

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

Number: **20212502F**

Release Date: 6/25/2021

CC:LB:5:LA:1:LAAmadei

POSTF-124383-20

UILC: 7701.34-00, 704.07-03, 170.00-00, 197.00-00

date: January 29, 2021

to: Angela Lee  
Revenue Agent  
(Large Business & International)

from: Lori A. Amadei  
Attorney  
(Large Business & International)

---

subject: Purported Transfer of LLC Units to Tax-Exempt Entity and Related Transactions

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

**LEGEND**

Adviser1 =

Adviser2 =

Adviser3 =

Appraiser =

Corporation =

Family Trust1 =

Family Trust2 =

LLC1 =

LLC2 =

LLC3 =

LLC4 =

LLC5 =

LLC Agreement =

Operating Method =

Organization1 =

Organization2 =

Organization3 =

Real Property =  
Taxpayers =  
Taxpayer-Husband =  
Taxpayer-Wife =

ISSUES

Whether Taxpayers' purported transfer of LLC units to Organization1 and related transactions should be respected for federal income tax purposes.

CONCLUSIONS

No, Taxpayers' purported transfer lacks economic substance and should be disregarded under multiple theories as described in this memorandum. Taxpayers engaged in the purported transactions in order to improperly minimize

Because the transaction lacks economic substance, the

charitable contribution Additionally, the noncash must be disallowed, and LLC1's claimed amortization expense for Operating Method must also be disallowed.

FACTS

**A.**

2

3

4

5

6

7

---

2

3

4

5

6

7

**B.**

**1.**

---

**2.**

8

			9	

**3.**

10

---

8  
9  
10


4.

11

12

---

11

12


**5.**


---

**6.**

13




**C.**

**1.**

15

16

---

15  
16

2.

**D.**

17

18

19

20

---

17

18  
19  
20

1.

21

22

23

---

21

22  
23


**2.**

**3.**

**4.**

**E.**





			<b>27</b>

**F.**

**G.**

28

29

---

28

29

## LAW AND ANALYSIS

**A. The purported donation of [redacted] units to Organization1 must be disregarded under the economic substance doctrine of I.R.C. § 7701(o), and all [redacted] must be allocated to Taxpayers.**

As discussed below, the purported transfer of [redacted] units to Organization1 lacks substance and must be disregarded under the economic substance doctrine of section 7701(o). This result is consistent under the theory that the donee was not a bona fide partner of LLC1 under I.R.C. § 704(e). Because the transfer of [redacted] units to Organization1 lacks economic substance, Organization1 is not a member of LLC1, and all [redacted] must be allocated to Taxpayers.

In the discussion below, the term “transaction” refers to the steps Taxpayers undertook to create a structure to avoid income taxes while maintaining control of the underlying assets, including:

Section 1409 of the Health Care and Education Reconciliation Act of 2010 added section 7701(o) to the Code to provide clarification of the economic substance doctrine. That section applies to transactions entered into on or after March 31, 2010. Section 7701(o) applies to Taxpayers because the

When a transaction falls within the scope of section 7701(o), the first inquiry is whether the economic substance doctrine is relevant to the transaction. I.R.C. § 7701(o)(1). If the doctrine is relevant, the second inquiry is whether the transaction is treated as having economic substance under section 7701(o). *Id.* Relevance of the economic substance doctrine is determined in the same manner as if section 7701(o) had never been enacted. I.R.C. § 7701(o)(5)(C). A transaction shall be treated as having economic substance if “(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and (B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.” I.R.C. § 7701(o)(1).

Under the economic substance doctrine, a transaction is disregarded for federal tax purposes if the taxpayer did not enter into the transaction for a valid business purpose but rather sought to claim tax benefits not contemplated by a reasonable application of the language and purpose of the Internal Revenue Code or its regulations. See, e.g., Horn v. Commissioner, 968 F.2d 1229, 1236 (D.C. Cir. 1992). The doctrine originated in Gregory v. Helvering, 293 U.S. 465 (1935). In Gregory, the Court recognized the taxpayer's right to minimize taxes through legal means, but stated that "the question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended." 293 U.S. at 469.

