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IRS Allows Charitable Contributions To Disregarded Entities

By Richard R. Upton and Carl Merino

Richard R. Upton

Carl Merino

Richard R. Upton is a tax partner and Carl Merino is a tax associate at Patterson Belknap Webb & Tyler LLP.

In this article, Upton and Merino discuss Notice 2012-52, which confirms the deductibility for income tax purposes of charitable contributions to domestic single-member limited liability companies owned by U.S. charities. They explain the basis for the notice in existing law and Treasury guidance and discuss remaining questions, including the treatment of charitable contributions to disregarded entities for gift and estate tax purposes, and the deductibility of charitable contributions to foreign disregarded entities owned by U.S. charities.

In Notice 2012-52,[1] the IRS announced that taxpayers may make tax deductible contributions to domestic single-member limited liability companies (SMLLCs) wholly owned by U.S. charities. If all other requirements of section 170 are satisfied, the IRS will treat a contribution to an SMLLC that (i) is created under the laws of the United States, a U.S. state or possession, or the District of Columbia and (ii) is wholly owned and controlled by a U.S. charity, as a charitable contribution for purposes of the deduction provided in section 170(a). Under the entity classification regulations, the SMLLC is treated as a branch or division of its parent and referred to as a disregarded entity.[2] Notice 2012-52 is effective for charitable contributions made on or after July 31, and provides for retroactive application to any years for which the statute of limitations remains open.

[1]2012-35 IRB 317, *Doc 2012-16325*, *2012 TNT 148-10*.
[2]Reg. section 301.7701-2(b) (the check-the-box regulations).

The notice also treats the U.S. charity that owns the SMLLC as the donee organization for purposes of the substantiation and disclosure requirements of sections 170(f) and 6115 (donee acknowledgement letters, quid pro quo contribution disclosures, etc.). In Notice 2012-52 the IRS urges charities to disclose in acknowledgement letters or other statements that the SMLLC is wholly owned by the U.S. charity and treated by the U.S. charity as a disregarded entity, to avoid ''unnecessary inquiries by the Service.'' The notice ends the uncertainty that has existed since the 1997 effective date of the check-the-box regulations over whether the IRS would treat charitable contributions to disregarded entities owned by charities as deductible contributions — at least in the domestic context.[3]

A. Issues the Notice Does Not Address

Notice 2012-52 does not address deductibility for gift and estate tax purposes. Nor does it mention the treatment of contributions to foreign disregarded entities owned by domestic charitable organizations (which may raise additional concerns for the IRS). However, it does not suggest that different principles would apply for gift and estate tax purposes and does not foreclose the possibility of deductions for charitable contributions to foreign disregarded entities owned and controlled by domestic charities.

1. Limited to domestic SMLLCs? The guidance in the notice is limited to confirming the deductibility of contributions to domestic SMLLCs that are owned and controlled by domestic charities. The limited discussion in the notice of the entity classification regulations and section 170 contains no suggestion that similar treatment should not apply to any domestic or foreign disregarded entities appropriately controlled by a domestic charity. For example, a contribution to a domestic limited partnership 100 percent owned, directly or indirectly, by

[3]In 2001 the IRS announced that it intended to publish guidance on ''charitable contributions to disregarded entities.'' Treasury, ''2001 Priorities for Tax Regulations and Other Administrative Guidance'' (Apr. 26, 2001), *Doc 2001-11987*, *2001 TNT 84-36*. *See also* Richard A. McCray and Ward L. Thomas, ''Limited Liability Companies as Exempt Organizations — Update,'' in *IRS Exempt Organizations Continuing Professional Education for the Fiscal Year 2001*, stating that guidance on this issue ''will be forthcoming in the near future.''

a domestic charity in which the charity holds the general partner interest (and possibly also the limited partner interest) through one or more SMLLCs, should be within the scope of the notice, as should a contribution to a domestic unincorporated association controlled by a domestic charity.[4] The treatment of contributions to foreign disregarded entities owned by domestic charities is discussed below.

2. Gift and estate tax deductibility. Notice 2012-52 is silent on the deductibility for gift and estate tax purposes of gifts to disregarded entities owned by charities. For purposes of the estate tax imposed by section 2001, the value of a decedent's taxable estate is determined, in part, by deducting from the value of the gross estate the amount of all bequests, legacies, and transfers to or for the use of any charity.[5] A similar deduction is allowed for purposes of the gift tax imposed by section 2501 on lifetime transfers by gift.[6] However, the notice does not foreclose the possibility that the same analysis and conclusions regarding the deductibility of gifts to disregarded entities owned by charities for income tax purposes would also apply to deductibility for estate and gift tax purposes.

