

Internal Revenue Service**Department of the Treasury**

Number: **200230007**
Release Date: 7/26/2002
Index No.: 170.00-00; 170.09-00;
170.18-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:3 PLR-126431-01

Date:

April 11, 2002

In re:

LEGEND:

Taxpayer =

Charity =

Local Chapter =

LLC =

Corporation =

Month/Year =

Vehicle =

Dear

This letter responds to a ruling request submitted on behalf of Taxpayer by a letter dated May 8, 2001, as supplemented by a letter dated February 27, 2002. The request relates to whether a proposed donation of a vehicle qualifies for a charitable contribution deduction under § 170 of the Code.

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Charity also has submitted a separate request for a letter ruling concerning the property donation program through which Taxpayer proposes to make a donation. Taxpayer and Charity have executed Forms 8821, Tax Information Authorizations, allowing each to receive confidential tax information related to the other's ruling request. Both Taxpayer and Charity have the same authorized representatives.

FACTS

Taxpayer is an individual and the owner of Vehicle. There are no liens on Vehicle. Taxpayer purchased Vehicle used and has always used it solely for personal use. The current fair market value of Vehicle is less than its purchase price and less than \$5,000. Taxpayer intends to donate Vehicle to Charity through a property donation program involving LLC, assuming Taxpayer receives a favorable letter ruling. Taxpayer itemizes his income tax deductions on his return.

Description of Relevant Parties

Charity is a charitable entity exempt from federal income tax under § 501(c)(3) and is not a private foundation; it normally receives a substantial part of its support from a governmental unit or from the general public under § 170(b)(1)(A)(vi). Charity received its determination letter in Month/Year. Charity's primary purpose is to find a cure for certain illnesses. Charity engages in programs for research, patient and community service, public health education, and professional education.

Local Chapter is one of the local chapters of Charity and is not a separate legal entity. Local Chapter is included in Charity's group exemption filing of Form 990 (Return of Organization Exempt from Income Tax). Charity expects to enter into a written agreement with LLC to solicit, process, and accept property donations on behalf of Charity within the area served by Local Chapter. Charity proposes to enter into the relationship because it does not currently have the resources to process property donations and meet the federal and state reporting requirements. Additionally, Charity believes it is more cost efficient to enter into this relationship than to attempt to solicit and process property donations itself. Charity will use the proceeds from the sale of donated property to support and further its purposes. Almost all of the donated property is expected to be in the form of automobiles and trucks, but property donations may include boats and other personal property.

LLC is a charitable fundraiser registered under state law. LLC is engaged in the for-profit business of buying, storing, maintaining, dismantling, and selling used motor vehicles and vessels and other personal property. LLC is owned by Corporation (a for-profit entity) (99%) and an individual (1%). The individual is the managing member of LLC and the president of Corporation. No director or officer of Charity (which includes Local Chapter) has a proprietary or familial relationship with LLC, Corporation, or the

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individual. Charity is fully informed of the relationship between LLC, Corporation, and the individual.

Description of Proposed Written Agreement

Charity has represented that the future course of dealing between the parties will be in accord with the written agreement described below.

The agreement is entitled Agency Agreement. The agreement includes as a recital that Charity desires to appoint LLC as its agent for the purpose of assisting Charity in the solicitation, acceptance, processing, and sale of donated motor vehicles, vessels, and other personal property donated by the general public to Charity, and LLC desires to accept its appointment as agent for such purposes, on the terms and conditions set forth in the agreement. Within a specified geographic area, LLC is the exclusive agent for Charity, but LLC also may be an agent for others.

The agreement states that Charity appoints LLC as its authorized agent pursuant to certain state agency laws to act in Charity's name, place, and stead for the following purposes: (1) to advertise and otherwise solicit donations of motor vehicles, vessels, and other personal property from the general public in the name and on behalf of Charity; (2) to pick up and/or accept donations of motor vehicles, vessels, and other personal property from the general public in the name and on behalf of Charity; (3) to arrange for qualified appraisals, process, provide minor repairs, and sell motor vehicles, vessels, and other personal property donated by the general public in the name and on behalf of Charity; and (4) to do and perform any act necessary, requisite, and proper to be done, and to do all things that Charity might or could do or cause to be done, to further the purposes of the agency set forth in (1) through (3).