"[W]here ... there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached, the Government should honor the allocation of rights and duties effectuated by the parties." Frank Lyon Co. v. United States, 435 U.S. 561, 583-84 (1978).

Taken together, the transaction lacks economic substance, including the steps leading up to the

. Taxpayers took those measures for no purpose other than tax savings prior to the

. By transferring LLC1 membership interests to Organization1, Taxpayers avoided income tax on

A closer examination of the transaction, as a whole, reveals that it had no economic substance beyond tax benefits.

### 1. Subjective inquiry

The subjective factors focus on the taxpayer's expectations and motives to determine whether it engaged in the transaction for business purposes other than tax avoidance. Bail Bonds v. Commissioner, 820 F.2d 1543, 1549 (9th Cir. 1987); see Kirchman v. Commissioner, 862 F.2d 1486, 1492 (11th Cir. 1989). Evidence of corporate form alone, however, is insufficient to demonstrate an economic purpose as it may just as likely reflect an intent to disguise a transaction's true purpose. Gregory, 293 U.S. at 469. "[A] transaction with no economic effects, in which the underlying documents are a device to conceal its true purpose, does not control the incidence of taxes." Sacks v. Commissioner, 69 F.3d 982, 986 (9th Cir. 1995). In any event, proper corporate form indicates nothing about the likelihood of producing economic benefits. Shasta Strategic Inv. Fund, LLC v. United States, 2014 WL 3852416, at \*8 (N.D. Cal. July 31, 2014). To meet its burden, the taxpayer must articulate a legitimate business purpose for placing its assets at risk. Dow Chemical Co. v. U.S., 250 F. Supp.2d 748, 799 (E.D. Mich. 2003).

- a. The transaction did not fit with Taxpayers' stated reasons for engaging in the transaction.

Despite  
Taxpayers' stated intentions, the structure did not meet those objectives. For  
example,

The donation of LLC units to Organization1 is substantially similar to the donation of stock in Torney v. Commissioner, T.C. Memo. 1993-385. The petitioner in Torney was gifted stock, which he then donated to a charity and claimed a sizable charitable deduction. Id. at \*2-3. The court held that petitioner did not hold the stock long enough so as to qualify for a long-term capital gain and therefore disallowed the deduction because petitioner's charitable deduction would be limited to his basis in the donated property. Id. at \*5. However, the court went on to conclude that the donation lacked economic substance because:

The stocks involved herein were never supported by anything but assets of highly questionable, minimal value and the value used throughout was overstated and rigged to create a large charitable deduction where none existed. The whole scheme was a confusing mess of paper shuffling, rather inartfully carried out by a group of people with dubious motives. Petitioners never exercised any control over the stock. They merely held a photocopy of the stock certificate and signed the assignment documents when directed. Moreover, World Family never benefited from ownership of the stock and listed the stock as having no value after 1987 on its Form 990.

Id. at \*8.

As discussed below, the LLC units Taxpayers donated to Organization1 have little to no value.

The use of LLC1 to transfer units to create a substantial charitable deduction lacks economic substance.

In Ford v. Commissioner, T.C. Memo. 1983-556, petitioners donated property to a corporation in exchange for stock. On the same day, the stock was donated to a university for a sizeable charitable contribution. Id. The court concluded that the intermediary corporation “did not conduct business and its incorporation served no business purpose.” Id. Instead, the corporation was used “to avoid the strictures of section 170(e).” Id. Similarly, LLC1 did not engage in any business and was used as a vehicle to

The units’ lack of economic value distinguishes this case from Skripak v. Commissioner, 84 T.C. 285 (1985). In Skripak, taxpayers purchased books at discounted rates and then donated the books to libraries for their full market value to obtain a sizable charitable deduction. Id. at 287. The court upheld the charitable contribution deduction in that case because “at each petitioner’s direction, various qualified charitable donees received gifts of books belonging to the respective petitioners. This is precisely the result intended by section 170.” Id. at 319-20. Here,

Therefore, this case is more similar to Ford and Torney where the donee did not receive anything of value.

