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Contributions by Individuals and Private Foundations to Foreign Charities

I. Introduction

- International charitable giving by Americans has increased dramatically in recent years and is evolving as a tax planning area of significant importance.\(^1\)

- Contributions by individuals and private foundations to or for the benefit of foreign charities are subject to complex tax rules, often presenting formidable obstacles in making such contributions on a deductible basis for income tax purposes.\(^2\)

- There are a number of alternatives available to effectuate international charitable giving, however, while ensuring tax deductibility and compliance with the tax laws.

- Due consideration must also be given to various sanctions and best practices adopted in the aftermath of September 11, 2001 aimed at preventing the funding of terrorism.

- Finally, where a contribution is made to a foreign charity to fund activities to be performed in the U.S., it is important to ensure compliance with the available exemptions from U.S. tax withholding obligations that otherwise apply.

II. Contributions to Foreign Charities by Individuals

A. No Deduction for Contributions to Foreign Charities

An individual making a contribution to a charitable organization is entitled to an income tax deduction under Section 170(a) only if the organization is "created or organized in the United States or in any possession thereof, or under the laws of the United States, any State, the District of Columbia, or any possession of the United States."\(^3\)

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\(^1\) International charitable giving by U.S. private and community foundations, which includes grants to overseas recipients and funding for U.S.-based international programs, reached $3 billion for the fourth year in a row according to "International Grantmaking III: An Update on U.S. Foundation Trends," a report prepared and published by the Foundation Center, with the support and collaboration of the Council on Foundations.

\(^2\) See, e.g., Nina J. Crimm, "Global Philanthropy Depends on Tax Laws," The Chronicle of Philanthropy, April 3, 2003 ("... our income-tax system needlessly presents formidable obstacles to overseas giving by America's individual and corporate donors and many domestic grantmakers, especially private foundations").

\(^3\) Section 170(c)(2)(A). All sections referenced hereinafter are to the Internal Revenue Code of 1986, as amended, unless specifically indicated otherwise. In planning for contributions to support foreign charities, U.S. treaties with other countries should also be considered. The U.S. has treaty provisions with Mexico, Israel and Canada providing for reciprocal deductibility of contributions to charitable organizations, such that contributions by U.S. individuals to charities organized in these countries are eligible for an income tax deduction.
1. Thus, contributions by individuals to a charity created or organized under foreign law are not deductible for income tax purposes.\(^4\)

2. Interestingly, the charitable contribution deduction provided under the Revenue Act of 1917, under which the federal income tax was first imposed, allowed an individual to deduct a contribution to charitable organizations created or organized anywhere in the world.

3. The original predecessor to the present-day Section 170, therefore, contained no provision limiting deductibility to contributions to domestic charities. Subsequently, however, under the Revenue Act of 1938, the income tax deduction available to individuals contributing to charitable organizations was limited, for the first time, to domestic charitable organizations and such limitation has remained in the Internal Revenue Code ever since.

4. The explanation for the imposition of this limitation under the Revenue Act of 1938 is contained in the reports of the House Ways and Means for the Revenue Act of 1938,\(^5\) in relevant part as follows:

   The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and the benefits resulting from the promotion of general welfare. The United States derives no such benefit from gifts to foreign institutions, and the proposed limitation is consistent with the above theory. If the recipient, however, is a domestic organization, the fact that some portion of its funds is used in other countries for charitable and other purposes (such as missionary and educational purposes) will not affect the deductibility of the gift.

B. Deduction Allowed For Contribution to Domestic Entity For Foreign Charitable Work

1. As the last sentence in the above-quoted language indicates, Congress did not intend to limit deductibility for a contribution to a domestic charity

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\(^4\) Deductibility for purposes of the estate and gift tax is more liberal than for income tax purposes, as a full estate and gift tax deduction is allowed for bequests and gifts to any corporation organized and operated for charitable purposes. See Section 2055(a)(2) and 2522(a)(2).

that, in turn, uses such funds to further its charitable purposes in foreign countries.

2. Moreover, the Treasury Regulations explicitly address this situation, specifically providing that a "charitable deduction by an individual to an organization described in Section 170(c) is deductible even though all, or some portion, of the funds of the organizations may be used in foreign countries for charitable or educational purposes."6

3. Similarly, Rev. Rul. 63-2527 provides that the limitation under Section 170(c) "relates only to the place of creation of the charitable organization to which contributions may be made and does not restrict the area in which deductible contributions may be used." Deductibility turning on the laws under which a donee charity is created or organized has been interpreted quite literally.

4. In Welti v. Comm.,8 for example, the court held that a contribution was not deductible because it was made to a church that was organized as a corporation under the laws of Switzerland, notwithstanding that it was for all intents and purposes merely a branch of a U.S. church organized under the laws of Massachusetts.9

5. In Bilingual Montessori School of Paris v. Comm.,10 contributions to an educational organization incorporated under the laws of Delaware were held to be deductible, although all of its activities took place in France and it had no assets or employees within the U.S.

6. An individual desiring to further a program conducted abroad by a domestic charity can earmark a contribution specifically for that program (but not for a specified foreign charitable organization), so long as that program is subject to the control of the domestic charity.

7. This is the case because a donor can determine which of a qualified organization’s charitable purposes will receive the exclusive benefit of a contribution to the organization.11 Where an individual desires to make

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6 Reg. Section 1.170A-8(a)(1) (emphasis added).


8 1 T.C. 905 (1943).

9 See, however, Rev. Rul. 63-252, 1963-2 C.B. 101, allowing a deduction where the foreign charitable organization "is merely an administrative arm of the domestic organization."

10 75 T.C. 480 (1980).

contributions specifically for the benefit of a particular foreign charitable organization, however, certain alternatives are available, as discussed below, to accomplish this on a tax deductible basis, notwithstanding that the intended donee organization is not a domestic charity and a contribution directly to such organization is not otherwise deductible.

III. U.S. “Friends” Organizations

There are a multitude of U.S. "friends" organizations that are formed to support a specific foreign charity, such as, for example, the American Friends of the Paris Opera, the American Friends of the London Business School, and the American Friends of the Tel Aviv University. Although these domestic charities are established specifically for the purpose of raising funds in the U.S. that will ultimately be distributed to the foreign charities they support, they are organized to meet the legal requirements for contributions to be deductible for U.S. tax purposes. Contributions to these organizations are generally deductible under Section 170 if the U.S. “friends” organization exercises control and discretion as to the use of the contributions received. Where, however, a contribution is earmarked specifically for the foreign organization or the domestic organization otherwise lacks control and discretion over the use of the contributed funds, the foreign charity will be considered the real donee and the contribution will not be deductible.

- In Rev. Rul. 63-252,\(^\text{12}\) the IRS addressed alternative factual situations regarding the deductibility of contributions to U.S. “friends” organizations. In the first example, a foreign organization caused a U.S. organization to be formed to conduct a U.S. fund-raising campaign, pay the administrative expenses from the collected funds and remit any balance to the foreign organization. The second example provides that U.S. persons, desirous of furthering a foreign organization’s work, form a U.S. organization whose charter provides that it will receive contributions and send them, at convenient intervals, to the foreign organization.

- The IRS, citing S.E. Thompson v. Comm.,\(^\text{13}\) stated that the inquiry as to the deductibility of a contribution does not stop once it is determined that an amount has been paid to a qualifying domestic organization; rather, if the amount is earmarked for a foreign charity, then it is appropriate to look beyond the fact that the immediate recipient is a qualifying organization to determine whether the payment constitutes a deductible contribution. Similarly, if an organization is required for other reasons, such as a specific provision in its charter, to turn over contributions to a foreign charity, or if the contributions are otherwise inevitably committed to go to a foreign charity, the IRS stated that the real donee is the ultimate foreign recipient.


\(^{13}\) 2 T.C. 441 (1943).
On this basis, the IRS concluded that the contributions to the domestic charity in examples one and two are not deductible.

Similarly, in example three of the ruling, where the domestic organization represents to prospective contributors that the contributions it receives will be turned over to a foreign organization, the IRS determined that the contributions are not deductible. In these examples, the foreign charity was considered the real donee, with the domestic charity considered merely a conduit. Example three of this ruling was subsequently amplified, however, by Rev. Rul. 66-79,\(^{14}\) whereby the IRS ruled that contributions to a domestic charity which are solicited for the specific project of a foreign charitable organization will be deductible under IRC Section 170 provided, however, that the domestic charity reviews and approves the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. As a general rule, if a U.S. “friends” organization is listed in the Cumulative List of Organizations described in Section 170(c), Publication 78, a contribution to the organization will be deductible for income tax purposes. Deductibility under Section 170(c) will be jeopardized only where a contribution to a U.S. “friends” organization listed in Publication 78 is specifically earmarked by an individual donor for a foreign charity.\(^{15}\)

IV. International Donor-Advised Funds Formed In The United States

- Donor-advised funds within community foundations and those sponsored by a multitude of mutual fund and brokerage companies generally prohibit recommendations of grants to foreign charities made by donor advisors and, accordingly, any such recommendations will not be approved.

- A number of domestic public charities, however, operate international donor-advised fund programs, such as United Way International, Charities Aid Foundation America, the King Baudouin Foundation and the International Community Foundation, that do make grants to foreign charities on the basis of recommendations made by the advisor to a donor-advised fund.

- Prior to approving such recommendations, these organizations conduct their own due diligence to ensure that the foreign charity recommended by a donor advisor is a bona fide charity that is otherwise in compliance with applicable foreign law governing charitable organizations and generally impose reporting obligations with respect to grants made to a foreign charity.

