

tax-exempt organizations lawflash

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IRS Issues Guidance on Charitable Contributions to Single-Member LLCs

Long-awaited notice allows individual and corporate donations made directly to a single-member LLC to be treated as donations made to the parent 501(c)(3) organization.

Many Section 501(c)(3) organizations establish single-member LLCs (SMLLCs) to conduct certain activities or to hold real estate or other assets. A common reason for establishing an SMLLC is to provide liability protection for the parent 501(c)(3) organization with respect to the SMLLC's activities. These SMLLCs are generally treated as "disregarded entities" for federal tax purposes, and their income and expenses are reported directly on the Forms 990 filed by the parent organizations. Although the Internal Revenue Service (IRS) has previously held that private foundation grants to SMLLCs are treated as grants made directly to their 501(c)(3) parents, see I.R.S. Gen. Info. Ltr. 2010-0052, (June 25, 2010), *available at* <http://www.irs.gov/pub/irs-wd/10-0052.pdf>, it has, until now, declined to hold that contributions made directly to SMLLCs by individuals and corporations are deductible as charitable contributions to the 501(c)(3) parents. The lack of favorable IRS guidance on the treatment of donations to SMLLCs has hampered charitable gift planning for many 501(c)(3) organizations, particularly with respect to donations of real estate and other assets that are commonly held through special-purpose SMLLCs.

On July 31, the IRS issued I.R.S. Notice 2012-52 (July 31, 2012), *available at* <https://www.morganlewis.com/documents/IRSNotice2012-52.pdf>, confirming that, if all other requirements of Section 170 are met, donations to domestic SMLLCs established by U.S. 501(c)(3) organizations are treated, for deductibility purposes, as charitable contributions to their parent organizations. This notice, issued in time for the year-end giving season, will allow 501(c)(3) organizations to establish SMLLCs to receive donations of real estate and other special purpose assets, and will facilitate direct charitable fundraising for programs and activities conducted by SMLLCs. The notice confirms that, even though the donation is made directly to the SMLLC, for tax purposes, it is treated as a donation made to the parent 501(c)(3) organization, which has responsibility for issuing the proper acknowledgement letter to substantiate the taxpayer's donation. The notice suggests that the parent 501(c)(3) organization's acknowledgement letter should disclose that the gift was made to an SMLLC, which would avoid potential confusion caused by the name of the donee being different from the name of the organization providing the acknowledgment letter.

The notice is effective for charitable contributions made on or after July 31, 2012; however, taxpayers may rely on the notice retroactively for tax years for which they are permitted to claim a credit or refund under Section 6511.

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