

Insights

IRS Disregards "Charitable LLC" Arrangement and Denies Charitable Deduction

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On January 23, 2026, the Internal Revenue Service (the "IRS") publicly released Field Attorney Advice 20260401F (the "FAA")¹, in which the Office of Chief Counsel rejected a promoted "charitable LLC" structure designed to generate a substantial charitable contribution deduction while allowing taxpayers to retain effective control over contributed assets. The IRS concluded that the purported transfer of non-voting LLC interests to a section 501(c)(3) organization lacked economic substance and failed to create a bona fide partnership interest because it did not meaningfully change the taxpayers' economic position apart from federal income tax effects, lacked a substantial non-tax purpose, and was undertaken primarily to achieve federal income tax benefits. As a result, the IRS treated all LLC income as taxable to the donors and disallowed the claimed charitable deduction. Although non-precedential, the FAA reflects the IRS's current enforcement posture with respect to such arrangements.

Background

The FAA addresses a transaction in which individual taxpayers formed a limited liability company to be used as an investment vehicle, contributed cash and marketable securities to the entity, and then transferred a substantial non-voting membership interest to a tax-exempt organization formed in connection with the transaction. On paper, the charity was allocated most of the LLC's income and losses, while the taxpayers retained all voting power and managerial control and the balance of the economic aspects of ownership.

In practice, the taxpayers continued to control the LLC's brokerage accounts, direct investment activity, and withdrew funds for personal use, only later attempting to characterize those withdrawals as loans, including entering into loan documentation after the fact. Although the taxpayers claimed a charitable contribution deduction equal to the appraised value of the non-voting LLC interest, the IRS determined that the charity had no meaningful ability to access or benefit from the LLC's assets. The charity lacked management rights, could not compel distributions, and faced severe restrictions on transferability of its interest.

IRS Analysis and Conclusions

In the FAA, the IRS applied several overlapping doctrines to disregard the transaction for federal income tax purposes. First, the IRS concluded that the transfer of non-voting LLC interests lacked economic substance under Internal Revenue Code (the "IRC") section 7701(o) because the transfer did not meaningfully change the taxpayers' economic position apart from federal income tax effects, lacked a substantial non-tax purpose, and was undertaken primarily to achieve federal income tax benefits for the transferors.

Second, the IRS determined that the charity was not a bona fide partner under general partnership principles (which focus on whether the parties genuinely intended to join together in the conduct of a business and share in its economic results)² nor under IRC section 704(e), as the purported charity did not share in the upside or

downside of the LLC's activities, did not have a meaningful stake in its economic success or failure, did not exercise dominion or control over its purported ownership interest in the LLC, and did not have any meaningful ability to influence the LLC's operations or distributions.

Third, the IRS applied the assignment-of-income doctrine to treat all LLC income as taxable to the donors, concluding that the taxpayers never relinquished control over the income-producing assets or the timing and disposition of the income generated by those assets.

Finally, the IRS disallowed the charitable contribution deduction under IRC section 170, citing lack of charitable intent, the absence of a completed gift (due to the taxpayers' failure to relinquish dominion and control), and failures to satisfy substantiation requirements.

Based on these factors, the IRS further concluded that the purportedly transferred non-voting interests lacked meaningful economic value in light of the extensive restrictions on distributions and transferability, and the taxpayers' retained control over LLC assets.

Practical Takeaways

The release of the FAA underscores the IRS's increasingly aggressive enforcement posture toward what it views as abusive charitable structures that purport to shift income to tax-exempt entities without a corresponding transfer of control or economic risk.³ Transactions involving donations of non-voting or non-managing interests in closely held entities (particularly where donors retain operational control, investment authority, or access to assets) are highly likely to be challenged on audit. The FAA also highlights IRS concern with arrangements involving affiliated or promoter-connected charitable organizations, including structures resembling donor-advised funds.

Taxpayers and advisors should carefully evaluate whether a charitable recipient receives a meaningful, enforceable economic interest, including the right to receive distributions, participate in appreciation, and dispose of the interest without donor consent. Structures that rely primarily on paper allocations, appraisals, or contractual restrictions that effectively negate charitable ownership are unlikely to withstand IRS scrutiny. In particular, arrangements in which the charitable recipient lacks enforceable rights to distributions, cannot transfer its interest freely, or is subject to donor control may be viewed as conferring no meaningful economic interest for federal tax purposes. More broadly, the FAA signals that the IRS will challenge arrangements in which taxpayers claim charitable deductions without relinquishing meaningful control over contributed assets, particularly where such arrangements are promoted as mechanisms for tax-free investment growth.

Notwithstanding the IRS's position in the FAA, not all structures involving charitable entities and closely held investment vehicles are inherently problematic. Properly structured arrangements—including charitable trusts, donor-advised fund structures, or other entities organized and operated for bona fide charitable purposes—can be respected for federal income tax purposes where the charitable recipient receives a genuine, enforceable economic interest and the arrangement produces real charitable benefits. However, structures that are designed primarily to generate tax deductions while allowing donors to retain control over contributed assets are likely to face heightened scrutiny. In addition, organizations formed for charitable purposes must comply with applicable state law requirements (including registration and oversight obligations), further reinforcing the importance of proper structuring and governance.

How We Can Help

Krieg DeVault attorneys regularly advise individuals, family offices, and nonprofit organizations on charitable giving strategies, entity structuring, and compliance with federal tax rules governing contributions of complex assets. We can assist in evaluating proposed charitable transactions, reviewing operating agreements and governance documents, and assessing audit exposure under the economic substance, partnership, and assignment-of-income doctrines. If you have questions about the implications of Field Attorney Advice 20260401F or similar arrangements, please contact Kendall A. Schnurpel, Robert C. Ansani, or your regular

Krieg DeVault attorney.

¹ I.R.S. Field Att'y Advice 20260401F (Jan. 23, 2026), <https://www.irs.gov/pub/irs-lafa/20260401f.pdf>.

² See *Comm'r v. Culbertson*, 337 U.S. 733, 742 (1949).

³ See *e.g.*, Internal Revenue Service, Donor-Advised Funds, <https://www.irs.gov/charities-non-profits/charitable-organizations/donor-advised-funds> (last reviewed Oct. 9, 2025).

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