- Contributions to these domestic public charities are not considered earmarked for a foreign charity because any grant recommended to a foreign charity is subject to the final review and approval of the domestic public charity operating the donor-

\(^{14}\) 1966-1 C.B. 48.

\(^{15}\) See Rev. Proc. 82-89, 1982-2 C.B. 759 (contributors may generally rely upon a listing in Publication 78 until such time as the IRS announces a revocation or change in exempt classification).
advised fund program, just as the case with donor-advised funds within community foundations and those sponsored by mutual fund and brokerage companies. As such, contributions to these organizations are deductible, notwithstanding that they ultimately may be directed to foreign charities by the donor advisor.

- Individuals considering making substantial gifts to an international donor-advised fund should, however, confirm that the administrators of the public charity operating the fund will, in fact, establish adequate screening processes related to donor recommendations. Absent such a screening process, grants to foreign charities pursuant to donor recommendations may be considered as being made by an individual directly to a foreign charity, in which case no deduction would be allowable.

V. Private Foundations

No prohibition exists on a domestic private foundation making grants to foreign charities provided, however, that the foundation complies with the applicable Chapter 42 excise tax requirements with respect to foreign grants. An individual desiring to make significant grants to foreign charities, therefore, may be better served by creating and funding a domestic private foundation which, in turn, can engage in grantmaking to foreign charities selected by the individual. Specific rules govern grants by private foundations to foreign charities, which are discussed below under the heading “Contributions to Foreign Charities by Private Foundations.”

A. Contributions to Foreign Charities by Private Foundations

1. Unless a foreign charity has been determined by the IRS to be a public charity for U.S. tax purposes (which is unusual because very few foreign charities seek such recognition), a domestic private foundation must comply with very specific requirements in order to make a grant to a foreign charity without running afoul of the Chapter 42 requirements applicable to private foundations.

2. There are basically two methods to accomplish this.

   a. First, a domestic private foundation can make an “equivalency determination” that the foreign grantee is the equivalent of a U.S. charity, which historically has been considered the only method available to accomplish a grant to a foreign charity.

   b. The second method, announced pursuant to an IRS general information letter dated April 18, 2001, allows for the domestic private foundation to exercise “expenditure responsibility,” which
includes the requirement that the foreign grantee maintain the grant funds in a separate fund dedicated to charitable purposes.\textsuperscript{16}

B. Equivalency Determination of Status of Foreign Charity

1. An equivalency determination requires that the domestic private foundation make a good faith determination regarding the status of a foreign grantee under U.S. tax law based on either an affidavit of the foreign charity or an opinion of counsel.\textsuperscript{17}

2. Rev. Proc. 92-94\textsuperscript{18} sets out the requirements for relying upon an affidavit and describes the multitude of quantitative and qualitative information that the foreign charity is required to provide. Among the information required by the affidavit is a copy of the foreign charity’s governing documents (which must be translated into English), several years of financial data, a description of activities and various statements regarding local law or customs.

3. Although this revenue procedure was intended to provide a “simplified procedure” to meet the good faith equivalency determination, compliance with the affidavit requirements is often quite burdensome, if not impossible, for many foreign organizations, with the exception of larger foreign organizations receiving substantial funding from U.S. foundations that often receive requests for currently qualified affidavits and can generally comply with little difficulty.

4. The alternative to obtaining an affidavit from the foreign charity is to obtain an opinion of counsel. The information that an attorney must generally review in order to issue an opinion is largely that required for the foreign grantee affidavit which is required by Rev. Proc. 92-94, such that obtaining an opinion of counsel may be expensive and not justified for smaller grants. Assuming that a good faith determination is made by the domestic charity, by way of an affidavit or opinion of counsel, establishing that the foreign grantee is the equivalent of a public charity under U.S. tax laws, the grant to the foreign charity is treated as a qualifying distribution and the exercise of expenditure responsibility is not required. If the foreign grantee, however, is determined to be the equivalent of a U.S. private foundation because it is not described in IRC Section 509(a), the domestic private foundation must exercise expenditure responsibility with respect to the grant as prescribed by Section 4945(h).

\textsuperscript{16} In addition, a U.S. private foundation can utilize an international donor-advised fund, just as in the case of a U.S. individual, as discussed above.

\textsuperscript{17} Reg. Section 53.4942(a)-3(a)(6); Reg. Section 53.4945-5(a)(5).

\textsuperscript{18} 1992-2 C.B. 507.
and the regulations thereunder, and a qualifying distribution is generally not available.\textsuperscript{19}

C. IRS Information Letter: Equivalency Determination No Longer Required Provided Expenditure Responsibility is Exercised and Separate Fund is Maintained

1. On April 18, 2001, following a two-year effort by the Council on Foundations ("Council") to streamline international grantmaking by U.S. private foundations, the Internal Revenue Service issued a general information letter to the Council concluding that nothing in the IRC or the regulations thereunder requires a private foundation to inquire or evaluate whether it can make a good faith determination that a foreign charitable grantee organization is the equivalent of an IRC Section 501(c)(3) organization and a public charity under IRC Section 509(a).\textsuperscript{20}

2. Under the IRS general information letter, a U.S. private foundation, therefore, is not required to make an "equivalency determination" with respect to a proposed foreign grantee by obtaining an affidavit or an opinion of counsel, thereby avoiding a process that is often complex, expensive and time-consuming.

3. Rather, as long as the domestic private foundation complies with the exercise expenditure responsibility requirements and requires the maintenance of a separate fund in which the grant funds are held, it may make a grant to a foreign charity.

4. While general information letters are advisory in nature and have no binding effect on the IRS, they are intended to provide clarification of well-established interpretations of law. The Council has stated that it believes that all U.S. private foundation grant-makers "may be confident that the information letter obtained by the Council faithfully describes the IRS's views on expenditure responsibility" with respect to foreign grants.

5. This conclusion appears to be absolutely correct given that this methodology would otherwise be available for a grant by a domestic private foundation to a noncharitable organization.\textsuperscript{21} Moreover, the IRS has since issued private letter rulings confirming that adherence to the procedures set forth in the information letter will ensure that a grant by a

\textsuperscript{19} Reg. Section 53.4945-5(a) and (b).

\textsuperscript{20} For the full text of this letter, see: http://www.cofo.org/government/irsletter.pdf.

\textsuperscript{21} Reg. Section 53.4945-6(c).
U.S. private foundation to a foreign organization will be treated as a qualifying distribution and not a taxable expenditure.\textsuperscript{22}

6. Specifically, under the IRS general information letter, a private foundation may treat a grant to a foreign grantee as a qualifying distribution and not as a taxable expenditure if the private foundation: (i) elects "to treat a foreign grantee as not being described in IRC Section 501(c)(3);" and (ii) exercises expenditure responsibility with respect to the grant as prescribed under Section 4945(h) and the regulations thereunder. This includes the requirement that the grantee organization must agree to continuously maintain the grant funds in a separate fund dedicated to one or more purposes described in Section 170(c)(2)(B).\textsuperscript{23}

7. A private foundation's ability to use the "equivalency determination" rules of the Treasury Regulations is not affected by the IRS information letter.

8. A private foundation may, therefore, still utilize either the affidavit or opinion of counsel approach to determine that a foreign charity is the equivalent of a Section 501(c)(3) organization and a public charity, in which case no expenditure responsibility would be required and the grant funds would not be required to be held by the foreign charity in a separate fund.

\textbf{Contemporaneous Donee Acknowledgment Requirements Strictly Construed}

I. General Rules

A. Under IRC Section 170(f)(8), in order for a donor to claim a charitable income tax deduction for a contribution of $250 or more, the donor must obtain from the donee organization a contemporaneous written acknowledgment of the contribution.

B. The acknowledgment must include: (i) the amount of cash and a description (but not the value) of any property other than cash contributed; (ii) whether the donee organization provided any goods or services in consideration of the contribution; and (iii) a description and a good faith estimate of the value of any goods or services provided by the donee organization in consideration of the contribution.

C. There is no prescribed IRS form or format for the contemporaneous written acknowledgment required under Section 170(f)(8). The acknowledgment may be made in the form of a paper copy of the acknowledgment to the donor or an organization can provide the acknowledgment electronically, such as via an e-mail addressed to the donor.

D. Contemporaneous: Must be obtained by the earlier of:

\textsuperscript{22} See, e.g., PLR 200321023.

\textsuperscript{23} Reg. Section 53.4945-6(c)(1).
• The date on which the taxpayer files a tax return for the tax year in which the contribution was made; or

• The due date, including extensions, for filing such return.

E. Note on Contributions to Private Foundation: There is no exception under IRC Section 170(f)(8) for contributions made to a private foundation. Therefore, donors to private foundations, even to family foundations by a family member, should be certain to obtain a contemporaneous donee acknowledgement.

F. There is no exception under Section 170(f)(8) should the donee charity go out of existence prior to the donor obtaining a contemporaneous donee acknowledgments.

II. Strict Application of Section 170(f)(8)

A. Section 170(f)(8) specifically provides that “[n]o deduction shall be allowed … for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization.”

B. Thus, the failure to obtain a written contemporaneous acknowledgment for a claimed contribution of $250 or more results in the denial of the entire deduction.

C. The courts and the IRS have interpreted this requirement quite strictly, resulting in the denial of an entire claimed charitable income tax deduction where the donor does not comply. Recent cases:

• In Schrimsher, T.C. Memo 2011-71, the Tax Court recently held that the taxpayers' failure to obtain a contemporaneous written acknowledgment resulted in disallowance of a charitable income tax deduction for a contribution of an easement to the Alabama Historical Commission. The taxpayers contended that the easement agreement constitutes a contemporaneous written acknowledgment within the meaning of IRC Section 170(f)(8).

