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**CHARITIES CAN NOW USE  
LIMITED LIABILITY COMPANIES  
TO ACCEPT DUBIOUS ASSETS**

**After 15 years of waiting, the IRS has finally allowed a contribution to a single-member LLC owned by a charity to be treated as a contribution directly to the charity.**

Dirty Dan contacts Clean Charity, a Section 501(c)(3) organization, and offers to donate Dirty Acres to Clean Charity. The officers of Clean Charity are concerned that (1) there might be environmental problems with Dirty Acres, and (2) that Clean Charity, if it accepts the property, will be required to remediate them. Clean Charity does not want to divert its precious cash from its charitable works to remediating Dirty Acres. Also, the cost of remediation might exceed the value of Dirty Acres after the remediation is complete.

**In the old days.** For Clean Charity, the key was (and is) to never have its name on a deed for Dirty Acres. If an LLC owned the property, the LLC and not Clean Charity would be required to expend its assets to re-

mediate the property. If the LLC ran out of assets before the remediation was complete, Clean Charity would not be compelled to use its assets to complete the remediation.<sup>1</sup>

Before today's IRS Notice, Clean Charity would have asked Dirty Dan to contribute Dirty Acres to Dubious Properties LLC, of which Clean Charity is the sole member. However, Dan would have refused, because his tax people were not sure that Dan could take a charitable deduction if the

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<sup>1</sup> This is a super-simplified summary of complex environmental laws. This Bulletin is about a tax development. Please do not take it as advice about environmental laws.

deed for Dirty Acres was from Dan to Dubious Properties LLC and not to Clean Charity.

So Clean Charity would have asked Dan to create an LLC and to transfer Dirty Acres to the new LLC, and then for Dan to transfer the LLC interest to Clean Charity. Dan would have countered that he was looking for a charitable deduction, not more legal fees.

At that point Clean Charity would have to make a tough decision. Did it want to front the legal fees to create a new LLC and to transfer Dirty Acres to it, followed by the transfer of the LLC interest to Clean Charity? If Clean Charity did not front these costs, Dan probably would have looked for another charity to accept Dirty Acres. And after the LLC was created and Dirty Acres was transferred to the LLC, Dirty Dan might not have transferred the LLC interest to Clean Charities after all.

**The long sought solution.** All this trouble could have been avoided if the IRS published guidance that Dan's transfer of Dirty Acres to Dubious Properties LLC, wholly-owned by

Clean Charities, was treated for tax purposes the same as a transfer of Dirty Acres directly to Clean Charities.<sup>2</sup>

**The new guidance.** On August 6, 2012 the IRS published its Notice 2012-52.<sup>3</sup> This Notice allows Dirty Dan to take a charitable contribution for his transfer of Dirty Acres to Dubious Properties LLC, as long as the LLC is a U.S. entity and is wholly owned by a charity.<sup>4</sup> This is consistent with the general rule the IRS adopted in 1997 -- that a single-member LLC is disregarded for all income tax purposes.

Now, when Dirty Dan approaches Clean Charity with a proposal to transfer Dirty Acres to Clean Charity, Clean Charity can either create a new LLC to accept the property or can have an existing LLC (wholly-

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<sup>2</sup> Several years ago the Tax Exempt Organization Committee of the Tax Section of the Los Angeles County Bar Association asked the IRS to publish this guidance.

<sup>3</sup> It's in Internal Revenue Bulletin 2012-35.

<sup>4</sup> The Notice applies to all charities. Names of hypothetical parties are used in this Bulletin to make it easier to understand what the IRS did.

owned by Clean Charity) accept the property. Now Dan and his advisers should be comfortable with Dan's charitable contribution, based on Notice 2012-52.

**Collateral issues.** In the Notice the IRS notes that Clean Charity (and not Dubious Properties LLC) signs Forms 8282 and 8283 and provides the acknowledgement letter for the contribution.

The IRS also states in the Notice that "To avoid unnecessary inquiries by the Service, the charity is encouraged to disclose, in the acknowledgment or another statement, that the [LLC] is wholly owned by the U.S. charity and treated by the U.S. charity as a disregarded entity." For the entities in the example above, the statement would be:

The contribution was made to Dubious Properties LLC, which is a California limited liability company that is wholly-owned by Clean Charity, a Sec-

tion 501(c)(3) organization. The separate existence of Dubious Properties LLC is disregarded for federal income tax purposes (and for no other purpose). Pursuant to IRS Notice 2012-52, the contribution is treated for income tax purposes (and for no other purpose) as if it was made directly to Clean Charity."

A bold donor who made a contribution to an LLC wholly-owned by a charity before this Notice may now rely on the Notice to substantiate the donor's charitable contribution deduction.

This is a good day for charitable organizations and donors. It's too bad it took 15 years for the charitable donations part of the IRS to catch up to the LLC part. But it's good that it finally happened.

Need to organize your own "Dubious Properties" LLC to accept a gift? We can do it quickly.

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