Planning Opportunities for 501(c)(3) Organizations Related to Charitable Contributions

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The Internal Revenue Service (the “IRS”) issued Notice 2012-52 on July 31, 2012 (the “Notice”), which provides that contributions made to a domestic single-member limited liability company (“SMLLC”) that is wholly-owned by a U.S. charity will be treated as a charitable contribution to the U.S. charity, assuming all other requirements under Section 170 of the Internal Revenue Code of 1986 (the “Code”) are met. The Notice confirms what many long believed was the correct answer (despite the IRS creating doubts about such treatment in previous guidance) and eliminates a potential trap for the unwary.

In prior guidance, IRS Announcement 99-102 (the “Announcement”) specifically provided that an entity that was disregarded for tax purposes pursuant to the entity classification Treasury Regulations promulgated under Section 7701 of the Code was to be treated as part of its tax-exempt sole member for purposes of reporting information pertaining to the finances and operations of the disregarded entity on annual information returns to the IRS. Based on the Announcement and the Treasury Regulations, it seemed clear that a taxpayer could make a charitable contribution to a SMLLC, whose sole member was a U.S. charity, and claim the contribution as a charitable deduction under Section 170 of the Code. However, the IRS stated in 2000 that it intended “in the near future” to provide “guidance” on the availability of a charitable deduction for contributions made to a SMLLC owned by a U.S. charity. Subsequently, the IRS refused to rule in advance in Private Letter Ruling 200150027 (August 7, 2001) that such a contribution would qualify for a charitable deduction, and thus created uncertainty regarding the deductibility of such a contribution. In the end, it took the IRS approximately twelve years to issue this long-awaited guidance and remove the uncertainty.

The Notice is effective for charitable contributions made after July 31, 2012. However, taxpayers may rely on the Notice prior to its effective date for taxable years for which the statute of limitations for claiming a refund or credit has not expired. The U.S. charity is the donee organization for purposes of the substantiation and disclosure requirements under the Code with respect to charitable contributions. The Notice encourages the U.S. charity to disclose in the acknowledgments of donations or other statements that the SMLLC is wholly-owned by the U.S. charity and treated by the U.S. charity as a disregarded entity.

The Notice removes previous questions about the deductibility of contributions to a SMLLC owned by a U.S. charity and provides U.S. charities with planning opportunities. For instance, it will often be desirable for a U.S. charity to form a SMLLC to hold real estate (or perhaps other assets) in order to help shield the U.S. charity from potential liabilities associated with the assets. The guidance also now makes it easier for a SMLLC to engage in direct fundraising activities for the SMLLC's charitable activities. The SMLLC's activities will be reported on the U.S. charity's Form 990 and the SMLLC will not be required to file a separate Form 990 with the IRS, unlike a supporting organization of a U.S. charity that sought and received separate tax-exempt status.

Lathrop Gage attorney Jami Shipman, the author of this legal alert, published an article on the lack of guidance from the IRS with respect to the deductibility of charitable contributions made to SMLLCs owned by U.S. charities in the September/October 2011 issue of Taxation of Exempts. See *IRS Guidance on Contributions to a Charity's Wholly-Owned LLC Still Missing*. The article can be found on Mr. Shipman's bio.

Please contact your Lathrop Gage attorney or a member of our tax department with questions regarding this long-awaited guidance from the IRS.