

TaxViews

A tax periodical for the private club community

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Social Clubs and the Coronavirus Pandemic

On March 13, 2020, President Trump declared a national emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Declaration") because of the challenges resulting from the coronavirus pandemic. The Declaration provides methods for employers, including social clubs, to provide tax-free payments to employees ("Qualified Disaster Payments") who are impacted by the coronavirus pandemic.

Internal Revenue Code ("IRC") Section 139 provides that gross income does not include any amount received by an individual as a Qualified Disaster Payment. Qualified Disaster Payments include payments by a social club, not otherwise reimbursed by insurance, to its employees, which are reasonably expected by the social club to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a Qualified Disaster.

Qualified Disaster Payments

Qualified Disaster Payments – made by social clubs to employees do not include:

- payments for expenses otherwise paid for by insurance or other reimbursements, or
- wages, or income replacement payments (payments of lost wages).

It is reasonable to conclude that social club payments to employees should not include payments for nonessential, luxury, or decorative items or services.

Qualified Disaster Payments – an Internal Revenue Service ("IRS") ruling has not been issued to-date to provide specific guidance regarding the expenses that may be paid by employers in connection with the coronavirus pandemic. Yet, it seems reasonable to conclude that a social club may pay for employee benefits, reasonably believed by the club to result from the coronavirus pandemic, provided such benefits are not covered by insurance. For example:

- medical and health related expenses;
- expenses to temporarily provide food or shelter because of the coronavirus pandemic;
- counseling because of trauma experienced as a result of the pandemic;
- childcare, or tutoring, expenses incurred because of school closings;
- cell phone used for communication between club and its employees for off-site work;
- transportation expenses if employee work site relocated;
- sanitizers and soaps used to combat coronavirus; and
- funeral expenses.

The preceding guidance seems reasonable considering IRS guidance in connection with prior Qualified Disasters; to the extent that specific advice is provided by the IRS in connection with the coronavirus pandemic, we will advise our clients.

These payments made by social clubs are expected to be commensurate with the unreimbursed reasonable and necessary personal living or family expenses of employees not compensated by insurance or otherwise in connection with the coronavirus pandemic.

Qualified Disaster Payments are not subject to income tax, self-employment tax, or employment taxes (Social Security, Medicare, and federal unemployment taxes) even if the payments are made directly from an employer.

Plan Criteria

With respect to the Qualified Disaster Plan (the “Plan”), although not presently required, it seems prudent to establish written criteria, such as identifying:

1. the Plan as the Coronavirus Declaration Plan and the Plan commencement and end dates;
2. the administrator and the administrator’s responsibilities;
3. the employees eligible to participate in the Plan by class or group
4. the expenses that may be paid and the permitted reasonable allowance per employee;
5. the acts required to receive payment (for example, is application required); and
6. the expense limit per employee provided under the Plan, if any.

Closing

Remember to properly document the selection process and expenditures. We remain committed to assisting our clients during this challenging time.

This bulletin is prepared by our tax department and is provided to our clients for informational purposes only and may not be used or cited as precedent. If you have any questions on the information contained in this bulletin, please do not hesitate to give us a call.