  The IRS did not dispute that the agreement is an “acknowledgment” or that it was “contemporaneous.” But, the IRS contended that the agreement failed to satisfy the requirements of IRC Section 170(f)(8)(B) because it does not state whether the commission provided any goods or services in consideration for the facade easement. The taxpayers acknowledged that the agreement expressly states that the commission provided consideration for the facade easement of “TEN DOLLARS, plus other good and valuable consideration.” The taxpayer suggested, however, that this language should be disregarded, asserting that it is “typical 'boilerplate.'” The agreement also included a clause (the merger clause) stating that “This agreement sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understanding, or agreements relating to the Easement, all of which are merged herein.”
The court applied a literal interpretation of Section 170(f)(8) and held that because there was no statement from the donee indicating that no goods or services were received by the taxpayer, the requirements of Section 170(f)(8) were not met and, therefore, no charitable income tax deduction was allowed. The court stated:

Without expressly alluding to the language that respondent has termed boilerplate, petitioners argue that the “clear and unambiguous” merger clause signifies that the agreement was the “entire agreement”, and consequently “it is apparent” that no cash or compensation was exchanged between petitioners and the commission. Thus, petitioners seem to suggest that the consideration recited in the deed ($10 plus other good and valuable consideration) was fictitious. And indeed it might have been. But even if the commission actually provided no consideration for the contribution, the written acknowledgment must say so in order to satisfy the requirement of section 170(f)(8)(B)(ii). See Friedman v. Commissioner, T.C. Memo. 2010-45 [TC Memo 2010-45]. As the legislative history notes: “If the donee organization provided no goods or services to the taxpayer in consideration of the taxpayer’s contribution, the written substantiation is required to include a statement to that effect.” H. Conf. Rept. 103-213, supra at 565 n.30, 1993-3 C.B. at 443.

The only statement in the agreement concerning consideration is the statement that the commission provided consideration of $10 plus other goods and valuable consideration. Whether or not it be considered boilerplate and whether or not it be considered in conjunction with the merger clause, this statement does not indicate that the commission provided no goods or services. And if the statement be construed literally to mean that the commission provided the stated consideration, then the agreement fails the requirement of section 170(f)(8)(B)(iii) since it does not include a description and good faith estimate of the “other goods and valuable consideration”.

Another recent case, Durden v. Comm’r, TC Memo 2012-140, dealt with two issues under Section 170(f)(8). In this case, the taxpayer’s original acknowledgment from the donee charity, which was obtained in a timely manner so as to be considered “contemporaneous,” did not contain a statement indicating that no goods or services were provided to the taxpayer.

The taxpayer then obtained a second acknowledgment that did indicate as such, but that acknowledgment was not obtained in a timely manner and therefore was not considered “contemporaneous.”

In deciding the case, the Tax Court focused only on the original acknowledgment, stating that the “second acknowledgment was not contemporaneous, and we do not consider it.” The court upheld the denial of the charitable income tax deduction by the IRS because of the
taxpayer’s failure to comply with IRC Section 170(f)(8), holding that a specific statement as to whether goods or services were provided in consideration for the contribution is necessary for the allowance of a charitable contribution deduction. ("The Petitioners failed strictly or substantially to comply with the clear substantiation requirements of section 170(f)(8) and their deduction for the charitable contributions ... must be disallowed").

  
  o A donor may not treat the fair market value of the goods or services indicated in a contemporaneous written acknowledgment as their fair market value "if the taxpayer knows, or has reason to know, that such treatment is unreasonable." For example, if the donor knows, or has reason to know, that there is an error in an estimate provided in the contemporaneous written acknowledgment pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the donor to treat the estimate provided by the donee charity as the fair market value of the goods or services provided.

  o The court found that both the taxpayer and the charity involved in the transaction acted improperly, stating that "the record strongly suggests that representatives of [the Nature Conservancy] and HCAC made a conscious decision to exclude items of consideration received in the 2001 transaction."

  o Because substantial elements of consideration were not contained in the gift letter, the court held that the bargain sale charitable deduction was denied.

D. Out-of-Pocket Expenses Incurred by Volunteers

The Tax Court in the recent case of Van Dusen, 136 T.C. No. 25 (2011), provides an important roadmap for volunteers of animal rescue groups and other charitable organizations to follow to deduct their unreimbursed expenses as charitable income tax deductions:

1. First, to establish that they are not acting independently in their own individual capacity, volunteers should document their connection and affiliation with the charitable organization to which they are providing volunteer services. Documentation of the affiliation with a charitable organization is particularly important where the volunteer services are done at the volunteer’s home and not on the organization’s premises. The documentation should be provided by the organization to the volunteer and should indicate the type of services being performed, the organization’s desire for the volunteer to perform these services in furtherance of the organization’s mission, and evidence the organization’s approval of the
volunteer engaging in these services on behalf of the charitable organization. The volunteer should report back to the charitable organization on the status of the services being rendered.

2. Substantiate all unreimbursed expenses by keeping records showing the name of the charitable organization receiving the volunteer services, the date the services were rendered, and the amount of the unreimbursed expenses incurred. Keep copies of cancelled checks payable to vendors and receipts for each expenditure incurred, including on each the name of the charitable organization receiving the volunteer services and the nature of the services provided. Where expenditures are incurred for both volunteer services and personal expenses, to the extent possible, pay for such expenditures separately so as to segregate volunteer expenses from personal expenses. For expenditures that cannot be segregated, but a portion of which relates to volunteer services, attempt to come up with a reasonable allocation mechanism to demonstrate which portion of the expenses incurred relate to volunteer activities and which relate to personal expenditures.

3. For any unreimbursed expense of $250 or more, obtain a special form of contemporaneous donee acknowledgment required for the expenses incurred as a volunteer. This means obtaining an acknowledgment from the charitable organization receiving the volunteer services that: (1) describes the services provided by the donor; (2) states whether or not the organization provided any goods or services in return; and (3) describes any goods or services that were provided in return, and give a good-faith estimate of the fair market value of those goods or services. Without this acknowledgment, an unreimbursed expense of $250 or more will be disallowed, no matter what records the volunteer has to substantiate the expense.

Charitable Contributions to Disregarded Single Member Limited Liability Company Owned and Controlled by a U.S. Charity

I. Introduction

A. Over the years, the IRS has steadfastly declined to rule on the deductibility of a contribution to a disregarded single member limited liability company (LLC) that is owned and controlled by a U.S. tax-exempt organization, notwithstanding that the tax-exempt organization itself can receive tax deductible contributions directly and its single member LLC is disregarded for federal income tax purposes.

B. After years of refusing to rule or otherwise provide any guidance, and therefore leaving taxpayers and charities alike in the dark on this issue, the IRS has now issued Notice 2012-52, advising taxpayers that so long as all other requirements of IRC Section 170 are met, the IRS will treat a contribution to the disregarded single member LLC as a tax-deductible contribution to the charity for federal income tax purposes.

C. The treatment of the contribution as being made to the charity itself subjects the charity, not the single member LLC, to the disclosure requirements of IRC Sections 170(f)(8) and 6115. The percentage limitations under IRC Section 170(b) also apply as though the contribution was made to the charity itself. This announcement is welcome news for charities, as they can now assure their donors that a contribution to a single member LLC owned and controlled by the charity is tax-deductible.
D. Notice 2012-52 provides definitive guidance that has been sought for years. Interestingly, under this notice, even if the LLC is formed solely to engage in an unrelated trade or business (that is not significant enough to cause the loss of the charity owning and controlling the LLC to lose its tax-exempt status) and does not engage in activities aimed at furthering a tax-exempt purpose, a contribution to the LLC will be treated as a tax-deductible charitable contribution provided that all requirements under IRC Section 170 are met.

II. Background: IRS Refuses to Rule on Deductibility of Contributions to Single-Member LLCs Owned and Controlled by Domestic Section 501(c)(3) Organizations

A. Over the years, the IRS has steadfastly declined to rule on the deductibility of a contributions to single-member LLCs owned and controlled by domestic Section 501(c)(3) organizations. Charities may want to form a single member LLC that they own and control so that the activities conducted by the LLC do not subject the charity to liability.

B. In Ltr. Rul. 200150027, for example, a donor desired to contribute real property to a community foundation, but due to environmental concerns and possible associated liability issues, the foundation proposed to create a single member LLC, of which the foundation was the sole member. To further avoid liability issues, the foundation would not be the manager of the LLC, but would appoint an unrelated individual to serve in that capacity. It was represented that the real property to be contributed to the LLC would be used in a manner furthering the charitable purposes of the foundation.

1. Consistent with Announcement 99-102, the IRS ruled that the LLC would be disregarded as an entity separate and distinct from the foundation. Accordingly, the LLC was not required to submit an application for exemption from tax and would be encompassed within the foundation's own income tax return.

2. The IRS, however, declined to rule on the deductibility of the contribution of the real estate under IRC Section 170, citing section 5.15(3) of Revenue Procedure 2002-1, 2002-1 CB 2002-4 ("ISSUE CANNOT BE READILY RESOLVED BEFORE A REGULATION OR ANY OTHER PUBLISHED GUIDANCE IS ISSUED").