Similarly,

b. Taxpayers arranged the transaction around the same time that they sought to

c. Taxpayers' conduct of business did not change as a result of the transaction.

After the purported transfer of \_\_\_\_\_ units to Organization1, Taxpayer-Husband remained in control of all of the assets held by LLC1. Economically, Taxpayer-Husband was in the same position as to the assets after the purported charitable contribution to Organization1, as he was before. As the transaction was structured,

d. A tax promoter devised most, if not all, aspects of the transaction.

Taxpayers engaged in the transaction to obtain tax benefits, which is evidenced by their use of tax advisers and promoters to structure the transaction, draft documents, and create an with cookie cutter provisions.

e. Taxpayers did not follow the agreements.

Not only did tax advisers draft agreements, apparently with the motivation of avoiding taxes, Taxpayers did not follow those agreements.

f. Taking all the circumstances into account, Taxpayers engaged in the transaction solely to obtain tax benefits.

As discussed above, Taxpayers entered into the transaction solely to obtain tax benefits.

and transferring units to a charitable organization do not stand under scrutiny. In effecting the transaction, many agreements were drafted and signed , but few provisions in those agreements were followed.

“All of the steps taken by the partnership were interdependent events, following closely together in time in an effort to resolve the partners' needs for a large tax deduction.” Ford v. Commissioner, T.C. Memo. 1983-556. Taxpayers created this structure with the help of

The series of transactions were highly structured so that Taxpayers could avoid

The ultimate goal of the transaction Taxpayers



engaged in was to avoid paying taxes as required by the code and therefore lacks economic substance.

## 2. Objective inquiry

In analyzing the objective factors, the Ninth Circuit focuses on whether a "reasonable investor would enter" into the transaction. Reddam v. Commissioner, 755 F.3d 1051, 1060-1 (9th Cir. 2014). The courts look to the "overall structure" of the transactions. Id. at 1061 (internal citations omitted). Theoretical outcomes of the transaction do not control; the execution of the transaction and its actual outcomes are what matter. Keane v. Commissioner, 865 F.2d 1088, 1091-2 (9th Cir. 1989). The "practical" economic effects are what controls. Sacks v. Commissioner, 69 F.3d 982, 987 (9th Cir. 1995). This test is also known as the business purpose test and provides that the "transaction must be rationally related to a useful nontax purpose that is plausible in light of the taxpayer's conduct and useful in light of taxpayer's economic situation and intentions." ACM Partnership v. Commissioner, T.C. Memo. 1997-115. In other words, "[r]ealistic potential for profit is found ... when the transaction is carefully conceived and planned in accordance with standards applicable to the particular industry, so that judged by those standards, the hypothetical reasonable businessman would make the investment." Cherin v. Commissioner, 89 T.C. 986, 993-4 (1987).

- a. Organization1 was not, in substance, a partner in LLC1 under Culbertson.

The Supreme Court in Culbertson v. Commissioner laid the foundation for determining, under federal tax laws, whether a partnership interest in form should be respected as a partnership interest in substance:

[C]onsidering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.

337 U.S. 733, 742 (1949). The determination is based on a realistic appraisal of the totality of the circumstances. TIFD III-E, Inc. v. United States, 459 F.3d 220, 231 (2d Cir. 2006). The key inquiry is whether the purported partner had a meaningful stake in the success or failure of the enterprise. Id. Here, Organization1 was a partner in name only as established by the totality of the circumstances.

- i. Organization1 did not share in the upside potential of LLC1.

Because Taxpayers maintained discretion over [redacted], Organization1 could not expect to share in the upside potential of LLC1.

- ii. Organization1 did not share in the downside risk of LLC1.

Regardless of what happened to LLC1 economically, Organization1 remained in the same position: receiving [redacted] at Taxpayer-Husband's sole discretion.

- iii. Organization1 was not able to freely sell its interest in LLC1.

It is also highly unlikely that Organization1 would be able to find a buyer for its [redacted] units because, as further explained below, Organization1 exercises no control of LLC1, and LLC1 only holds [redacted] units. Furthermore, because the [redacted] member has no upside potential, it is unlikely that an outside buyer would have any interest in purchasing the [redacted] units.

- iv. Organization1 did not exercise control over any aspect of LLC1.

Taxpayer-Husband, maintained absolute discretion in all decisions, including [redacted]

[redacted] This total discretion resulted in LLC1 [redacted]

- v. Organization1 performed no due diligence before receiving the [redacted] units.

vi. LLC1 did not follow the terms of

Although \_\_\_\_\_, Taxpayer-Husband,  
did not follow the terms of the agreement. Most importantly,

In light of the above-described facts and circumstances, Organization1 was not, in substance, a partner of LLC1. Therefore, the economic substance doctrine of section 7701(o) applies to disregard the purported transfer of \_\_\_\_\_ units to Organization1.

b. A reasonable investor would not exchange its 100% interest in an LLC that \_\_\_\_\_ for LLC1 \_\_\_\_\_ units.

So, it is likely that the \_\_\_\_\_ units were worth far less than the value of LLC4 prior to the transfer. A reasonable investor would not exchange valuable property for property of a lower value.

c. A reasonable investor would not \_\_\_\_\_ from LLC1.

\_\_\_\_\_ No reasonable investor  
would pay royalties to another party to use its own documents.

The transaction lacks economic substance, both subjectively and objectively, and must be disregarded for federal income tax purposes. The transaction did not meaningfully change Taxpayers' economic position (aside from tax consequences)

nor did they have a substantial purpose in participating in the transaction (aside from tax consequences).

**B. Organization1 is not recognized as a member of LLC1 for income tax purposes under section 704(e), given the facts and circumstances.**

Section 704(e) provides that a donee of a partnership interest in a partnership in which capital is a material income-producing factor may be recognized as a partner for income tax purposes.

Whether an alleged partner who is a donee of a capital interest in a partnership is the real owner of such capital interest, and whether the donee has dominion and control over such interest, must be ascertained from all the facts and circumstances of the particular case.... The reality of the transfer and of the donee's ownership of the property attributed to him are to be ascertained from the conduct of the parties with respect to the alleged gift and not by any mechanical or formal test.

Treas. Reg. § 1.704-1(e)(2).

If the donor has retained control of the partnership interest that he has purported to transfer to the donee, then the donor should be treated as remaining the substantial owner of the interest. Treas. Reg. § 1.704-1(e)(2)(ii). Controls of significance include: (1) retention of control of the distribution of amount of income or restrictions on the distributions of amounts of income (other than amounts retained in the partnership annually with the consent of the partners, including the donee partner, for the reasonable needs of the business); (2) limitation of the right of the donee to liquidate or sell his interest in the partnership at his discretion without financial detriment; (3) retention of control of assets essential to the business (for example, through retention of assets leased to the alleged partnership); (4) retention of management powers inconsistent with normal relationships among partners. Id. If controls by the donor are exercised indirectly (such as through a separate business organization, trust, or partnership), then the reality of the donee's interest will be determined if such controls were exercisable directly. Treas. Reg. § 1.704-1(e)(2)(iii).

On the other hand, substantial participation in the control and management of the business (including participation in major policy decisions affecting the business) is strong evidence of a donee partner's exercise of dominion and control over his interest. Treas. Reg. § 1.704-1(e)(2)(iv). Actual distribution to a donee partner of the entire amount or a major portion of his distributive share of the business income is evidence of the reality of the donee's interest. Treas. Reg. § 1.704-1(e)(2)(v). In determining if a donee ownership interest exists, consideration will be taken into whether the donee partner is included in the operation of the partnership business. Treas. Reg. § 1.704-1(e)(2)(vi).

A donee partner may be a limited partner who does not participate in the management of the partnership if the donee partner's right to transfer his interest is not subject to substantial restriction. Treas. Reg. § 1.704-1(e)(2)(ix).  
 If the reality of the transfer of interest is satisfactorily established, the motives are generally immaterial, but the presence of a tax avoidance motive is one factor to consider in determining the reality of the ownership of a donee's partnership interest. Treas. Reg. § 1.704-1(e)(2)(x).

