



**GIANT, IMPORTANT DISCLAIMER: WE AREN'T GIVING LEGAL, TAX OR FINANCIAL ADVICE. PLEASE SEEK YOUR OWN COUNSEL FOR ANY DONATIONS. MANY OF THESE QUESTIONS ARE OPEN TO SOME INTERPRETATION, ARE GENERAL IN NATURE OR ARE UNIQUE TO A PARTICULAR JURISDICTION. ASSUME ALL ANSWERS ARE WRONG UNTIL YOU/YOUR DONOR CONFIRMS WITH HER/HIS ADVISOR.**

**Q & A from “Charitable Gifts of LLCs: The Good, the Bad and the Ugly”  
<May, 2023>**

<b>Does Emergency Assistance Foundation handle non-employer emergency grantmaking (such as for mass shooting victims, etc.)?</b>	We do but it is usually for larger groups. I have written several articles on this topic though it would be helpful in terms of design and consideration options. You can see them at <a href="http://www.charitablesolutionsllc.com">www.charitablesolutionsllc.com</a> under Resources/Articles.
<b>Three years tax returns on diligence because those are the open reporting years?</b>	This is a good rule of thumb to start. Depending upon what the charity finds, more information may be needed.
<b>Is the Diligence list what most 501(c3)s should go through if they want to take a gift from an LLC? Would that all apply to opening a DAF or endowment?</b>	Yes, as a start. The article and our Charitable Gifts of Noncash Assets book (free) go much deeper into what to review and other issues. And yes, the issues, generally, are the same for any type of public charity charitable donation no matter the vehicle. There can be some additional risks with DAFs (excess benefit transactions, etc.) but that is more the exception rather than the rule.
<b>What is the advantage to a donor (in the Zuckerberg example) to set up a Charitable LLC vs a family foundation?</b>	For some donors it is a way to publicly mark assets for future giving. Other donors sometimes use LLCs to coordinate activities among charitable and non-charitable entities that they have.
<b>How is a charity setting up an LLC different/more beneficial than accepting the gift in a supporting org?</b>	Just a bit easier as there is usually not a 1023 application process/990 tax return/Board, etc. that a SO would require. There are some other pros/cons but that is the main one since it is a disregarded entity and deemed to be an asset/owned by the mothership charity.

<p><b>What type of activities do you have in mind as being inappropriate for a board to manage?</b></p>	<p>Any activity where the board has identified a group of non-board members to be responsible for the activities. In one case a charter school set up each campus as an LLC run by board of managers for that campus.</p>
<p><b>Can Charitable Solutions help us evaluate potential LLC gifts? Including review of op agreement, proposed structure of gift - - - etc.</b></p>	<p>Yes, we do this pretty often (without giving legal, tax or financial advice of course).</p>
<p><b>What is the best way for a charitable minded donor to sell an active professional practice (set up as LLC but must be owned by a doctor, attorney, vet, etc. by state law) to get both retirement income and make charitable gifts? Given the issues present would it be best to set up a DAF account and offset taxes owed/make charitable gifts that way? Fund a CRT with cash after the sale? Any other creative ideas? Thanks!</b></p>	<p>Charitable gifts of professional practices raise issues well beyond those that are typical for an LLC. The donor and charity need guidance from legal counsel familiar with the professional corporation law of the relevant state to see if a gift to a charity is even possible.</p>
<p><b>Do operating agreements spell out what happens when one member (who holds interest) passes away, while there might be 10 other LLC members? Or, put another way, what is a typical example of what happens in this scenario?</b></p>	<p>Operating agreement and state law address this. Provisions include allowing heirs to become fully substituted members, allowing heirs to have monetary rights but not management rights, or a buy back under specified terms.</p>
<p><b>Who/What can be the Trustee of a CRT? Does Bryan's company do this?</b></p>	<p>The donor may be able to self-trustee, perhaps a financial institution, maybe a charity or, yes, Dechomai Foundation has a CRT platform where we can serve as Trustee where there isn't a better fit.</p>
<p><b>Is there any situation where loans back to the donor would not be abusive?</b></p>	<p>That may be possible but should only be considered with experienced counsel where the charity has a benefit from having the loan made.</p>
<p><b>Can real estate with debt be donated to charity and deducted at FMV without first paying off the debt? Does it matter who guarantees the debt with regards to deductibility at FMV?</b></p>	<p>Yes, but it can create a bargain sale gain recognition to the donor and potentially debt financed income as UBIT on gain and/or income so it can be messy unless there is less than 30% of debt or so.</p>

