

MEMORANDUM

TO:	Maureen Maurer
FROM:	Ellis Carter
DATE:	October 26, 2016
RE:	Tax Treatment of Gifts to Assistance Dogs Northwest, LLC

You have requested, and we have agreed, to provide our opinion concerning whether donations from donors made directly to Assistance Dogs Northwest, LLC are eligible for a charitable contribution deduction as of October 26, 2016.

The opinion expressed herein is based upon Notice 2012-52, the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations issued and proposed under the Code (the “Regulations”) and interpretations of the Code by both the Internal Revenue Service (the “Service”) and the federal courts, as the Code, the Regulations and such interpretations exist as of the date of this opinion, and upon certain other assumptions set forth below. The provisions of the Code or the Regulations may be amended, or the interpretations of the Service or the courts may be changed, in each case, after the date of this opinion and in a way that would affect the conclusions set forth below.

Documents Relied Upon

In rendering this opinion, we have examined and relied upon such documents as we have considered necessary or appropriate for the purposes of this opinion, including, but not limited to, those set forth below:

1. the Service’s Business Master File (the “BMF”) for the State of Hawaii for October 2016;
2. the Service’s Publication 78;
3. the letter from the Service to Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence, dated May 30, 2001, determining its tax-exempt status and determining that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence is not a private foundation because it is described in Code Section 509(a)(1);
4. Assistance Dogs Northwest, LLC’s Articles of Organization filed August 8, 2016 ;
and
5. Assistance Dogs Northwest, LLC’s Operating Agreement dated August 15, 2016.

Assumptions

In rendering this opinion, we have made the following assumptions:

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1. the copies of all documents submitted to us are accurate and complete, each such document that is an original is authentic, and each such document that is a copy conforms to an authentic original;
2. all signatures on the documents reviewed by us are genuine;
3. all Service documents reviewed by us are accurate;
4. the activities of Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence have been and will be conducted in accordance with its Articles of Incorporation, Bylaws and applicable federal, state, and local laws;
5. the activities of Assistance Dogs Northwest, LLC have been and will be conducted in accordance with its Articles of Organization, Operating Agreement and applicable federal, state, and local laws;
6. neither Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence nor any of its officers will take any actions after the date of this opinion that would have the effect of changing the opinion set forth herein;
7. neither Assistance Dogs Northwest, LLC nor any of its managers will take any actions after the date of this opinion that would have the effect of changing the opinion set forth herein;
8. there will be no changes in applicable law or regulations that would alter the conclusions reached in our opinion;
9. that no election has been made to treat Assistance Dogs Northwest, LLC as an entity separate from its owner for tax purposes; and
10. if challenged by the Service, each of our conclusions would be fully litigated by competent legal counsel in the appropriate judicial tribunal.

Relevant Facts

The relevant facts, based on our review of the documents that we have examined and our conversations with Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence's officers, are set forth below.

I. Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence.

A. Service Determination Letters. On May 30, 2001, the Service issued a letter to Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence determining that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence was exempt from federal income taxation because it was described in Code Section 501(c)(3) and that it was not a private foundation because it was described in Code Section 509(a)(1).

B. Business Master File and Publication 78. The BMF, as accessed on October 26, 2016, indicates that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence's deductibility code is "1," its subsection code is "3," and its foundation code is "15." According to

the BMF *Instruction Booklet* (available online at https://www.irs.gov/pub/irs-soi/eo_info.pdf), these codes translate into a statement that contributions to Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence are tax-deductible; that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence is exempt from federal income taxation under Code Section 501(a) because it is described in Code Section 501(c)(3); and that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence is not a private foundation because it is a public charity described in Code Section 509(a)(1). Publication 78 indicates that the exemption is still in effect.

II. Assistance Dogs Northwest, LLC.

A. Articles of Organization. Assistance Dogs Northwest, LLC's Articles of Organization indicate that Assistance Dogs Northwest, LLC is an Arizona limited liability company organized on July 26, 2016 and that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence is its sole member.

B. Operating Agreement. According to Section 1.7 of Assistance Dogs Northwest, LLC's Operating Agreement dated August 15, 2016 ("Operating Agreement"), Assistance Dogs Northwest, LLC is organized and operated to:

[P]rovide assistance dogs to people with physical disabilities and other special needs, and for the transaction of any and all other lawful activities for which limited liability companies may be organized under the Act as approved by the Member; *provided, however, all such activities shall be for the exclusive benefit of the Member and shall be consistent with the Member's status as an organization described in Code Section 501(c)(3) and exempt from federal income tax under Code Section 501(a).*

Emphasis added.

Further, Section 1.8 of the Operating Agreement includes prohibitions against private inurement, excessive lobbying and supporting or opposing political candidates.

Legal Principles

A. Tax Treatment of Single Member LLC. A domestic limited liability company with a single owner or member (hereafter "owner") is generally disregarded for federal tax purposes unless it elects to be regarded separately from its owner, in which case it is treated as an association that is taxable as a corporation.¹

B. Tax Treatment of Single Member LLC with Exempt Owner. In 1999, the IRS issued an Announcement stating that an entity with a tax-exempt owner that is disregarded for tax purposes under the Section 7701 entity classification regulations is to be treated as part of its tax-exempt sole owner for purposes of reporting information pertaining to the finances and operations of the disregarded entity on annual IRS information returns including Form 990.² Announcement 99-102 also states that this conclusion is required by the Treasury Regulations.³

¹ See Treas. Reg. Sections 301.7701-2(a) and (c)(2) and 301.7701-3(a), (b)(1)(ii), and (c)(1)(v).

² Ann. 99-102, 1999-2 CB 545.

³ Treas. Reg. 301.7701-3(a).