3. A subsequent article contained in the IRS Continuing Professional Education Text for fiscal year 2001 ("Limited Liabilities Companies As Exempt Organizations—Update") provides as follows: "Ann. 99-102 clearly allows the disregarded entity (which includes a single member LLC) to be treated as part of its exempt owner for purposes of Subchapter F (IRC 501 et seq.), Chapter 42 and UBIT reporting purposes. However, the Service is considering whether the same treatment applies for purposes of IRC 170. If not, then a contribution to a disregarded entity would not be deductible as a charitable contribution unless the disregarded entity either qualified in its own right under IRC 170(c), or qualified as an agent of the exempt owner under the facts and circumstances [test]. Guidance on this issue will be forthcoming in the near future." (Emphasis added.)
III. Notice 2012-52: Contributions to Single Member LLC Deductible

A. The guidance promised by the IRS on “this issue” back in 2001 never came “in the near future” (and didn’t actually come until the issuance of Notice 2012-52 on July 31, 2012). Given that the IRS declined to rule on deductibility under IRC Section 170 in Ltr. Rul. 200150027 and the lack of any IRS guidance on this issue, taxpayers and charities alike exercised caution when contemplating a donation to an LLC having a tax-exempt organization as its sole member. And, because of the lack of published guidance in this area, where the dollars at stake were substantial, prudence often dictated donors insisting on contributing property to an entity that had obtained a separate IRS determination classifying it as a tax-exempt organization eligible to receive tax deductible contributions.

B. On July 31, 2012, the Internal Revenue Service released Notice 2012-52, which advises taxpayers that, if all other requirements of IRC Section 170 are met, the IRS will treat a contribution to a U.S. disregarded single-member limited liability company, wholly owned and controlled by a U.S. charity, as a charitable contribution to a branch or division of the U.S. charity. For purposes of complying with IRC Sections 170(f)(8) (contemporaneous donee acknowledgment rules for contributions of $250 or more) and 6115 (the “quid pro quo” disclosure rules for contributions in excess of $75), the charity, not the disregarded entity, is treated as the donee organization. Notice 2012-52 is effective for charitable contributions made on or after July 31, 2012. However, taxpayers may rely on this notice prior to its effective date for taxable years for which the period of limitation on refund or credit under IRC Section 6511 has not expired. Specifically, the notice states as follows:

If all other requirements of Section 170 are met, the Internal Revenue Service will treat a contribution to a disregarded SMLLC that was created or organized in or under the law of the United States, a United States possession, a state, or the District of Columbia, and is wholly owned and controlled by a U.S. charity, as a charitable contribution to a branch or division of the U.S. charity. The U.S. charity is the donee organization for purposes of the substantiation and disclosure required by Sections 170(f) and 6115. To avoid unnecessary inquiries by the Service, the charity is encouraged to disclose, in the acknowledgment or another statement, that the SMLLC is wholly owned by the U.S. charity and treated by the U.S. charity as a disregarded entity. The limitations of Section 170(b) apply as though the gift were made to the U.S. charity.

Grants by Private Foundations to Non-Charitable Organizations

I. Recent Publicized Grants by Private Foundations to For-Profit Entities

A. As reported in the Chronicle of Philanthropy (Ford Gives $500,000 to Augment Washington Post’s Reporting, July 27, 2012), the Ford Foundation has announced that it is giving $500,000 to help The Washington Post strengthen its reporting on government accountability.

1. The grant is the second by Ford to a commercial newspaper, and the foundation says there will be a “handful” more to come.
2. A longtime backer of public broadcasting, the New York philanthropy is experimenting with new ways to finance coverage of social issues, says Alfred Ironside, Ford’s director of communications. Financial support of for-profit newspapers like The Post and the Los Angeles Times, which in May received a $1-million, two-year Ford grant to expand reporting on immigration and other issues, is one strategy, he said.

3. Ford’s grant will enable The Post to create four newsroom positions focused on covering local, state, and federal governments. The foundation expects to renew the one-year grant for two more years.

B. As financial problems have forced newspapers to cut back coverage, more foundations have stepped in to finance reporting on issues they care about.

1. According to the same article in the Chronicle of Philanthropy, the Bill & Melinda Gates Foundation supports journalism exploring the three causes it backs: global health, poverty, and U.S. education. It gave $2.5-million to The Guardian, a for-profit newspaper in London, for a blog on poverty and $1.5-million to ABC News.

2. Journalism’s growing reliance on foundation support has worried some people who say the money could jeopardize editorial independence. Reporters whose salaries depend on foundations may not feel they can pursue stories that might upset their donors or that do not align with the foundations’ advocacy positions, say some observers. Mr. Ironside said The Post and other grantees retain their independence. “Ford will have no role beyond the grant—The Post will select what to cover” and “how to cover it,” he said. Though $500,000 is a large grant, it’s still a tiny share of The Post’s costs. The paper’s print advertising in the first quarter of 2012 brought in $52.7-million. Its newspaper division, which includes other media properties like Slate, posted an operating loss that quarter of $22.6-million.

II. How Private Foundations Can Make Grants to For-Profit Entities

A. Under the taxable expenditure prohibition under IRC Section 4945(d)(5), a private foundation cannot make an expenditure for purposes other than those described in Section 170(c)(2)(B), which includes religious, charitable, scientific, literary, and educational purposes.

1. Therefore, as a general rule, a private foundation may not make a grant to an organization other one described in IRC Section 501(c)(3).

2. Under the regulations, however, the term purposes described in IRC Section 170(c)(2)(B) are treated as including such purposes whether or not they are carried out by an organization that is organized and operated exclusively for such purposes.

3. Therefore, a private foundation may make a grant to an organization that is not described in IRC Section 501(c)(3), including a for-profit company, provided that the private foundation “is reasonably assured that the grant will be used exclusively for purposes described in section 170(c)(2)(B).”
4. A private foundation will be considered to be reasonably assured that the grant will be used for Section 170(c)(2)(B) purposes "only if the grantee organization agrees to maintain and, during the period in which any portion of such grant funds remain unexpended, does continuously maintain the grant funds (or other assets transferred) in a separate fund dedicated to one or more purposes described in section 170(c)(2)(B)."

5. The private foundation must also comply with the expenditure responsibility provisions in order to make a grant to an organization not described in IRC Section 501(c)(3). Therefore, provided a private foundation exercises expenditure responsibility, and the grantee organization agrees to maintain and, during the period in which any portion of such grant funds remain unexpended, does continuously maintain the grant funds in a separate fund dedicated to one or more purposes described in Section 170(c)(2)(B), a private foundation may make a grant to an organization that is not described in IRC Section 501(c)(3), even if the grantee organization is a for-profit corporation.

III. Example

A. In Ltr. Rul. 200603031, one of the primary objectives of a private foundation was to reduce global health inequities by accelerating the discovery, development and adoption of health interventions that save lives and reduce the disease burden in developing countries.

B. Although the foundation made grants to the government, nonprofit and academic sectors to further its charitable goals, it determined that it was also essential to engage private industry directly in order to further its charitable goals because, as the foundation stated, many global health problems sustainable solutions for use in the developing world were frequently held within private industry but were largely undeveloped.

C. The private foundation intended to make grants to for-profit pharmaceutical and biotechnology companies to create answers for health problems that disproportionally affect the developing world in order to further the foundation’s charitable goals of accelerating the prevention, elimination, or eradication of diseases disproportionally impacting the developing world and increasing the availability of medical tools and technologies in low-resource settings.

1. A grant would only be made if the proposal submitted by such companies: (a) supports the discovery or development of medical tools and technologies essential to solving major global health problems and inequities; (b) facilitates the adoption of such tools and technologies in developing countries; or (c) enables the availability of such tools and technologies on an affordable basis to those people otherwise without access within developing countries.

2. A proposal also had to include a description of the project sufficient to confirm that it will further a charitable objective. As a condition of a grant, the early stage research results of the companies were required to be adequately and timely published, disclosing substantially all information concerning the research results that would be useful and beneficial to the interested public.
3. The grants would also be subject to an agreement that establishes its terms and conditions and would require each company receiving a grant to hold funds in a separate fund dedicated to IRC Section 170(c)(2)(B) purposes and the foundation would exercise expenditure responsibility. The IRS concluded that the grants furthered the foundation’s scientific purpose, a purpose described in IRC Section 170(c)(2)(B), and were therefore permissible.

4. In determining that the grants furthered a scientific purpose, the IRS noted that “scientific” includes “scientific research” carried on in the public interest, and that an activity is scientific research in the public interest if: (1) it is scientific; (2) it is research; and (3) it is in the public interest. Here, the IRS stated that the scientific research would be in the public interest because the early stage research was required to be adequately and timely published, disclosing substantially all information concerning the search results that would be useful and beneficial to the interested public, and the scientific researched funded by the foundation would be directed toward discovering the cure for, curing, or eliminating a disease.

D. The IRS has ruled in a number of other contexts that a private foundation may make a grant to an organization not described in IRC Section 501(c)(3) where the grantee organization agrees to maintain the grant funds in a separate fund dedicated to one or more purposes described in section 170(c)(2)(B) and the foundation exercises expenditure responsibility.

1. In Ltr. Rul. 9306034, a grant by a private foundation to a fraternity house classified under Section 501(c)(7) was permitted where the grant was used to finance that portion of the construction cost of a major renovation of the chapter house that was allocable to the educational area of the house and the purchase of furniture, fixtures, and equipment for use in those educational areas. The IRS ruled that the grant was made exclusively for charitable and educational purposes within the meaning of IRC Section 170(c)(2)(B).

2. In Ltr. Rul. 8220080, the IRS ruled that a grant by a private foundation to IRC Section 501(c)(7) organization was permissible where the grant was made to provide support for the leadership school programs conducted by the organization that held seminars and presented speakers. The grant was determined to serve an educational purpose within the meaning of Section 170(c)(2)(B).