In this case, Taxpayers purportedly donated \_\_\_\_\_ units to Organization1, which are similar to limited partnership interests as described in section 1.704-1(e)(2)(ix).

However, because the \_\_\_\_\_ units are akin to limited partnership interests, Organization1's lack of \_\_\_\_\_ rights or control of LLC1 is not dispositive.

A consideration of other factors indicates that Organization1 is not a partner in LLC1.

The parties did not follow \_\_\_\_\_ in the allocation  
 In fact, Taxpayers reveal their tax avoidance motive in how allocations were made

Taxpayers avoided tax on the  
 while using LLC1's funds

Organization1 a \_\_\_\_\_ But making  
 member of LLC1 did not accomplish this stated objective.

There was no need for Organization1 to be a partner

to

As discussed above, Organization1 was not a partner of LLC1 under section 704(e). Organization1 had no say in the Organization1's ability to sell its interest was severely restricted if it could even find a willing buyer. Taxpayers' tax avoidance motive is clear, and their stated objectives did not correspond with the parties' conduct. Therefore, Organization1 is not recognized as a partner of LLC1 for federal income tax purposes.

**C. Taxpayers' claimed noncash charitable contribution to Organization1 must be disallowed as required by I.R.C. § 170.**

Section 170(a)(1) allows a deduction (subject to sections 170(b) and (d)) for any charitable contribution (defined in section 170(c)) made during the taxable year if verified under regulations prescribed by the Secretary. This deduction is allowed whether the contribution is in cash or in other property. Treas. Reg. § 1.170A-1. Section 170(e) provides that the amount of a charitable contribution deduction under section 170 is generally equal to the fair market value of the property on the date of contribution minus ordinary gain that would have been realized if the property contributed had been sold by the taxpayer at its fair market value on the date of contribution. Treas. Reg. § 1.170A-1(c).

Deductions are a matter of legislative grace and are strictly construed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934). As such, a taxpayer has the burden to establish that a claimed charitable contribution meets the requirements for a deduction.

**1. Failure to comply with section 170(f)(11) and Treas. Reg. § 1.170A-13(c)(2)(i)(B) requires that the deduction be denied.**

Taxpayers did not comply with section 170(f)(11). Section 170(f)(11) denies a deduction for any contribution of property for which a deduction of more than \$500,000 is claimed unless a qualified appraisal is obtained from a qualified appraiser and attached to the return for the taxable year in which the contribution is made.

Section 1.170A-13(c)(3) defines a qualified appraisal as a document that, among other things: (A) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the due date (including extensions) of the return on which a deduction is first claimed under section 170; (B) is prepared, signed, and dated by a qualified appraiser; (C) includes the information required by paragraph (c)(3)(ii) of this section; and (D) does not involve an appraisal fee prohibited by paragraph (c)(6) of this section. The term "qualified appraiser" is defined in

section 170(f)(11)(E)(ii). See also Notice 2006-96, 2 C.B. 902; T.D. 9836, 2018-33 I.R.B. 291 (regulations applicable for tax years later than the instant case).

The information required by section 1.170A-13(c)(3)(ii) includes: (A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed; (B) In the case of tangible property, the physical condition of the property; (C) The date (or expected date) of contribution to the donee; (D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that -- (1) restricts temporarily or permanently a donee's right to use or dispose of the donated property, (2) reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or (3) earmarks donated property for a particular use; (E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser; (F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations; (G) A statement that the appraisal was prepared for income tax purposes; (H) The date (or dates) on which the property was appraised; (I) The appraised fair market value (within the meaning of § 1.170A-1(c)(2)) of the property on the date (or expected date) of contribution; (J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and (K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

As previously discussed, Taxpayers transferred LLC1  
on

units to Organization1

See generally Treas. Reg. § 1.170A-13(c)(4) (providing requirements for the Form 8283 appraisal summary).

Taxpayers did not comply with section 170(f)(11) because a qualified appraisal was not attached to the return as required under section 170(f)(11)(D) for noncash charitable donations over \$500,000. Additionally, the appraisals were authored by Adviser2, who was not qualified to perform the appraisal as well as barred from valuing the LLC units due to his relationship to the transaction. See Treas. Reg. § 1.170A-13(c)(5)(iv) (excluding certain persons from being qualified appraisers with respect to particular property). Furthermore, the claimed noncash charitable contribution should be disallowed because Taxpayers did not comply with section 1.170A-13(c)(2)(i)(B), which requires that a taxpayer attach a fully completed appraisal summary to the tax return. See Blau v. Commissioner, 924 F.3d 1261, 1269 (D.C. Cir. 2019), aff'g 149 T.C. 1 (2017) (holding that petitioner did not comply with section 1.170A-13, substantially or otherwise, when it omitted a donated asset's basis on Form 8283.) Instead of complying with the applicable Treasury Regulations, Taxpayers attached Forms 8283 to their returns.

## **2. The charitable deduction should be denied because it is an improper conditional gift.**

Section 1.170A-1(e) provides that a deduction for a charitable contribution is denied if on the date of the contribution, the contribution is subject to a condition to be effective or, once effective, can be defeated by a subsequent event, unless the possibility that the contribution will not be effective or, once effective, can be defeated, is so remote as to be negligible. See also Treas. Reg. § 1.170A-7(a)(3). "Similarly, a fundamental principle underlying the charitable contribution deduction is that the charity actually receive and keep the contribution." Graev v. Commissioner, 140 T.C. 377, 390 (2013).

For the purpose of section 1.170A-1(e), the United States Tax Court in Briggs v. Commissioner, 72 T.C. 646, 656-7 (1979), aff'd without published opinion, 665 F.2d 1051 (9th Cir.1981), has interpreted the phrase "so remote as to be negligible" to mean "a chance which persons generally would disregard as so highly improbable that it might be ignored with reasonable safety in undertaking a serious business transaction" and "a chance which every dictate of reason would justify an intelligent person in disregarding as so highly improbable and remote as to be lacking in reason and substance."

---

<sup>30</sup> In this case,

Under section 170, a deduction is limited to the donated asset's fair market value, even if a taxpayer's basis exceeds the fair market value.



Taxpayers claimed noncash charitable contribution deductions for LLC1 units that they transferred to Organization1. In this case, the chance that Organization1's interest would be defeated by a subsequent event is not remote at all. states:

[31]

LLC1 retains the right at the absolute and unquestionable discretion to "reclaim" and regift the units Organization1 holds. The right to reclaim is the condition subsequent that causes the gift to fail. This is quite different than the charity having the ability to transfer its assets to another charity in the event it dissolves or loses its tax-exempt status. Such ability recognizes that the charity owns the assets – not the donors. Instead, LLC1's right to reclaim the gift divests the charity of the gift after the gift is made in violation of section 1.170A-1(e) and allows LLC1 to select a new recipient (a right held by the owner of property).

The provision's allowance that LLC1 can reclaim and regift the contribution if the recipient charity is is clearly not so remote as to render it negligible. It is probable that a charity will be at some point in its existence for some reason. Finally, in point of fact,

**D. LLC1 is not entitled to deduct amortization expense related to Operating Method.**

---

<sup>31</sup> Not all organizations that have tax-exempt status qualify under section 170(c) as organizations eligible to receive a gift for which a deduction would be allowed to the donor under section 170(a).

I.R.C. § 197 and the regulations thereunder provide the rules concerning the amortization of an amortizable section 197 intangible. Any allowable amortization expense would be based on the proper amount capitalized under I.R.C. § 263(a) with respect to acquisition of the amortizable section 197 intangible. As explained above, the purported purchase price for Operating Method was not determined as part of a bona fide transaction. Nevertheless, Operating Method does appear to be a section 197 intangible (i.e., know-how described in section 197(d)(1)(C)(iii) and Treas. Reg. § 1.197-2(b)(5)).

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[REDACTED]

[REDACTED]

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views. Please call (213) 372-4054 if you have any further questions.

EWAN D. PURKISS

Area Counsel

By: \_\_\_\_\_  
Lori A. Amadei  
Attorney  
(Large Business & International)