

Deductibility of Charitable Contributions to LLCs Wholly Owned by Charitable Organizations

August 9, 2012

On July 31, 2012, the Internal Revenue Service (the IRS) issued Notice 2012-52 (the Notice), providing long awaited confirmation that a charitable contribution to a limited liability company that is wholly owned by a charitable organization, and classified as a disregarded entity for U.S. federal income tax purposes (an SMLLC), will be treated as a contribution to a branch or division of the charitable organization. Accordingly, a contribution made to an SMLLC will be deductible for tax purposes to the same extent as a contribution made directly to its sole member, the charitable organization.

Charities may choose to form one or more SMLLCs in order to separate operations with different management needs or isolate higher risk activities within a separate legal entity, while avoiding the need to file additional applications for tax-exempt status and additional annual information returns (Form 990) with the IRS.[\[1\]](#) Fundraising for such subsidiaries will now be streamlined as donors will be able to contribute directly to the SMLLC, rather than making a contribution to the parent charitable organization with the understanding that the funds would be used for the benefit of the SMLLC.

In order to limit IRS inquiries into the charitable receipts issued by an SMLLC, the IRS is encouraging charities to disclose that the SMLLC is wholly owned by its parent charitable organization and is treated by such organization as a disregarded entity in the receipt or another statement.

The Notice provides that it is effective for contributions made on or after July 31, 2012, but that it can be relied on by donors for taxable years for which the statute of limitations for refund or credit are still open.

While the Notice addresses U.S. federal income tax issues for an SMLLC, state and local tax issues may still remain. For example, states may treat an SMLLC as ineligible to obtain property tax exemption for its real property or ineligible to purchase property free of sales tax. State positions vary widely and may be subject to change.

If you would like to discuss the application of the Notice to your particular situation, or have questions about the taxation of charitable organizations generally, please contact one of the Proskauer lawyers listed on this alert, or the Proskauer lawyer with whom you normally consult on these matters.

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This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

[\[1\]](#) Instead, all financial and other information applicable to SMLLCs is reported on the parent charitable organization's Form 990.

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