<p><b>Can you re-state the name of the case that supports the charitable gift with formula clause?</b></p>	<p>McCord v. Commissioner, 120 T.C. 358, 376 (2003), rev'd on other grounds, Succession of McCord v. Commissioner, 461 F.3d 614 (5th Cir. 2006). See also Estate of Petter v. Commissioner, No. 25950-06 (U.S.T.C. Dec. 7, 2009) and Wandry v. Comm'r of Internal Revenue, Docket No. 10751-09 (U.S.T.C. Mar. 26, 2012).</p>
<p><b>Does the NIMCRUT with LLC allow the designated beneficiary to determine if they receive payouts year-to-year? Is that what the "spigot trust" means?</b></p>	<p>Usually \$500K - you can see full overview on <a href="http://www.charitablesolutionsllc.com">www.charitablesolutionsllc.com</a> and then under Services/CRT</p>
<p><b>Do you advise against holding shares where the exit plan is unclear (LLC holds land, hoping to sell for development, but who knows), or is ok to accept if the risk is low? (Currently farm land)</b></p>	<p>The charity needs to balance the risks, but if the cost is minimal to maintain and there is a good prospect for further appreciation, charity might want to accept a long-term hold LLC gift.</p>
<p><b>I assume LLC gifts still needs appraisal and form 8283 and form 8282. Thank you! JJ</b></p>	<p>Yes.</p>
<p><b>Will there be presentation slides available to participants?</b></p>	<p>I mentioned at the start no slides are provided, but the entire webinar recording is provided for free as well as Reynolds' journal article. All prior 35+ free webinars can be seen here including Q&amp;A from the sessions - <a href="https://charitablesolutionsllc.com/webinars/">https://charitablesolutionsllc.com/webinars/</a></p>
<p><b>Do you have gift acceptance check list for LLCs?</b></p>	<p>This slide is pretty good, his article includes some additional items, and then our free book - Charitable Gifts of Noncash Assets includes an entire chapter on pass-through entities - <a href="https://charitablesolutionsllc.com/new-book-charitable-gifts-of-noncash-assets/">https://charitablesolutionsllc.com/new-book-charitable-gifts-of-noncash-assets/</a></p>
<p><b>Since the valuation discounts are so real/steep, do these really make good charitable gifts? If adding the charity as a member causes a big valuation discount, then it might swallow the income tax deduction value to the donor. But maybe the capital gain tax avoidance is still there.</b></p>	<p>If there is low basis, the value tends to still be there. Most of the LLC transactions we work on have between a 3-8% discount so not as great, generally, than the estate side. In some cases we include Put Options to mitigate some of the marketability discount. Or even choose a different approach - for example, the Income Approach has no discounting vs. a Comparative Market Approach.</p>

<p><b>How much of a discount is typical when a donor is gifting a minority interest, such as 5-10%? Also, given such a discount, can such a gift still be practical for the charity to accept while still being attractive to the donor?</b></p>	<p>Yes, 5-10% and still works quite well relative to all the other tax benefits for a charitably-inclined donor.</p>
<p><b>Do all gifts of LLC stock require an appraisal?</b></p>	<p>Basically, yes. If it is over \$5K, a qualified appraisal is required. Our average business interest donation is closer to \$5-6 million so WAY north of \$5K. I would say, generally, donations less than \$200-250K are pretty turbulent given the moving parts. So, you will always be over the \$5K qualified appraisal threshold. We have deeper webinars on the Form 8283/8282 Qualified Appraisal requirements if interested as well. They are in the free webinar library.</p>
<p><b>Are UBTI blockers ever a good option to accept LLC interests?</b></p>	<p>Sometimes. It means that corporate tax is paid on all income of the LLC and appreciation upon sale. But if charity would rather not have UBTI, blocker is an option.</p>
<p><b>We have had several LLCs from 20-25 years ago, we've come to a point where we do not have a good handle on their characteristics and benefit to the organization. How should we approach getting our hands around these? What are some practical steps?</b></p>	<p>Reach out to the manager to get current copies of operating agreements. You might also ask if the manager is aware of other members who might want to purchase the interests.</p>
<p><b>Many thanks to Reynolds for all this good information. Could he elaborate on the due diligence the charity should do if it accepts the LLC interest itself vs. a third party? E.g., what is one looking for in financial statements and tax returns?</b></p>	<p>Even if the charity uses a third party, it will want to generally understand the LLC and its terms. The charity still should review the tax returns and financials and discuss them with the third party who accepting the gift.</p>
<p><b>I just met with a fellow that had his Char LLC audited 10 years ago by IRS. They approved it without changes. It calls for a 10% donation of net income.</b></p>	<p>All audits vary. He was a bit of a unicorn getting audited to begin with. In any event, it's a large grey area of what is allowed in terms of donor control or benefit.</p>

<p><b>But couldn't the managing member strip out most of the income by salary and thus leave little for donation? What if there is a requirement for 10% or \$10k gift whichever is greater to help the LLC pass audit but also make a more meaningful gift to the charity? Likewise, can you leave a right to change the charitable beneficiary ownership to another charity but with some sort of buyout feature for the LLC interest owned by the current charity?</b></p>	<p>These are fact intensive. The question for the charity is whether this is the type of donor and situation that you want to spend a lot of time on, because you will spend a lot of time.</p>
<p><b>Have you noticed any trends in the type of businesses that tend to be good candidates for LLC gifts? (e.g., general contractor business)?</b></p>	<p>LLCs formed to hold single assets like a single piece of real estate for a single owner tend to be the easiest. Multi-owner and LLCs that are operating businesses are more challenging.</p>
<p><b>Are there any restrictions on a charity's ability to own a UBTI blocker in a foreign jurisdiction? Thanks.</b></p>	<p>Yes. If you can use a domestic blocker, then easier to structure.</p>
<p><b>What is the slide and article you referred to that gives checklist items?</b></p>	<p>Bryan—didn't I send?</p>