Recent Donor-Advised Fund Cases

I. Styles v. Friends of Fiji

A. In the case of Ray Styles v. Friends of Fiji, (Nev. S.Ct., No. 51642, February 8, 2011), a donor established a donor-advised fund with Friends of Fiji (“FOF”). Rather than approving the donor’s recommendations for funds to be distributed from his donor-advised fund to various charities, FOF refused to distribute any funds from the donor-advised fund to any charity recommended by the donor. Instead, the two directors of the organization opted to use the donor’s donor-advised funds for their own purposes.
B. As recognized by the Nevada Supreme Court, although the trial court determined the FOF failed to attempt in any way to satisfy the donor’s charitable goals, and thus, that it breach the implied covenant of good faith and fair dealing, it concluded that the donor failed to prove damages and that his claim for any relief failed.

C. In its decision, the Nevada Supreme Court determined that the donor gave up any interest in the money when he made the unrestricted gift to FOF, allowing FOF the discretion to reject any of his recommendations for the donation’s use.

- The Court further stated that the parties’ intent for the donor to give up all control was further shown by his claiming a charitable income tax deduction, with the Court citing case law that a charitable income tax deduction requires the surrendering of all control.

- The Court stated that while damages may be awarded when a party breaches the implied covenant of good faith and fair dealing, here, the district court, after reviewing the testimony and evidence, including the donor-advised fund agreement, concluded that donor suffered no damages because he made an unrestricted gift and had no control over the donation, and the Nevada Supreme Court found that conclusion to be legally sound.

II. National Heritage Foundation

A. As a result of losing a substantial lawsuit and in the face of a $6.2 million judgment against it, the National Heritage Foundation (“NHF”), a Virginia-based charity, was forced to file for Chapter 11 bankruptcy protection in January of 2009 and filed a Third Amended and Restated Plan of Reorganization dated September 4, 2009. The plan of reorganization states that the NHF bankruptcy estate under Section 541 of the Bankruptcy Code includes "all assets received from Donors (including without limitation all donor-advised fund (‘DAFs’))," thereby, in the view of the NHF, subjecting DAFs to the claims of its creditors.

B. In support of its position that donors having DAFs are not claimants and have no rights in connection with the NHF bankruptcy, the plan of reorganization states that the agreement to establish the DAF “clearly provides that all ownership and custody in the donated funds are relinquished to the [NHF],” “the Donors took or were entitled to claim a tax deduction ... confirming that the Donor transferred to the [NHF] full control over all interest and rights to the property,” and “any rights that the Donors have with respect to [DAFs] are merely 'advisory'.”

C. The plan of reorganization further indicates that the assets of the NHF, “which include Assets originating from a Donor’s [DAF],” may be used “for its reasonable and necessary operational and overhead costs and expenses ... including establishing sufficient reserves as it determines in its discretion.”

D. Use of donor-advised fund assets approved by bankruptcy court.
Ascending Annual Payments by Charitable Lead Annuity Trusts: Permissibility of Shark-Fin CLAT?

I. IRS Approves Charitable Lead Annuity Trust Providing for a 20% Annual Increase in Annuity Payments

   A. The IRS in a recently released private letter ruling, Ltr. Rul. 201216045, approved a zeroed-out charitable lead annuity trust (CLAT) whereby the annual annuity payment to charity would increase by 20% each year, so that each year’s annuity payment was equal to 120% of the prior year’s annuity payment.

   B. This 20% increase in the annual annuity payment is consistent with the rules applicable to a grantor retained annuity trust ("GRAT"), where the applicable regulations (Reg. Section 25.2702-3(b)(ii)) allow annual increases in the annuity payments, but only to the extent of an increase of 20% for each year.

   C. Thus, under the GRAT rules, an annual increase in the annuity payment in excess of 20% is prohibited. Although the GRAT payout rules do not apply to a CLAT, the CLAT payout in Ltr. Rul. 201216045 adopted those rules. The IRS did not, however, indicate its position on whether an annual increase in a CLAT payment has to conform with the 20% limitation imposed on a GRAT.

II. Note on Increases in Charitable Lead Annuity Payments in Context of Shark-Fin CLATs

   A. The issuance of Ltr. Rul. 201216045 comes on the heels of a debate in the charitable community as to the extent that a charitable lead annuity trust can have increasing annuity payments, particularly in the context of what is commonly known as the "shark-fin CLAT," were only nominal annuity payments are made to charity during the term of the CLAT, with the substantial balloon payment to the charity made upon the termination of the CLAT.

   B. Questions have been raised about the validity of the shark-fin CLAT, with certain commentators cautioning that the combination of nominal annuity payments and a back-loaded balloon payment to charity may not qualify as a charitable lead trust.

   C. It is possible that the IRS might view the shark-fin strategy as abusive and, accordingly, seek to limit the CLAT’s charitable payments that may be deferred or, consistent with the GRAT regulations, seek to impose a percentage limitation on year-to-year increases in the annual payments to charity.

   D. Until the IRS clarifies its position on this issue, it would appear prudent in the context of a CLAT for planners to adopt the 20% GRAT limitation on the year-to-year increases in the annual payments to charity.
Estate Administration Exception Where Private Foundation is a Beneficiary of Estate or Revocable Trust That Becomes Irrevocable

I. Estate Administration Exception to Indirect Acts of Self-Dealing

A. Because its scope is so broad, the self-dealing rules under IRC Section 4941 could make it problematic to administer an estate that includes a private foundation as a beneficiary.

B. In order to facilitate estate administration, permit the orderly administration of an estate or trust, and to allow flexibility to shift assets to carry out the decedent’s intent under a will or trust otherwise allowable under fiduciary state law principles, transactions affecting property of an estate or trust in which a private foundation has an interest are excepted from the definition of an indirect act of self-dealing if they meet the so-called “estate administration exception” provided under Reg. Section 53.4941(d)-1(b)(3).

C. The estate administration exception can serve as an extremely valuable tool that can be used in a number of potentially problematic situations when a private foundation is a beneficiary of an estate. The IRS has been generous in issuing favorable rulings involving the estate administration exception and interprets the exception broadly.

D. Given the significant tax penalties imposed under IRC Section 4941 for an act of self-dealing, whenever there is a question or uncertainty as to whether a transaction would result in an indirect act of self-dealing, the estate administration exception should be utilized.

II. Requirements of Estate Administration Exception

A. Under the estate administration exception, indirect self-dealing does not include a transaction involving a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if the following five-prong test is met:

1. The administrator or executor of an estate or trustee of a revocable trust either: (a) possesses a power of sale with respect to the property; (b) has the power to reallocate the property to another beneficiary; or (c) is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

2. The transaction is approved by the probate court having jurisdiction over the estate (or trust) or over the private foundation;

3. The transaction occurs before the estate is considered terminated for federal income tax purposes pursuant, or in the case of a revocable trust that becomes irrevocable, the transaction occurs before it is considered subject to IRC Section 4947;

4. The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the
transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

5. The transaction either: (a) results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up; (b) results in the foundation receiving an asset related to the active carrying out of its exempt purposes; or (c) is required under the terms of any option which is binding on the estate (or trust).

B. Examples. The regulations provide the following examples regarding the application of the estate administration exception:

Example: A bequeathed $100,000 to his wife and a piece of unimproved real estate of equivalent value to private foundation Z, of which A was the creator and a foundation manager. Under the laws of State Y, to which the estate is subject, title to the real estate vests in the foundation upon A's death. However, the executor has the power under State law to reallocate the property to another beneficiary. During a reasonable period for administration of the estate, the executor exercises this power and distributes the $100,000 cash to the foundation and the real estate to A's wife. The probate court, having jurisdiction over the estate, approves the executor's action. Under these circumstances, the executor's action does not constitute an indirect act of self-dealing between the foundation and A's wife.

Example: A, a substantial contributor to P, a private foundation, bequeathed one-half of his estate to his spouse and one-half of his estate to P. Included in A's estate is one-third interest in AB, a partnership. The other two-thirds interest in AB is owned by B, a disqualified person with respect to P. The one-third interest in AB was subject to an option agreement when it was acquired by the estate. The executor of A's estate sells the one-third interest in AB to B pursuant to such option agreement at the price fixed in such option agreement in a sale which meets the requirements of the estate administration exception. Under these circumstances, the sale does not constitute an indirect act of self-dealing between B and P.

**IRS Procedures for Charitable Trusts to Convert Back to Type III Supporting Organization Status After Erroneously Converting to Private Foundation**

Under Ann. 2010-19, a Type III supporting organization charitable trust that erroneously converted to a private foundation may request a ruling that it qualified and continues to qualify as a Type III Supporting Organization for tax years beginning on or after January 1, 2008 by submitting a written request to the IRS National Office. The ruling request should generally follow the format specified in Rev. Proc. 2010-4 and must include the following:

1. A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating “REQUEST FOR RULING—TYPE III SUPPORTING ORGANIZATION STATUS OF TRUST.”

2. An explanation of how the trust satisfied the requirements to be classified as a Type III Supporting Organization through the end of its 2008 tax year (including by meeting the significant voice responsiveness test for periods after August 16, 2007), and how it
expects to continue to satisfy such requirements for subsequent years. For this purpose, the trust may rely on the proposed regulations.

3. Documentation that establishes that the trust satisfied the requirements of the significant voice responsiveness test. For example, such documentation may include minutes or other documentation of meetings, telephone calls, conversations, e-mail exchanges, and policies that demonstrate a close and continuous working relationship between the Type III Supporting Organization and the supported organization based on which the supported organization has a significant voice.