B. Why Charities Use Disregarded Entities

1. Domestic disregarded entities. Charities use disregarded entities for various reasons, including to limit liability in connection with specific projects, activities, or assets. Although a charity in theory could directly receive charitable contributions and then fund an LLC or other entity to carry on a particular activity or project, to shield the rest of the organization from any prospective liabilities, there are situations — for example, donations of real estate — when the charity will want to have the LLC receive the contribution to avoid entering the chain of title (for example, to limit exposure to environmental claims). Charities also form LLCs for special projects, and some charities want those LLCs to raise funds on their own in support of the projects. Commentators have noted that an LLC may hold some assets that a section 501(c)(2) title holding organization[7] may not and is not required to apply for recognition of tax-exempt status or file an information return (at least in the domestic context).[8]

2. Foreign disregarded entities. In the foreign context, a U.S. charity may want to have a locally organized affiliate to operate in compliance with local laws or to open a bank account in another jurisdiction. A U.S. charity could always accept contributions and then transmit the funds to a foreign subsidiary, if it maintains control over the foreign subsidiary's operations.[9] However, the charity may have the same concerns regarding the chain of title for donated real property that it would have in the domestic context or the same desire to have a local entity to conduct a project. Also, in the case of charities that receive substantial donations from dual residents — for example, a charity that conducts substantial operations in a foreign country and receives donations from U.S. citizens who also are tax residents in the foreign country — a local charitable entity (that could check the box to be disregarded for U.S. tax purposes) may be needed for U.S. donors to receive charitable contribution deductions in both countries. Although foreign taxes paid by the donors generally may be credited for U.S. income tax purposes, the absence of a deduction in either the foreign country or the United States could undo the benefit of the deduction in the other country. In a report on the deductibility of charitable contributions to disregarded entities owned by charities, the New York State Bar Association offered the following example:

> Assume a U.S. citizen resides and pays taxes in foreign country X, which has a tax system similar to ours. The individual has 100 of X country source income and makes a charitable contribution of 10. If the contribution is made to a U.S. charity, the individual will be taxed on 100 in country X and 90 in the U.S. The individual will owe tax on 100 in country X

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[4]The case would be less clear for a limited partnership with a charity as the 100 percent limited partner and an unrelated party as the 0 percent general partner because of questions about the charity's control over the partnership.

[5]*See* section 2055(a)(2). The charity need not be domestic if the decedent was a U.S. citizen or resident. However, the estate tax imposed on nonresident decedents who were not U.S. citizens is limited to U.S. situs assets (including stock in domestic corporations and obligations of U.S. persons). Accordingly, the deduction for nonresident alien decedents is allowed only for U.S. charities. *See* section 2106(a).

[6]*See* section 2522(a)(2). As with the estate tax deduction, the recipient charity need not be domestic in the case of a gift made by a U.S. citizen or resident. However, nonresident aliens are subject to gift tax only on gifts of U.S. situs assets, citizens is limited to U.S. situs assets (including stock in domestic corporations and obligations of U.S. persons), so their deduction is limited to gifts made to U.S. charities. *See* section 2522(b)(2).

[7]For example, there are limitations on the types of unrelated business taxable income a section 501(c)(2) title holding company may earn. *See* Robert W. Fritz, "The Evolving Use of Limited Liability Companies by Tax-Exempt Organizations," 13 *Tax'n Exempts* 112, 115 (2001).

[8]Note that some U.S. direct and indirect owners (including exempt organizations) of foreign disregarded entities are required to file Form 8858, "Information Return of U.S. Persons With Respect to Foreign Disregarded Entities," to report their interests in these entities.

[9]*See* Rev. Rul. 63-252, 1963-2 C.B. 101, Example 5.

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(say 35) and owe tax on 90 in the U.S. (31.50 which, after foreign tax credits, results in no U.S. tax and total tax of 35). Similarly, if the individual makes the contribution of 10 to a country X charity, the taxpayer will owe tax on 90 in country X and 100 in the U.S. (losing the charitable contribution deduction because the gift was not made to a domestic charity). Thus the individual will pay tax of 31.50 in country X, owe tax of 35 in the U.S. which, after foreign tax credit of 31.50 results in U.S. tax of 3.5 for total tax of 35.