In 2010, the IRS issued an Information Letter reiterating that the sole owner of a disregarded limited liability company is treated as a component part of its exempt owner.⁴ The Information Letter states that in such a situation, the exempt owner of the disregarded limited liability company must treat the operations of the limited liability company as a branch or division of the exempt owner and include, as the owner's own, information pertaining to the finances and operations of the limited liability company in filing its annual Form 990 or other information return.⁵

C. Deductibility of Contributions. On July 31, 2012, the IRS issued Notice 2012-52, 2012-35 IRB 317 (the "Notice") providing long-awaited guidance regarding the deductibility of contributions to U.S. charities' single member LLCs.⁶ The Notice provides that contributions made to a domestic limited liability company (LLC) that is wholly owned by a U.S. charity will be treated as a charitable contribution to the U.S. charity, assuming all other requirements under Section 170 are met.⁷

Section 170(c)(2) defines "charitable contribution" to include a contribution or gift to or for the use of a "corporation, trust, or community chest, fund, or foundation" that meets certain criteria. These criteria require the entity, in relevant part, to be:

1. 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;
2. organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;
3. no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
4. which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

D. Private Foundation Grants. The IRS 2010 Information Letter specifically considered whether a distribution by a private foundation to a disregarded single member LLC owned by a public charity to accomplish one or more exempt purposes described in Section 170(c)(2)(B) would be treated as a qualifying distribution and whether it would amount to a taxable expenditure. There, the IRS stated that where the sole member of the disregarded limited liability

⁴ IRS Info Ltr. 2010-0052.

⁵ *Id.*

⁶ See Shipman, "Contributions To Charity's Wholly Owned LLC Deductible Under Long-Awaited Regs", *Taxation of Exempts (WG&L)*, Mar/Apr 2013.

⁷ See Livingston, "The Tax Consequences of Accepting Charitable Contributions through a Single-Member LLC," 13 *Exempts* 107 (Nov/Dec 2001); McCarden, "The Deductibility of Contributions to Single-Member LLCs Owned by Tax-Exempt Organizations," 2005 *TNT* 115-36; and Shipman, "IRS Guidance on Contributions to a Charity's Wholly Owned LLC Still Missing," 23 *Exempts* 2, page 3 (Sep/Oct 2011).

company is a public charity (which is described in Section 509(a)(1) and is not controlled by the distributing private foundation), it will generally be treated as a qualifying distribution to the public charity for purposes of Section 4942 and will not be treated as a taxable expenditure for purposes of Code Section 4945(d).

E. Acknowledgements. The Notice makes clear that the exempt owner is the donee organization for purposes of the substantiation and disclosure requirements under Section 170 with respect to the charitable contributions. Notice 2012-52 encourages the charity to disclose in acknowledgments of donations or other statements to the donor that the single member LLC is wholly owned by the charity and treated by the charity as a disregarded entity to avoid unnecessary inquiries by the IRS.

The Notice is effective for charitable contributions made after July 31, 2012. However, taxpayers may rely on the Notice prior to its effective date for tax years for which the statute of limitations for claiming a refund or credit has not expired.⁸

Analysis

Assistance Dogs Northwest, LLC satisfies the first requirement of the Notice which is to be a domestic limited liability company with a single owner recognized as tax-exempt under Code Section 501(c)(3). Further, Assistance Dogs Northwest, LLC satisfies the Notice's second requirement because its Operating Agreement meets the other requirements of Code Section 170(c)(2) including the requirement to be organized and operated for purposes recognized by Code Section 501(c)(3) and the prohibitions against private inurement, excessive lobbying and supporting or opposing political candidates.

Opinion

This opinion is intended to comply in all material respects with the American Bar Association Committee's Revised Formal Opinion No. 346 and United States Treasury Department Circular 230 and, in accordance therewith, all material federal income tax issues relating to Assistance Dogs Northwest, LLC's tax status have been discussed herein. It should be noted that this opinion is not a representation or a guarantee of the tax results, and has no binding effect or official status of any kind. Rather, it represents our views as to the interpretation of existing law. No assurance can be given that the conclusions reached in this opinion would be sustained by a court if contested by the Service.

Based upon the foregoing, under the Code, the Regulations promulgated thereunder, and existing interpretations thereof, it is our opinion that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence is tax-exempt under Code Sections 501(c)(3) and 509(a)(2). Accordingly, it is also our opinion that Assistance Dogs of Hawaii f/k/a Hawaii Canines for Independence's solely owned limited liability company, Assistance Dogs Northwest, LLC, is qualified to receive tax-deductible gifts and as well as grants.

To comply with Section 10.35(e)(3) of Circular 230, we state that (a) this opinion is limited to the Federal tax issues addressed in the opinion; (b) additional issues may exist that could affect the Federal tax treatment of the matter that is the subject of this opinion and this opinion does not

⁸ *Id.*

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consider or provide a conclusion with respect to any additional issues; and (c) with respect to any significant Federal tax issues outside the limited scope of this opinion, this opinion was not written, and cannot be used, for the purpose of avoiding penalties that may be imposed.

This letter is limited solely to federal income tax laws and to the matters expressly stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated or as of another date. This opinion is given as of the date hereof, and we assume no obligation to update or supplement it in response to subsequent changes in the law or future events affecting the matters considered herein. This opinion is intended solely for the addressee hereof, although we consent to the addressee's making further distribution of this letter to potential grantors to Assistance Dogs Northwest, LLC in order to demonstrate Assistance Dogs Northwest, LLC's qualification to accept charitable contributions and grants.

Sincerely,

A handwritten signature in blue ink that reads "Carter Law Group P.C." in a cursive script.

Carter Law Group, P.C.