The request must be signed under penalties of perjury by the trust's officer, director, trustee, or other authorized official, and request should be mailed to:

Internal Revenue Service
Attention: EO Letter Rulings
P.O. Box 27720
McPherson Station
Washington, D.C. 20038

There is no user fee for this ruling request. No deletions statement is required because determinations regarding foundation status are public pursuant to Section 6104. The Checklist in Appendix B of Rev. Proc. 2010-4 is also not required.

**IRS Issues Favorable Rulings on CRTs Investing in University Endowments Where the University Is Not the Sole Charitable Remainder Beneficiary**

I. Prior Rulings Allowing Investments Where University Was the Sole Remainder Beneficiary

A. The IRS has previously issued a host of private letter rulings concluding that the issuance of “endowment units” by a tax-exempt university to a charitable remainder trust (CRT) does not result in unrelated business taxable income (UBTI) to the CRT, notwithstanding that the direct investment in the endowment fund would have produced UBTI (which, under current law, would subject the CRT to a 100% tax).

B. The endowments were composed primarily of investments in publicly traded stocks and bonds, but also included investments in various partnerships and other investments that produced UBTI (because of the operation of an unrelated business or the existence of debt-financed income).

C. In these rulings, the university created a contractual obligation, pursuant to which it would issue a contract right to the CRT for so-called endowment units. The CRT had no interest whatsoever in the underlying investments of the endowment. The value of the units, however, was tied to the university's endowment and the contract right entitled the CRT to receive periodic payments based on the payout rate established by the endowment. The CRT had the option to reinvest a portion of the payout or to redeem additional units, depending on its cash requirements. In concluding that UBTI would not result from the issuance of the endowment
units, the making or receipt of payments with respect to the units, or the holding or redemption of the units, the IRS stated:

The Trusts do not have a position of ownership of the assets. There is no suggestion that the contractual relationship between [the university] and the Trusts is in the nature of a partnership or agency relationship. Thus, the income earned by the Trusts from the payout [the university] established for the endowment reflects ordinary income and does not take on the character of the income of the underlying assets as debt-financed or unrelated business taxable income.

II. Recent Rulings Where University Was Not Sole Remainder Beneficiary

A. In the prior rulings issued by the IRS in this area, the university (in whose endowment fund the CRT invested) was the sole charitable remainder beneficiary under the CRT.

B. This is consistent with the policy of many universities allowing a CRT to invest in the university endowment fund, but only if the university itself is irrevocably named the sole charitable remainder beneficiary.

C. The IRS has recently issued favorable rulings on CRTs investing in a university’s endowment fund where the university is not the sole charitable remainder beneficiary. Ltr. Ruls. 201208038 and 201209014.

- Although most of the CRTs in these rulings designated the university as the sole charitable remainder beneficiary, some of the CRTs had charitable remainder co-beneficiaries in addition to the university.

- The CRTs that had co-beneficiaries all designated the university as the “primary remainder beneficiary,” defined as a beneficiary having a remainder interest equal to, or greater than, the remainder interest of any other designated charitable remainder beneficiary of the trust.

- The fact that there was more than one charitable remainder beneficiary did not alter the previous conclusion of the IRS that the issuance of “endowment units” by a tax-exempt university to CRT does not result in UBTI, notwithstanding that the direct investment in the endowment fund would have produced UBTI.

- These rulings make it clear, therefore, that the university need not be the sole charitable remainder beneficiary of a CRT seeking to invest in a university endowment fund, although the university policy may require that the university be the sole charitable remainder beneficiary.

- Universities allowing CRTs to invest in their endowment funds while allowing other charitable remainder beneficiaries of the CRT, in addition to the university,
is reminiscent of the policies adopted by universities sponsoring donor-advised funds. In most cases, the university will allow the donor to recommend contributions to organizations other than the university provided, however, that at minimum percentage (e.g., 50%) of the grants are directed to the university itself.

**Type III Supporting Organizations Investing in University Endowments**

I. IRS Rulings

A. In Ltr. Ruls. 200850048 and 200850049, a Type III supporting organization invested its funds in the endowment of the university it supported in return for shares in the endowment. Under an investment agreement between the university and the supporting organization, the university made payments to the supporting organization based on the number of shares held by the supporting organization and the university “payout rate” applied to the endowment.

B. The rulings indicate that the supporting organization would treat the payments from the university endowment “as ordinary income, regardless of the character of the underlying income, whether capital gain, ordinary income, or return of capital.”

C. The ruling also noted that the supporting organization did not hold any ownership interest in any of the assets in the university endowment or have any rights to or interest in the income derived from the endowment. Instead, the supporting organization's rights, including the right to receive annual payments, “are contractual rights pursuant to the Investment Agreement.”

II. Treatment of Payout from Endowment by Supporting Organization

A. The IRS ruled that for purposes of the “integral part” test, the income of the supporting organization includes the annual payments received from the university endowment, without regard to the actual underlying income of the endowment of the character of such income.

B. The IRS further ruled that the receipt of such payments, or the redemption of any shares in the endowment, would not generate unrelated business taxable income under IRC Section 512.

**Charitable Lid Planning Using Defined Value Formula Clause Upheld by Courts**

I. Use of Charitable Lid Formula Upheld

A. On the heels of the Estate of Christiansen, 130 TC No 1 (1980), aff’d, No. 08-3844 (8th Cir. 2009), approving a “charitable lid” estate plan activated by a formula clause disclaimer, the Tax Court, in the case of Estate of Petter v. Comm'r, TC Memo 2009-280 (Dec. 7, 2009), upheld a formula clause in the gift tax context that transferred a substantial gift to the Seattle Community Foundation. Consistent with the holding in Estate of Christiansen, the court held that there was no public policy against such defined value gifts, and distinguished them
from gifts in which revaluation by the courts or the IRS resulted in a return of some of the transferred assets to the donor.

B. Background on Christiansen Case

1. In Estate of Christiansen, 130 TC No 1 (1980), aff'd, No. 08-3844 (8th Cir. 2009), the Tax Court, and now the Eighth Circuit Court of Appeals (in a November 13, 2009 decision), has approved the ability of a taxpayer to establish a "charitable lid" estate plan activated by a formula clause disclaimer. The taxpayer victory in the Christiansen appeal is a great result for charities because of its approval of charitable lid estate planning. In holding for the taxpayer in this case, the court rejected the IRS' position that the use of defined value clauses in estate plans are strictly prohibited, at least in the context of a defined value clause ultimately resulting in an increased distribution to charity at the expense of the IRS. This was the situation in Christiansen, where although the IRS was successful in asserting that the limited partnership interests held by the decedent were undervalued by the estate on the estate tax return, under the defined value clause, the result was that more of the estate property went to charity, and the IRS was not entitled to any more estate tax. This decision, approving the use of "charitable lid planning," could fundamentally change the estate planning of wealthy individuals otherwise having philanthropic intentions, who hold nonmarketable property whose estate tax valuation is subject to challenge by the IRS. And, this is something that charities can presumably present to their donors as an estate planning opportunity, as this planning ultimately can result in the reallocation of funds to charity that would otherwise be paid to the IRS in estate taxes.

2. A charitable lid estate plan essentially involves one in which a decedent leaves a fixed amount of his estate to noncharitable beneficiaries, with the residuary estate passing to a qualified charitable organization. The portion passing to charity qualifies for the estate tax charitable deduction under IRC Section 2055, thereby putting a "lid" on the amount that can be included in the taxable estate. The "lid" is created because even if the IRS should successfully assert that the estate assets are undervalued in determining the decedent's gross estate, then any increase in the taxable estate is offset by a corresponding increase in the estate tax charitable deduction. The purpose of this technique is to eliminate any incentive for the IRS to contest valuations made by the estate because if the IRS is successful in increasing the value of the gross estate, then the residual transfer to charity would necessarily increase by the same amount. The Christiansen case approved a formula clause disclaimer in the context of an estate lid plan despite attacks by the IRS on public policy grounds.

C. Petter Case

1. In Estate of Petter v. Comm'r, TC Memo 2009-280 (Dec. 7, 2009), the Tax Court held that a taxpayer was entitled to a charitable deduction for the value of a charity's share of a gift of interests in an LLC, where the gift documents transferred to the donor's children a fixed dollar amount of the interests as finally valued for tax purposes, and gave the balance to charity. Similar to the determination made in the Estate of Christiansen, the court held that there was no public policy against such defined value gifts, and distinguished them from gifts in which revaluation by the courts or the IRS resulted in the actual return of the transferred property to the donor.
2. In this case, the donor made gifts of interests in a limited liability company to grantor trusts intending to use the balance of the donor's $1 million gift exclusion. The gift formula indicated that the gifts of the interest to the children were equal to "one-half the [maximum] dollar amount that can pass free of federal gift tax by reason of transfer's applicable exclusion amount." The excess of the value was to be transferred to "the Seattle Foundation as a gift to the A.Y. Petter Family Advised Fund." Thus, in the case of a later valuation controversy with the IRS, the trusts were required to transfer additional limited liability company interest to the Seattle Foundation so that the taxable gifts did not exceed the available gift exemption. The donor understood that her unused applicable exclusion amount to be $907,820, so that the amount of this gift should be $453,910.