> If a U.S. charity has a country X [disregarded entity] that qualifies as a country X charity, the individual can give 10 to the [disregarded entity]. If the foreign charity is disregarded, the taxpayer receives a deduction of 10 both in country X and in the U.S. The individual has taxable income of 90 in both country X and the U.S., pays tax of 31.50 to country X and has tax of 31.50 in the U.S. offset by foreign tax credits.[10]

Thus, even though a U.S. charity could accept donations directly and then transfer funds to a wholly owned disregarded entity under its control, there are situations in which it is necessary or preferable for contributions to be made directly to the foreign disregarded entity.

C. Check-the-Box Regulations

Until publication of Notice 2012-52, the IRS did not rule or otherwise provide guidance on the deductibility of contributions to disregarded entities owned by charities. However, as discussed below, the notice is fully consistent with the entity classification regulations and merely confirms the current status of the law in this area.

A domestic business entity (other than a corporation) with a single owner is disregarded for most federal tax purposes under reg. section 301.7701-3(b) unless it elects to be classified as an association (and thus treated as a corporation for tax purposes).[11] Reg. section 301.7701-2(a) provides that if an entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of its owner.

1. Exceptions to disregarded status.

a. Regulatory exceptions. Structurally, the entity classification regulations lay out the above rule disregarding the entity ''for federal tax purposes'' generally,[12] with delineated exceptions. For example, as pointed out in Notice 2012-52, a disregarded entity still is ''regarded'' as a separate entity for employment and certain excise tax purposes.[13] Thus, although a disregarded entity generally would not file a separate federal income tax or information return,[14] it would be liable for wage withholding, employment taxes, and related information reporting, such as Form W-2, ''Wage and Tax Statement,'' and Form 941, ''Employer's Quarterly Federal Tax Return,'' under its own name and using its own employee identification number.[15] However, these are explicit carveouts.[16] The preamble to the 2007 amendments to the entity classification regulations concerning employment taxes acknowledges the general rule in noting that a disregarded entity ''continues to be disregarded for other Federal tax purposes.''[17] Similarly, reg. section 301.7701-2(a), in addressing the carveouts for employment and excise taxes, provides, in pertinent part: ''But see paragraphs (c)(2)(iv) and (v) of this section for special employment and excise tax rules that apply to an eligible entity *that is otherwise disregarded as an entity separate from its owner*'' (emphasis added).[18]

Under reg. section 301.7701-3(c)(1)(v)(A), an eligible entity that is determined to be (or claims to be) exempt from taxation under section 501(a) is deemed to have elected to be treated as a corporation for federal tax purposes (the ''deemed election''). Section 508 provides that for an entity to be considered an exempt organization described in section 501(c)(3) it must apply for exempt status. One issue that arose shortly after the check-the-box

[10] NYSBA tax section, ''Report on Tax Deductibility of Contributions to Disregarded Entities Owned by Charities,'' Rept. No. 1254 (Jan. 12, 2012), *Doc 2012-728*, *2012 TNT 9-15* (''NYSBA report'').

[11] Domestic corporations and some foreign entities are designated as per se corporations under reg. section 301.7701-2(b). A foreign ''eligible entity'' with limited liability for all of its members will be treated as a corporation by default, but it can elect to be disregarded by filing Form 8832, ''Entity Classification Election.'' *See* reg. section 301.7701-3(b)(1).

[12] *See* reg. section 301.7701-1(a), -3(a).

[13] *See* reg. section 301.7701-2(c)(2)(iv), (v).

[14] As indicated *supra* note 8, the U.S. owner of a foreign disregarded entity (including some U.S. owners of a foreign partnership or corporation that owns a foreign disregarded entity) would need to file Form 8858 regarding these foreign disregarded entities. Also, separate filings may be required at the state level for an SMLLC.

[15] *See* reg. section 301.7701-2(c)(iv)(D), Example.

[16] Before the introduction of the carveout for employment taxes in 2007 (which became effective in 2009), the IRS's litigating position was that owners of disregarded entities were personally liable for the entity's employment taxes. *See, e.g.*, *McNamee v. Dep't of the Treasury*, 488 F.3d 100 (2d Cir. 2007), *Doc 2007-12575*, *2007 TNT 101-13*; *Littriello v. United States*, 484 F.3d 372 (6th Cir. 2007), *Doc 2007-9567*, *2007 TNT 73-16*.

