task Force for specific guidance on these and other rapidly emerging issues.

Related People

Alexander Fraser

apfraser@michaelbest.com

T 414.347.4757

Gregory Hartwig

Partner

gjhartwig@michaelbest.com

T 414.225.4943

Bradley Kalscheur

Partner

bjkalscheur@michaelbest.com

T 414.225.2763

Daniel Kaufman

Partner

dakaufman@michaelbest.com

T 312.836.5077

José Olivieri

jaolivieri@michaelbest.com

T 414.225.4967

Elizabeth Prendergast

Associate

eaprendergast@michaelbest.com

T 303.536.1737