3. As in the Christiansen case, the formula allocation provision was determined not to be "void as contrary to public policy, as there was no 'severe and immediate' frustration of public policy as a result, and indeed no overarching public policy against these types of arrangements in the first place." The court further determined that the gifts were not as susceptible to abuse as the IRS maintains. The court pointed to various factors suggesting that the allocation clauses would be implemented fairly:

- The terms of the transfer documents made the LLC managers fiduciaries for the foundations, and they could police the trusts for "shady dealing."

- The directors of the foundation "owed fiduciary duties to their organizations to make sure that the appraisal was acceptable before signing off on the gift — they also had a duty to bring a lawsuit if they later found out that the appraisal was wrong."

- The IRS could revoke the foundations' IRC Section 501(c)(3) exempt status "if [it] found they were acting in cahoots with a tax-dodging donor."

- The state attorney general "is charged with enforcing charities' rights."

The court stated that taxpayers are not using these formula clauses just to avoid taxes, stating that because of these enforcement mechanisms, "[w]e certainly don't find that these kinds of formulas would cause severe and immediate frustration of the public policy in favor of promoting tax audits."

II. Tax Court Extends (For the First Time) Use of Defined Value Gift Clause Without a Charitable Component

A. In the recent case of Wandry v. Commissioner, TC Memo. 2012-88, the Tax Court, for the first time, approved a defined value clause for gifts of membership units in a limited liability company to family members fixed at specified dollar amounts for federal gift tax purposes, notwithstanding that no charity was involved. Under the gift assignment document in Wandry, if a final determination of a different value was made by the IRS or a court of law, the number of gifted units would be adjusted accordingly so that the value of the number of units gifted to each family member would be equal the specified dollar amounts. Unlike the charitable
laid formula, any "excess value" would be retained by the donor, rather than passing to a charity. The actual gift assignment document provided as follows:

I hereby assign and transfer as gifts, effective as of January 1, 2004, a sufficient number of my Units as a Member of Norseman Capital, LLC, a Colorado limited liability company, so that the fair market value of such Units for federal gift tax purposes shall be as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Gift Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenneth D. Wandy</td>
<td>$261,000</td>
</tr>
<tr>
<td>Cynthia A. Wandy</td>
<td>261,000</td>
</tr>
<tr>
<td>Jason K. Wandy</td>
<td>261,000</td>
</tr>
<tr>
<td>Jared S. Wandy</td>
<td>261,000</td>
</tr>
<tr>
<td>Grandchild A</td>
<td>11,000</td>
</tr>
<tr>
<td>Grandchild B</td>
<td>11,000</td>
</tr>
<tr>
<td>Grandchild C</td>
<td>11,000</td>
</tr>
<tr>
<td>Grandchild D</td>
<td>11,000</td>
</tr>
<tr>
<td>Grandchild E</td>
<td>11,000</td>
</tr>
</tbody>
</table>

1,099,000

Although the number of Units gifted is fixed on the date of the gift, that number is based on the fair market value of the gifted Units, which cannot be known on the date of the gift but must be determined after such date based on all relevant information as of that date. Furthermore, the value determined is subject to challenge by the Internal Revenue Service ("IRS"). I intend to have a good-faith determination of such value made by an independent third-party professional experienced in such matters and appropriately qualified to make such a determination. Nevertheless, if, after the number of gifted Units is determined based on such valuation, the IRS challenges such valuation and a final determination of a different value is made by the IRS or a court of law, the number of gifted Units shall be adjusted accordingly so that the value of the number of Units gifted to each person equals the amount set forth above, in the same manner as a federal estate tax formula marital deduction amount would be adjusted for a valuation redetermination by the IRS and/or a court of law.

B. With respect the fact that the excess value would not pass to charity, the Tax Court stated: "In Estate of Petter we cited Congress’s overall policy of encouraging gifts to charitable organizations. This factor contributed to our conclusion, but it was not determinative. The lack of charitable component in the cases at hand does not result in a 'severe and immediate' public policy concern." Wandy represents a significant case in the defined value clause regime. Although taxpayers have had success with similar clauses, this is the first case which did not provide for a charity to receive any amount in excess of the specified dollar amount the donor intended to give to family members. Essentially, the charity was in place in these case to receive any amount in excess of what the taxpayer intended to be treated as a taxable gift. Under
Wandry, however, a charity is not required to avoid unanticipated gift tax. This is significant because some taxpayers do not want to involve a charity in these situations. As a “memorandum decision,” Wandry may be cited as precedent in future cases, although the IRS may appeal the case to the Tenth Circuit Court of Appeals.

**New Proposed Regulations on Program-Related Investments by Private Foundations**

I. Introduction

A. Program-related investments (“PRIs”) have become an increasingly popular tool to advance the philanthropy of private foundations. Indeed, the Bill and Melinda Gates Foundation recently created a $400 million fund dedicated exclusively to making PRIs.

B. Many states have now enacted legislation to create a new type of legal entity known as a low-profit limited liability company, or L3C, specifically in an effort to encourage private foundation funding of business ventures that improve public welfare.

C. Although private foundations have traditionally focused principally on grant-making activities, PRIs allow foundations to use their resources to further their charitable mission through investment activities, including by making investments with for-profit business enterprises and individuals.

D. The IRS had become aware that many private foundations were hesitant to make potential program-related investments because the existing regulations that were issued in 1972, which focus on domestic situations principally involving economically disadvantaged individuals and deteriorated urban areas did not provide the necessary degree of comfort to private foundations to ensure that the investments would constitute PRIs.

E. The IRS also determined that the private foundation community sought regulations that would include examples reflecting modern-day investment practices and illustrating certain principles clarifying the nature of permissible PRIs.

F. In response to the call from the private foundation community, the Treasury and the IRS have now issued proposed regulations providing new guidance in the form of nine additional examples describing permissible PRIs.

G. The issuance of these regulations, which update the existing regulations issued 40 years ago, is welcome news for private foundations, as the examples in the proposed regulations clarify that PRIs may be used to accomplish a wider variety of charitable purposes through a wider range of investment vehicles than those described under the existing regulations.

H. The examples contained in the proposed regulations are quite detailed and instructive and reflect the types of investments that the IRS has previously determined qualify as PRIs in private letter rulings issued to specific foundations. However, having these examples in the form of regulations, as opposed non-precedential private rulings, provides more comfort to private foundations since these types of investments are viewed by the IRS as permissible PRIs.
I. The proposed regulations do not alter the existing regulations or the general rules applicable to PRIs, but demonstrate that a wide range of investments may qualify as PRIs and send a clear signal that PRIs can serve as a valid and important tool in furthering the charitable purposes of a private foundation. As a result, the proposed regulations should serve to broaden the interest of private foundations in making PRIs and may offer potential recipients an increased opportunity to seek investments from private foundations. Although they will not become effective until they are published as final regulations, private foundations may immediately rely upon the proposed regulations before they are finalized.

II. Explanation of Proposed Regulations

A. The proposed regulations do not modify the existing regulations but, instead, provide nine detailed and instructive additional examples that illustrate that PRIs may be used to accomplish a wider variety of charitable purposes through a wider range of investment vehicles than those reflected under the existing regulations.

B. The new examples clarify that a PRI may accomplish a wide variety of tax-exempt purposes, such as advancing science, providing relief to the poor and distressed, combating environmental deterioration, and promoting the arts. Several examples demonstrate that an investment that funds activities in one or more foreign countries, including overseas investments that alleviate the impact of a natural disaster or that fund educational programs for poor individuals, may further the accomplishment of charitable purposes and qualify as a PRI.

C. Thus, unlike the existing regulations, the examples in the proposed regulations make it clear that investments outside the United States may qualify as PRIs. One example illustrates that the existence of a high potential rate of return on an investment does not, by itself, prevent the investment from qualifying as a PRI. Another example illustrates that a private foundation's acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI and two examples illustrate that a private foundation's provision of credit enhancement can qualify as a PRI. The final example demonstrates that a guarantee arrangement may qualify as a PRI.

D. The following sets forth the fact patterns in the nine new examples in the proposed regulations where the IRS concludes, in each case, that the investment constitutes a PRI:

Example 1. X is a for-profit business that researches and develops new drugs. X's research demonstrates that a vaccine can be developed within ten years to prevent a disease that predominantly affects poor individuals in developing countries. However, neither X nor other commercial enterprises like X will devote their resources to develop the vaccine because the potential return on investment is significantly less than required by X or other commercial enterprises to undertake a project to develop new drugs. Y, a private foundation, enters into an investment agreement with X in order to induce X to develop the vaccine. Pursuant to the investment agreement, Y purchases shares of the common stock of S, a subsidiary corporation that X establishes to research and develop the vaccine. The agreement requires S to distribute the vaccine to poor individuals in developing countries at a price that is affordable to the affected
population. The agreement also requires S to publish the research results, disclosing substantially all information about the results that would be useful to the interested public.

Example 2. Q, a developing country, produces a substantial amount of recyclable solid waste materials that are currently disposed of in landfills and by incineration, contributing significantly to environmental deterioration in Q. X is a new for-profit business located in Q. X's only activity will be collecting recyclable solid waste materials in Q and delivering those materials to recycling centers that are inaccessible to a majority of the population. If successful, the recycling collection business would prevent pollution in Q caused by the usual disposition of solid waste materials. X has obtained funding from only a few commercial investors who are concerned about the environmental impact of solid waste disposal. Although X made substantial efforts to procure additional funding, X has not been able to obtain sufficient funding because the expected rate of return is significantly less than the acceptable rate of return on an investment of this type. Because X has been unable to attract additional investors on the same terms as the initial investors, Y, a private foundation, enters into an investment agreement with X to purchase shares of X's common stock on the same terms as X's initial investors. Although there is a high risk associated with the investment in X, there is also the potential for a high rate of return if X is successful in the recycling business in Q.