[17] *See* T.D. 9356, *Doc 2007-18927*, *2007 TNT 159-4*.

[18] The owner of a disregarded entity remains liable for backup withholding under section 3406 on behalf of the disregarded entity. *See* reg. section 301.7701-2T(c)(2)(v)(A).

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regulations were finalized in 1996 was how the deemed election applies to otherwise disregarded entities owned by charities. Some practitioners wondered whether an eligible entity wholly owned by an EO could be exempt only if it applied for exempt status itself and was thereby deemed to have elected to be an association (that is, a charitable corporation). However, the IRS confirmed in Announcement 99-102[19] that an entity wholly owned by a tax-exempt organization may be disregarded as an entity separate from its tax-exempt owner. The announcement provides, in pertinent part:

> When an entity is disregarded as separate from its owner its operations are treated as a branch or division of the owner. Therefore, an owner that is exempt from taxation under section 501(a) of the Internal Revenue Code must include, as its own, information pertaining to the finances and operations of a disregarded entity in its annual information return.[20]

The IRS's online reference, ''Instructions for Limited Liability Company: Reference Guide Sheet,'' is even broader, providing that a disregarded entity owned by a tax-exempt organization ''receives the benefit of its owner's tax-exempt status, including exemption from federal income tax, federal unemployment tax, and other federal taxes where applicable.''[21] This is consistent with the language in reg. section 301.7701-2(a) to the effect that the activities of a disregarded entity are treated ''in the same manner as a sole proprietorship, branch or division of the owner.'' Similarly, numerous private letter rulings over the years have confirmed that an SMLLC could be a disregarded entity of a tax-exempt owner without being subject to the deemed election.[22]

b. Judicial exceptions. For a charitable contribution to be deductible under section 170(a), it must be made ''to or for the use of'' a charity.[23] The Supreme Court clarified in *Davis v. United States*[24] that the term ''for the use of'' means an enforceable trust for the EO or similar arrangement. A disregarded entity is not a trust, so the question could be framed as whether a contribution to a disregarded entity owned by a charitable organization is considered a gift *to* the charitable organization.[25]

The Tax Court held in *Pierre v. Commissioner*[26] that the check-the-box regulations do not apply to the valuation of interests in disregarded entities for federal gift tax purposes. *Pierre* implicitly raised the issue of whether there might be a broader common law exception to disregarded entity status (for example, a contribution to a disregarded entity would not be considered a gift to its parent charity). However, the court seemed concerned mainly with how to value a gift under the transfer tax regime, in which one must look at the factors that an unrelated buyer or seller would consider in an arm's-length transaction (such as state law restrictions inherent in a minority interest).[27]

In *Pierre*, the taxpayer gave and sold interests in her wholly owned LLC to a pair of irrevocable grantor trusts. The IRS took the position that because the entity itself was disregarded for federal tax purposes, no entity-level discounts (for example, for lack of control and marketability) should apply. The Tax Court upheld the discounts generally (reducing them on other grounds in a separate opinion).[28] Central to the court's decision was the long-established principal in gift taxation articulated in *Morgan v. Commissioner*[29] that ''State law creates property rights and interests, and Federal tax law then defines the tax treatment of those property rights.''[30] The court was concerned that valuing the gifts and sales as if they were transfers of the underlying assets would be ''manifestly

[19]1999-43 C.B. 545, *Doc 1999-33100*, *1999 TNT 198-4*.

[20]The instructions to Form 990, ''Return of Organization Exempt From Income Tax,'' require inclusion of ''all of the revenues, expenses, assets, liabilities, and net assets or funds of a disregarded entity of which [an exempt organization] is the sole member.''

[21]*See* http://www.irs.gov/pub/irs-tege/llc_guide_sheet_instructions.pdf.

[22]*See*, *e.g.*, LTR 200150027, *Doc 2001-30807*, *2001 TNT 242-35*; LTR 200134025, *Doc 2001-22485*, *2001 TNT 166-29*; LTR 200124022, *Doc 2001-16742*, *2001 TNT 117-28*; LTR 200249014, *Doc 2002-26814*, *2002 TNT 236-15*; LTR 200304036, *Doc 2003-2236*, *2003 TNT 17-49*; LTR 200538027, *Doc 2005-19537*, *2005 TNT 185-28*; LTR 200551023, *Doc 2005-25833*, *2005 TNT 247-26*; and LTR 200637041, *Doc 2006-19411*, *2006 TNT 180-38*.