Subject to the review and approval of Charity, LLC agrees to do the following: (1) to pick up and/or accept donations of the property; (2) to the extent necessary or desirable as determined by LLC in the exercise of its reasonable business judgment, to pay all costs and expenses pertaining to the property so as to result in the cost-efficient sale thereof (including the towing and repairing of vehicles); and (3) to pay all costs and expenses of selling, auctioning, or otherwise disposing of the property. These activities shall be performed by LLC, and/or its agents, contractors, subcontractors, and/or third parties, whether related to LLC and/or its principals or not, as determined by LLC in its sole and absolute discretion, according to the terms of the agreement. LLC reserves the right to refuse to accept a vehicle that LLC determines, in the exercise of its reasonable business judgment, is not saleable at a price at least adequate to cover LLC's related costs and expenses.

Subject to the review and approval of Charity, all property shall be sold or disposed of as determined by LLC in its reasonable business judgment, and LLC agrees to use its

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best efforts in connection with the sale of the property to obtain the greatest price therefor. LLC may enter into a consignment agreement or other subcontract with an auction company or any other business entity (including any affiliate and/or related person or entity) and pay such person or entity a fee for any services rendered. All property shall be sold "AS-IS" and in compliance with all applicable laws, rules, and regulations. Corporation, or any other person or entity related to LLC, may purchase any vehicle provided that the purchase price shall be comparable to the purchase price anticipated in the regular course of business. LLC has an option and right of first refusal to process, but not to purchase, any property donated to and received directly by Charity.

Charity is and shall remain the equitable owner of the property until an authorized sale occurs. Upon the sale of the donated property, the proceeds shall become the property of Charity, net of the fee payable to LLC. Until such sale, the risk of accidental loss, damage, or destruction of the donated property shall be borne by Charity, subject to LLC's obligation to pay the cost and expenses of insurance coverage described later in the agreement.

LLC agrees to provide advertising on behalf of Charity, which may include radio, television, newspapers, and direct mail. The placement and content of advertising shall be determined by LLC, subject to Charity's review and approval. LLC will pay for all the costs and expenses of the advertising. The parties have agreed to an approximate monthly sum that LLC will spend on advertising. LLC agrees to provide a toll-free telephone number on behalf of Charity for vehicle donations. Charity may provide its own toll-free telephone number for vehicle donations if it pays the associated costs.

For donated property valued above \$5,000, LLC will arrange for professional appraisals by an unaffiliated appraiser. Donors are solely responsible for paying the costs of their appraisals. LLC may, when requested by Charity, provide signatures for Forms 8283 (Noncash Charitable Contributions) on behalf of Charity pursuant to a Power of Attorney described later in the agreement.

LLC will provide the donor of a vehicle with a "blue book" (used car price guide) printout along with a disclosure that the printout does not in any way represent the opinion of LLC or Charity. Donors will sign a Certificate of Donation, together with a Bill of Sale, Statement of Facts, and a Limited Power of Attorney. LLC will send copies of the Certificates of Donation to Charity. On behalf of Charity, LLC will send a "thank you letter" to each donor upon receipt of a vehicle. LLC agrees to send to a donor, within 40 days after donation of a vehicle, an "official receipt" from Charity on forms provided by Charity.

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On behalf of Charity, LLC will process all Department of Motor Vehicles (DMV) documents according to DMV rules and regulations. Charity will provide a Power of Attorney to LLC in order to complete DMV title transfers.

LLC will provide monthly accounting reports to Charity, in a form and in detail satisfactory to Charity. LLC will provide weekly advertising reports to Charity.

Charity agrees to pay LLC a fee based on a specified percentage of gross proceeds received from the sale or disposition of donated property. On a monthly basis, LLC shall remit a payment to Charity in an amount equal to the preceding month's gross proceeds less LLC's percentage.

Charity reserves the right to audit and inspect LLC's property donation program financial statements for Charity at any time during normal business hours.

Description of Vehicle Classification and DMV Titling Process

An interested donor will call the toll-free number, and a pick-up of the vehicle will be scheduled. Donors will be informed that LLC is acting on behalf of Charity. Vehicles will be classified as either "acquisition" or "clear title" by LLC, based on guidelines determined in advance by LLC in consultation with Charity.

A "clear title" vehicle complies with the state antipollution and safety requirements and has enough value to be sold to the public. The chain of title goes from the donor to Charity to LLC (as a dealer) then to the buyer. DMV will collect transfer fees for each of the transfers in the chain of title. LLC appears in the chain of title because LLC sells all donated vehicles under its dealer license. State DMV rules provide that a charitable organization is exempt from the dealer license requirement, but all of the proceeds from the sale of the vehicle must go to the charity. Consequently, this rule is not applicable here because some of the sale proceeds will go to LLC as its fee.