Example 3. Assume the facts as stated in Example 2, except that X offers Y shares of X's common stock in order to induce Y to make a below-market rate loan to X. X previously made the same offer to a number of commercial investors. These investors were unwilling to provide loans to X on such terms because the expected return on the combined package of stock and debt was below the expected market return for such an investment based on the level of risk involved, and they were also unwilling to provide loans on other terms X considers economically feasible. Y accepts the stock and makes the loan on the same terms that X offered to the commercial investors.

Example 4. X is a for-profit business located in V, a rural area in State Z. X employs a large number of poor individuals in V. A natural disaster occurs in V, causing significant damage to the area. The business operations of X are harmed because of damage to X's equipment and buildings. X has insufficient funds to continue its business operations and conventional sources of funds are unwilling or unable to provide loans to X on terms it considers economically feasible. In order to enable X to continue its business operations, Y, a private foundation, makes a loan to X bearing interest below the market rate for commercial loans of comparable risk.

Example 5. A natural disaster occurs in W, a developing country, causing significant damage to W's infrastructure. Y, a private foundation, makes loans bearing a below-market interest rate to H and K, poor individuals who live in W, to enable each of them to start a small business. H will open a roadside fruit stand. K will start a weaving business. Conventional sources of funds were unwilling or unable to provide loans to H or K on terms they consider economically feasible.

Example 6. X, a limited liability company, purchases coffee from poor farmers residing in a developing country, either directly or through farmer-owned cooperatives. To fund the provision of efficient water management, crop cultivation, pest management, and farm management training to the poor farmers by X, Y, a private foundation, makes a below-market interest rate
loan to X. The loan agreement requires X to use the proceeds from the loan to provide the training to the poor farmers. X would not provide such training to the poor farmers absent the loan.

Example 7. X is a social welfare organization that is recognized as an organization described in Section 501(c)(4). X was formed to develop and encourage interest in painting, sculpture and other art forms by, among other things, conducting weekly community art exhibits. X needs to purchase a large exhibition space to accommodate the demand for exhibition space within the community. Conventional sources of funds are unwilling or unable to provide funds to X on terms it considers economically feasible. Y, a private foundation, makes a below-market interest rate loan to X to fund the purchase of the new space.

Example 8. X is a non-profit corporation that provides child care services in a low-income neighborhood, enabling many residents of the neighborhood to be gainfully employed. X is recognized as an organization described in Section 501(c)(3). X's current child care facility has reached capacity and has a long waiting list. X has determined that the demand for its services warrants the construction of a new child care facility in the same neighborhood. X is unable to obtain a loan from conventional sources of funds including B, a commercial bank, because X lacks sufficient credit to support the financing of a new facility. Pursuant to a deposit agreement, Y, a private foundation, deposits funds in B, and B lends an identical amount to X to construct the new child care facility. The deposit agreement requires Y to keep the funds on deposit with B during the term of X's loan and provides that if X defaults on the loan, B may deduct the amount of the default from the deposit. To facilitate B's access to the funds in the event of default, the agreement requires that the funds be invested in instruments that allow B to access them readily. The deposit agreement also provides that Y will earn interest on the deposit at a rate substantially less than Y could otherwise earn on this sum of money if Y invested it elsewhere. The loan agreement between B and X requires X to use the proceeds from the loan to construct the new child care facility.

Example 9. Assume the same facts as stated in Example 8, except that instead of making a deposit of funds into B, Y enters into a guarantee agreement with B. The guarantee agreement provides that if X defaults on the loan, Y will repay the balance due on the loan to B. B was unwilling to make the loan to X in the absence of Y's guarantee. X must use the proceeds from the loan to construct the new child care facility. At the same time, X and Y enter into a reimbursement agreement whereby X agrees to reimburse Y for any and all amounts paid to B under the guarantee agreement. The signed guarantee and reimbursement agreements together constitute a "guarantee and reimbursement arrangement."

**IRA Charitable Rollover Provision Not Yet Reinstated for 2012 – What To Do?**

- As of today (September 24, 2012), the IRA charitable rollover provision that expired on December 31, 2011, has not yet been extended for the year 2012 and, therefore, is currently not available. Based on what transpired in tax year 2010, taxpayers who would otherwise have their required minimum distributions rolled over to charity should proceed with caution before taking such distributions personally and should not assume
that such distributions will ultimately be eligible for charitable rollover treatment, if the IRA charitable rollover provision is ultimately reinstated retroactive to January 1, 2011.

- In 2010, the IRA charitable rollover provision expired on December 31, 2009, but was reinstated on December 17, 2010, by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (HR 4853). The legislation reinstated the IRA charitable rollover for two years through 2011, retroactive to January 2010. Because the legislation was enacted virtually at the end of 2010, Congress allowed individuals who chose to make a qualified charitable distribution from their IRA trustee to a charity to make their 2010 distribution any time during 2010 or January of 2011. Congress determined that the time necessary to make these transfers for 2010 should be extended for one additional month for the required 2010 distributions. Thus, an otherwise eligible distribution made at any time during 2010 or through January 2011 could be treated as a qualified IRA charitable rollover for the year 2010. Those taxpayers who had not taken their required minimum distributions for 2010 were allowed to have charitable rollovers made through January 2011 to be treated as if made in 2010.

- One question that arose as a result of the extension of the IRA charitable rollover provision was whether those individuals who had already taken their 2010 required minimum distribution amount, who would otherwise have given such distribution directly to charity as an IRA charitable rollover, could return their 2010 payouts to the IRA in order to then make direct charitable distributions from the IRA by January 31, 2011. According to a January 5, 2011 statement by IRS spokesman Eric Smith, and to the upset of donors and charities alike, the answer is no. The IRS statement clarified that taxpayers are not allowed to return any required minimum distributions they took last year in order to make charitable IRS distributions for 2010. Many taxpayers were angered, saying it took lawmakers too long to extend the provisions. After waiting a year, many simply took their required minimum distributions or made donations from taxable sources. After the extension was ultimately permitted, many felt they should be able to roll back into an IRA the payouts they took under the assumption the extension would not occur. However, the IRS statement responded to this claim by saying that they do not have the authority to allow taxpayers to roll back their payouts into the IRA and then make the charitable donation.

- Based on what transpired in 2010, taxpayers who would otherwise distribute their required minimum distributions to charity should not take such distributions personally, if they intend to utilize the charitable rollover provision, if it is ultimately reinstated for tax year 2012. For those who would otherwise utilize the IRA charitable rollover provision, if it is ultimately reinstated during 2012, the most prudent course of action at this point is simply to defer action with respect to the required minimum distribution until the law becomes more clear in this area over the remainder of 2012. But, if a taxpayer is intent on having the required minimum distribution go to charity before the issue is clarified, the distribution should be made directly to the charity so as to fall within the IRA charitable rollover provision should the provision be reinstated retroactive to January 1, 2012. If the charitable rollover provision is ultimately not reinstated during 2012, such a distribution would be treated for tax purposes as being received by the taxpayer and then contributed
to the charity, the same result as where the distribution is actually made to the taxpayer and then actually contributed to the charity.

**IRS Issues New Tax Form 8940 for Requests by Section 501(c)(3) Organizations and Nonexempt Charitable Trusts for Various Determination Letters**

The IRS has issued new Form 8940, Request for Miscellaneous Determination, for various requests made by Section 501(c)(3) organizations and nonexempt charitable trusts under Section 4947(a)(1). These requests previously did not require the filing of an IRS form, but typically involved sending a letter requesting the IRS determination. The form should be filed with the IRS Exempt Organizations Division in Covington, Kentucky, when making the following requests for IRS determinations:

- Advance approval of certain set-asides by private foundations described in Section 4942(g)(2);
- Advance approval of voter registration activities described in Section 4945(f);
- Advance approval for private foundations of scholarship procedures described in Section 4945(g);
- Exemption from Form 990 filing requirements;
- Advance approval that a potential grant by a private foundation constitutes an “unusual grant”;
- Change in Type (or initial determination of Type) of a Section 509(a)(3) supporting organization, including for Section 4947(a)(1) nonexempt charitable trusts;
- Reclassification of private foundation status, including a voluntary request from a public charity for private foundation status;
- Termination of private foundation status under Section 507(b)(1)(B) advance ruling request; and
- Termination of private foundation status under Section 507(b)(1)(B) sixty-month period.
IRS Rules That State Income Tax Credits Attributable to Charitable Contributions Do Not Constitute a Quid Pro Quo Benefit

I. CCA 201105010: Is a payment of cash to either a state agency or a charitable organization considered a charitable contribution under Section 170 or a payment of state tax deductible under Section 164 if, instead of a state tax charitable deduction, the payment entitles the taxpayer to a transferable state tax charitable credit?

A. The IRS has ruled that a charitable income tax deduction is not reduced or eliminated in the case of contributions of money or property to state programs that entitle the taxpayer to state income tax credits. The payment is not deductible as tax deduction.

B. In the ruling, the state income tax credits were not treated as benefits received by the donor, which would reduce the amount of the contribution.

C. This was the case even though the credits could be carried over to other tax years or sold. If a credit was sold, however, then the taxpayer would have gain from the sale of a zero-basis asset, but the sale would not reduce the charitable deduction that gave rise to his receipt of the credit.

D. If the credits are used to reduce the taxpayer's state income tax liability, then the taxpayer would have a reduced state income tax deduction (that is, the use of the state income tax credit does not generate a state income tax deduction), but the income tax charitable deduction would not be affected.