[23]*See* section 170(c).

[24]495 U.S. 472, 485 (1990).

[25]Only a business entity can be a disregarded entity. Some entities, such as Delaware Statutory Trusts, may be classified either as business entities or trusts, depending on their terms. *See* Rev. Rul. 2004-86, 2004-2 C.B. 191, *Doc 2004-14855*, *2004 TNT 140-13*.

[26]133 T.C. 24 (2009), *Doc 2009-19089*, *2009 TNT 162-4*.

[27]In determining the value of a gift of property, the gift tax regulations start with the general proposition that the fair market value of the gifted property is ''the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts.'' *See* reg. section 25.2512-1.

[28]*See* T.C. Memo. 2010-106, *Doc 2010-10724*, *2010 TNT 93-5*.

[29]309 U.S. 78 (1940).

[30]*Pierre*, 133 T.C. at 29-30, 35-36.

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incompatible'' with the estate and gift tax laws because it would amount to the creation of a property right under federal law.[31]

Whether a transfer of property to a disregarded entity *owned* by a charity should be treated as a transfer to the charity itself for tax purposes is another matter entirely.[32] Reg. section 301.7701-1(a) lays out the inverse of the rule articulated in *Morgan* and *Pierre* regarding the interplay of state and federal law: ''Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.''

2. Previous IRS guidance on contributions to disregarded entities. Until Notice 2012-52, there was no published IRS guidance directly addressing whether a charitable contribution to a disregarded entity owned by a charitable organization was considered a contribution to the charity itself for purposes of establishing a charitable contribution deduction. However, since issuing the check-the-box regulations in 1996, the IRS has issued (mostly informally through private letter rulings) guidance addressing other aspects of the tax treatment of disregarded entities owned by charitable organizations. For example, in LTR 200150027,[33] the IRS ruled that: (1) the SMLLC at issue will be disregarded as separate from its tax-exempt owner for purposes of sections 170(b)(1)(A)(v), 501(c)(3), and 507-509; (2) the LLC is not required to submit an application for recognition under section 508; and (3) the LLC will be encompassed within the owner's income tax status, and therefore will be ''part of a public charity described in I.R.C. sections 509(a)(1) and 170(b)(1)(A)(vi).'' Similarly, in INFO 2010-0052[34] (information letter), the IRS concluded that a private foundation's grant to a disregarded entity wholly owned and controlled by a public charity to accomplish an exempt purpose described in section 170(c)(2)(B) is a qualifying distribution under section 4942(g) and not a taxable expenditure under section 4945(d), effectively treating a grant from a private foundation to a public charity's disregarded entity as a grant to the charity for purposes of the private foundation excise tax rules.[35]

D. Foreign Disregarded Entities

The general rule in reg. section 301.7701-2(a) is that the activities of a disregarded entity are treated in the same manner as a sole proprietorship, branch, or division of the owner. Thus, absent a specific exception, such as for employment or excise taxes (or the valuation of gifts), a contribution to a disregarded entity owned by a charity should be treated as a contribution to a branch of the charity. That the branch is a separate legal entity should not by itself have any bearing on its tax treatment, because reg. section 301.7701-1(a) provides that an entity's status as a disregarded entity does not depend on whether it is recognized as an entity under local law.[36] This was confirmed by Notice 2012-52 — at least regarding domestically organized and controlled SMLLCs. However, the notice does not address contributions to foreign disregarded entities owned by U.S. charities.

As noted in the NYSBA report[37] (and essentially confirmed in Notice 2012-52), a critical issue in justifying a deduction to a disregarded entity owned by a U.S. charity is the charity's control over the disregarded entity. This may be of particular concern to the IRS in the foreign context. As a practical matter, the sole member of a domestic LLC can liquidate the LLC and have the assets distributed to it. Absent a contrary provision in the operating agreement (which likely would put the LLC outside the protection of the notice), the sole member should also have the less drastic option of replacing the officers if the LLC is member-managed or replacing the manager(s) if the LLC is not member-managed. Presumably, based on the notice and earlier guidance, the IRS would want to see comparable rights — both under the terms of the governing documents and under local law — for the sole member in the case of a foreign disregarded entity.