An "acquisition" vehicle does not meet the state antipollution and safety requirements and is destined to go to an automobile dismantler. The chain of title goes from the donor to Charity to LLC (as a dealer) then to the buyer. DMV considers these transactions as multiple transfers, but no DMV transfer fees are imposed when an acquisition vehicle is processed by a licensed automobile dismantler. The vehicle's DMV record will reflect a "junk" status, with the name of the automobile dismantler and the date the vehicle was acquisitioned. It is expected that the buyer generally will be Corporation, and it has been represented that this is so because Corporation pays more for acquisition vehicles than the other automobile dismantlers that are potential buyers.

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Description of State Donation Law

State donation law provides, in part, that if a person donates a motor vehicle, aircraft, or vessel to a nonprofit organization or commercial fundraiser for charitable purposes, the nonprofit organization or commercial fundraiser must send to the donor a receipt for that property within 90 days from the date of the donation. The receipt must describe the donated property in terms of its model, age, level of use, including, but not limited to, the mileage, in the case of a vehicle, and condition, and whether a visual inspection indicated that there were any readily apparent defects that would materially reduce the value of the property. The receipt must also include the date the donation was made and must indicate whether the property was operable or inoperable at the time of donation. Additionally, if the donated property is sold prior to the issuance of the receipt, the receipt must also include all of the following: (1) the date the property was sold, (2) if the property was sold to a dismantler, the amount paid to the nonprofit organization or commercial fundraiser, and (3) if the property was altered subsequent to the donation and the alteration affected the value of the property, a statement that the property was altered and whether the alteration increased or decreased the value of the property. The nonprofit organization or commercial fundraiser must retain a copy of the receipt for its records.

ANALYSIS

Issue 1 – Whether donation of Vehicle through the property donation program involving LLC is made “to” Charity through LLC as its agent.

Section 170(a)(1) of the Code provides the general rule that, subject to certain limitations, there shall be allowed as a deduction any charitable contribution payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary. See also § 1.170A-1 of the Income Tax Regulations.

Section 170(c)(2) provides that the term “charitable contribution” includes a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (D) which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the

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publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. See also § 1.170A-1(j)(5).

A taxpayer may claim a deduction for a charitable contribution only if the contribution is made “to or for the use of” a qualified organization. A contribution is “for the use of” a qualified organization when it is held in a legally enforceable trust for the qualified organization or in a similar arrangement. Davis v. United States, 495 U.S. 472, 485 (1990). Because the proposed donation of Vehicle will not be made in trust or similar arrangement, it cannot be “for the use of” Charity. Therefore, we need to determine whether contributions in the property donation program are made “to” Charity.

It is well established that an organization described in § 170(c)(2) may receive contributions through its agent. Section 1.170A-1(b) provides, in part, that if a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee or the donee’s agent, the gift is completed on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing. In Rev. Rul. 85-184, 1985-2 C.B. 84, a utility company was authorized by a charitable organization to act as its agent in receiving contributions from customers of the utility company.

As stated above, Charity submitted a separate request for a letter ruling concerning the property donation program through which Taxpayer proposes to make a donation of Vehicle. A separate letter ruling issued today to Charity concludes that LLC is the agent for Charity and donations made through the property donation program are made “to” Charity through LLC. That letter ruling also concludes that Charity’s exempt status under § 501(c)(3) is not adversely affected by this program.

Accordingly, based on the facts submitted and the representations made, we conclude that donation of Vehicle through the property donation program involving LLC is made “to” Charity through LLC as its agent.

Issue 2 – Whether the requirements of § 170(f)(8) will be satisfied.

Section 1.170A-1(c)(1) provides that if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in § 170(e)(1) and § 1.170A-4(a), or § 170(e)(3) and § 1.170A-4A(c). Section 1.170A-1(c)(2) provides that the fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

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Section 170(f)(8)(A) provides the general rule that no 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 that meets the requirements of § 170(f)(8)(B). Section 170(f)(8)(B) provides that an acknowledgment must contain the following information: (i) The amount of cash and a description (but not value) of any property other than cash contributed; (ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i); and (iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect. Section 170(f)(8)(C) provides that an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or (ii) the due date (including extensions) for filing such return.

