

# HOW TO SET UP A DISASTER RELIEF CHARITY

**BY DARREN MOORE**



When tragedy strikes as it did in different ways last week in Boston and West one thing is a constant, the desire of Americans to help their neighbors. That help comes in many forms as people seek to meet the physical, emotional, spiritual and even financial needs of those affected. Sometimes to meet those needs individuals and businesses decide to set up new charitable organizations. This post will teach you how to set up a new charity (one that follows the IRS rules) to provide aid following a disaster.

There are many ways to help our neighbors in need. We give blood, give to established charities like the Red Cross and Salvation Army, donate clothes, food, and blankets, and join together to pray and show support. After the most immediate needs have been met in the aftermath of tragedy, the focus turns to what we can do longer term. Sometimes a decision is made to establish a fund to help those affected. While not mandated, often the decision is made to seek tax exempt status. Trying to meet the needs we see while also navigating the various rules that regulate this type of good is an admirable goal but not one without challenges.

The key to establishing a tax-compliant charity to provide for disaster assistance is defining the persons eligible for aid. This requires two answering two questions: (1) what class of persons is eligible for assistance, and (2) which of the persons in that class are needy or distressed.

To qualify for tax exempt status under Section 501(c)(3) an organization must serve public purposes, not private purposes. In the context of disaster relief this means defining the class broadly so as to benefit a “charitable class” as opposed to a narrower subset of individuals. Stated differently, the class must be sufficiently large or indefinite as opposed to closed and definite.

For example, an organization established to provide assistance to families of the first responders who lost their lives in West, Texas would fail to qualify as a Section 501(c)(3) organization the class is closed and defined (i.e. a specific group that would qualify and no one else). However, an organization established to provide assistance to families of West, Texas first responders who lose their lives in the line of duty, both those from last week’s fertilizer plant explosion and those who may lose their lives in the future, would qualify the class is open and indefinite (the criteria may apply to any number of people in the future). As a

side note, there is no bright line on what class is “sufficiently large” so as to qualify as a charitable class. While a class like the first responders killed during the event would be too small, a class of families of those killed or injured (more than 170) could arguably be large enough. For example, One Fund Boston, according to news reports, has been established specifically to assist families of those killed or injured in the Boston bombing. It will be interesting to see if that class is sufficiently large so as to be charitable.

After ensuring the assistance is available for a charitable class, the organization providing disaster relief must also ensure the specific persons receiving aid are proper recipients of charity. The IRS has acknowledged that both individuals and businesses may be appropriate recipients of charity. Further, charitable aid may be provided on an emergency basis, a short-term basis (e.g. 3-6 months) or a long-term basis. With respect to emergency aid (such as blankets, hot meals, clothing), it is sufficient that the persons receiving aid were victims of the disaster no showing of financial need is required. However, for assistance beyond immediate emergency assistance, the organization must conduct an assessment to ensure the recipient of aid meets the test of being in need and qualifying for charitable aid, namely lacking the resources to obtain basic necessities.

At that point, the type of aid that is appropriate depends on the recipient’s needs and resources. For example, while all victims in the immediate area of the Boston Marathon bombing may qualify for immediate crisis counseling, whether long(er) term counseling may be given by a charitable organization depends on the needs and resources of the individual.

It is critical for the organization dispensing aid to document the assessment it performs so that it will have records to show that its funds were spent for charitable purposes. More information on documentation and reporting can be found in the IRS’s helpful publication on disaster relief, Publication 3833. (<https://www.irs.gov/pub/irs-pdf/p3833.pdf>)

Aside from the issues in this post specific to disaster relief, to create a disaster relief charity, the founders must follow state law to create the organization and file Form 1023 to obtain recognition of tax exempt status from the IRS.