In Rev. Rul. 63-252, the IRS analyzed five scenarios involving charitable contributions to a U.S.

[31]*Id.* at 35. Section 7701(a), which defines the various entities addressed by the check-the-box regulations, begins with the phrase, ''When used in this title, where not otherwise distinctly expressed or *manifestly incompatible* with the intent thereof'' (emphasis added).

[32]Similar considerations might apply in determining the value of a gift to charity of an interest in a disregarded entity. Notably, reg. section 1.170A-1(c)(2) starts with the same willing-buyer/willing-seller language articulated in reg. section 25.2512-1.

[33]*Doc 2001-30807*, *2001 TNT 242-35*.

[34]*Doc 2010-14913*, *2010 TNT 129-21*.

[35]INFO 2010-0052 explains that a taxable expenditure under section 4945(d) includes a grant to any organization other than a public charity unless the foundation making the grant exercises ''expenditure responsibility.'' The information letter concludes that a grant to the public charity's disregarded entity does not require the exercise of expenditure responsibility.

[36]For example, an unincorporated association that does not elect to be treated as a corporation would be a disregarded entity unless it applied for exemption. If it applied for exemption, the deemed election rule would require that it be treated as a charitable corporation (or a taxable corporation if the request for exemption were denied).

[37]NYSBA report, *supra* note 10, at 24-31.

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charity, which then transmitted the contributed funds abroad. When the recipient U.S. charity was contractually bound (under its governing documents or agreements with its donors) to transmit the funds to a structurally unrelated foreign charity, the U.S. charity's lack of control over the funds was fatal to the charitable deduction.[38] In the final scenario, a U.S. charity that conducted charitable work in a foreign country set up a foreign subsidiary there for administrative convenience. In this scenario, the U.S. charity was bound to transmit some contributed funds to its foreign subsidiary but retained direct organizational control over the subsidiary's operations as its parent. The contributions in this last situation were held to be deductible because the foreign subsidiary was ''merely an administrative arm of the domestic organization.'' Thus, even though contributions necessarily would be transmitted to the foreign subsidiary, the domestic charity was still considered the ''real'' recipient.

Although the cash in this last situation still flows through the U.S. charity, the control issues are the same as those that would exist for contributions to a foreign disregarded entity — does the charity retain the necessary level of control as the sole member under the governing documents (and does it actually exercise that control)? It also would be important, both in the foreign and domestic context, that there not be any provisions in the governing documents that are inconsistent with the parent's exempt purposes (such as allowing distributions to go to a named individual).

The IRS has noted that it relies somewhat on state attorneys general for enforcement, arguably putting more pressure on the controls in place addressing activities of foreign disregarded entities outside U.S. jurisdiction.[39] However, the activities, assets, and liabilities of a foreign disregarded entity owned by a U.S. charity are subject to both separate entity reporting on Form 8858 and combined reporting (with the parent) on Form 990. Moreover, the U.S. charity itself remains subject to both federal and state jurisdiction. Thus, there does not appear to be much reason for treating contributions to a foreign disregarded entity owned by a U.S. charity differently from contributions to a domestic disregarded entity owned by a U.S. charity, if it satisfies the same ownership and control requirements.

E. Conclusions

Notice 2012-52 provides welcome guidance for taxpayers on the question of the income tax deductibility of contributions to domestic disregarded entities owned by charities. The IRS is to be applauded for issuing this clear guidance. Questions remain regarding the scope of the guidance. Certainly, the same principles should apply for gift and estate tax purposes. Contributions to foreign disregarded entities raise more questions and concerns, but should be deductible if the charity retains control over its foreign disregarded entity. Additional guidance in this area would be helpful.

[38]However, when the U.S. charity made grants to foreign charities at its own discretion, reviewing and approving each grant, the contributions to the U.S. charity were held to be deductible. Similarly, contributions to a U.S. ''friends of'' organization were held to be deductible when the organization refused earmarked contributions and its board retained full discretion over how funds were to be used and had to approve each grant under its bylaws. *See* Rev. Rul. 66-79, 1966-1 C.B. 48.

[39]NYSBA report, *supra* note 10, at n.73. The NYSBA report also asks whether section 170 deductions for contributions to a foreign disregarded entity owned by a U.S. charity lead to situations in which the IRS is unable to obtain needed information concerning the disregarded entity.

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