Section 1.170A-13(f) provides rules for substantiation of charitable contributions of \$250 or more. Section 1.170A-13(f)(1) provides, in part, that no deduction is allowed under § 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. Section 1.170A-13(f)(2) provides that, except as otherwise provided in § 1.170A-13(f)(8) through (f)(11) and (f)(13), a written acknowledgment from a donee organization must provide the following information: (i) The amount of any cash the taxpayer paid and a description of any property other than cash the taxpayer transferred to the donee organization; (ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization; (iii) If the donee organization provides any goods or services other than intangible religious benefits, a description and good faith estimate of the value of those goods or services; and (iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

Section 1.170A-13(f)(3) provides that a written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of (i) the date the taxpayer files the original return for the taxable year in which the contribution was made, or (ii) the due date (including extensions) for filing the taxpayer's original return for that year.

Under the property donation program described above, LLC, on behalf of Charity, will send a "thank you letter" to each donor upon receipt of a vehicle. A copy of this type of letter was submitted with the ruling request. It contains detailed information (some of which is apparently to meet the requirements of the state donation law) and is on the letterhead of the LLC. LLC agrees to send to a donor, within 40 days after donation of a vehicle, an "official receipt" from Charity on forms provided by Charity. An example of

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this type of receipt letter was submitted. It contains less detailed information than the thank you letter and is on the letterhead of Charity.

If appropriately modified, as explained in the letter ruling to Charity, the thank you letter could satisfy the requirements of § 170(f)(8), assuming it is received by Taxpayer within the prescribed time periods.

Issue 3 – Whether the requirements of § 1.170A-13(b)(1) are satisfied.

Section 1.170A-1(c)(1) provides that if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in § 170(e)(1) and § 1.170A-4(a), or § 170(e)(3) and § 1.170A-4A(c). Section 1.170A-1(c)(2) provides that the fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

Section 1.170A-13(b) provides rules concerning recordkeeping and return requirements for charitable contributions of property other than money. Section 1.170A-13(b)(1) provides the general rule that, except for cases covered by § 1.170A-13(c), any taxpayer who makes a charitable contribution of property other than money shall maintain for each contribution a receipt from the donee showing the following information: (i) The name of the donee; (ii) The date and location of the contribution; and (iii) A description of the property in detail reasonably sufficient under the circumstances. Although the fair market value of the property is one of the factors to be taken into account in determining the amount of detail to be included on the receipt, such value need not be stated on the receipt. A letter or other written communication from the donee acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph.

The receipt letter does not include all of the information required by § 1.170A-13(b)(1), as previously discussed with Taxpayer's authorized representative. As discussed in the letter ruling to Charity, the thank you letter includes all of the information required by § 1.170A-13(b)(1) and meets the requirements of a "letter or other written communication from the donee."

It has been represented that the value of Vehicle is in excess of \$500; we note that § 1.170A-13(b)(3) provides rules concerning recordkeeping and return requirements for deductions in excess of \$500 claimed for a charitable contribution of property other than money. Section 1.170A-13(b)(3)(i) provides in part that, in addition to the information required by § 1.170A-13(b)(2)(ii), if a taxpayer makes a charitable contribution of property other than money and claims a deduction in excess of \$500 in respect of the

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contribution of such item, the taxpayer shall maintain written records that include the following information with respect to such item of donated property, and shall state such information in his or her income tax return if required by the return form or its instructions: (A) The manner of acquisition, as, for example by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer; and

(B) The cost or other basis, adjusted as provided by § 1016, of property held by the taxpayer for a period of less than 12 months immediately preceding the date on which the contribution was made and, when the information is available, of property held for a period of 12 months or more preceding the date on which the contribution was made.

The preceding paragraph, in describing the provisions of § 1.170A-13(b)(3)(i), incorporated by reference the information required by § 1.170A-13(b)(2)(ii). The information required by § 1.170A-13(b)(2)(ii) includes, in part, the following items:

(A) The name and address of the donee organization to which the contribution was made; (B) The date and location of the contribution; (C) A description of the property in detail reasonable under the circumstances (including the value of the property); and (D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

We also note that Schedule A (Itemized Deductions) for Form 1040 (U.S. Individual Income Tax Return) requires a taxpayer to complete and attach Form 8283 (Noncash Charitable Contributions) if the deductions for the claimed gifts to charity other than by cash or check are more than \$500.

Based on the facts submitted and the representations made, we conclude that the donation of Vehicle made through the property donation program qualifies for a charitable contribution deduction under § 170 of the Code, subject to the limitations of that section.

CAVEATS:

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings, and it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant. We have enclosed a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

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Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

KARIN GROSS
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of this letter

Copy for section 6110 purposes

cc: