

# Gifts of LLC Interests: the Good, the Bad and the Ugly

Reynolds T. Cafferata

1966 United Artists - MGM



# Overview

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- History of the LLC
- LLC Basics
  - State Law
  - Taxation
- Receiving Gifts of LLCs
- Using LLCs to Facilitate Gifts
- Conclusion

# History



- First authorized in Wyoming in 1977
- Goal – limited liability for all owners, simple operation, pass-through taxation
- Facilitate ownership of oil & gas interests
- Not widely used until 1988 when IRS gave guidance on taxation

# LLC Legal Structure

Limited liability for all owners who are called members

Can be managed by members or a manager

Minimal formalities required

Virtually all terms of operating subject to operating agreement

Now recognized in all 50 states

# LLC Taxation

- Can be taxed as corporation, partnership or disregarded entity
- Corporate taxation means corporate tax and tax on dividends at owner level
- Partnership – two or more members taxed as a partnership
- Disregarded entity-single owner treated as owning all income and assets
- Partnership and disregarded entity taxation means no tax at LLC level, all income taxed to members
- Multimember LLCs are usually taxed as partnerships
- Single member LLCs are usually taxed as disregarded entities



# Flow-Through Taxation



# Gifts of LLC Interests – General Concerns



Contractual Obligations under LLC Agreement



Unrelated Business Taxable  
Income

Operating Business in LLC  
Debt Financed Property in LLC



Liquidity of LLC



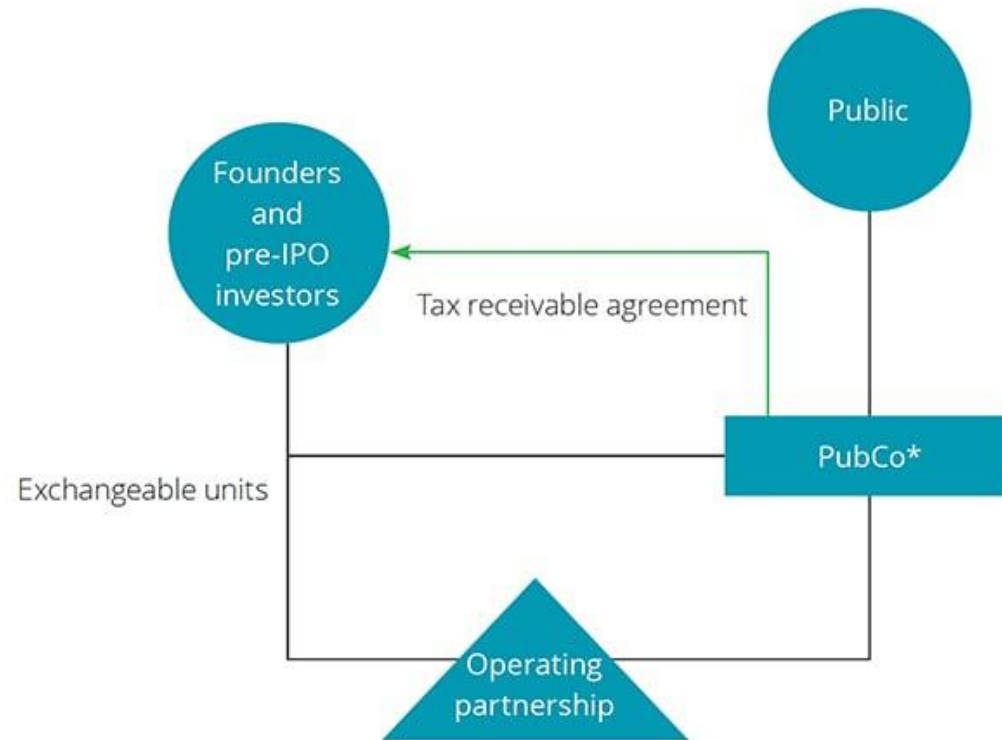
# Diligence List

- Operating agreement
- Financial statements
- Tax returns
- Offering memo
- Asset details
- Management background





# UP C LLC Structure

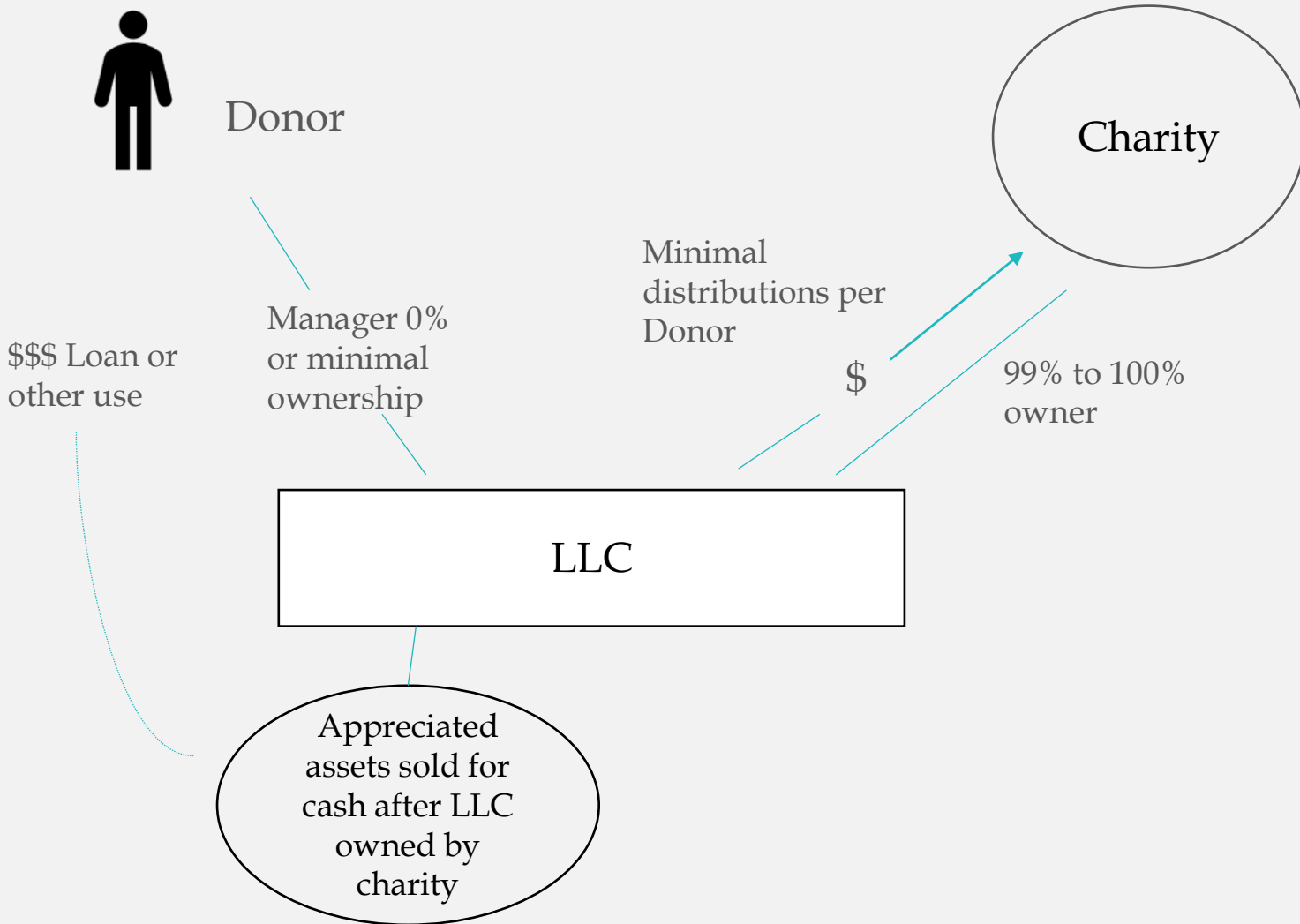


\*PubCo issued stock to the public in IPO as part of the Up-C IPO

# Formula Clause LLC Gifts

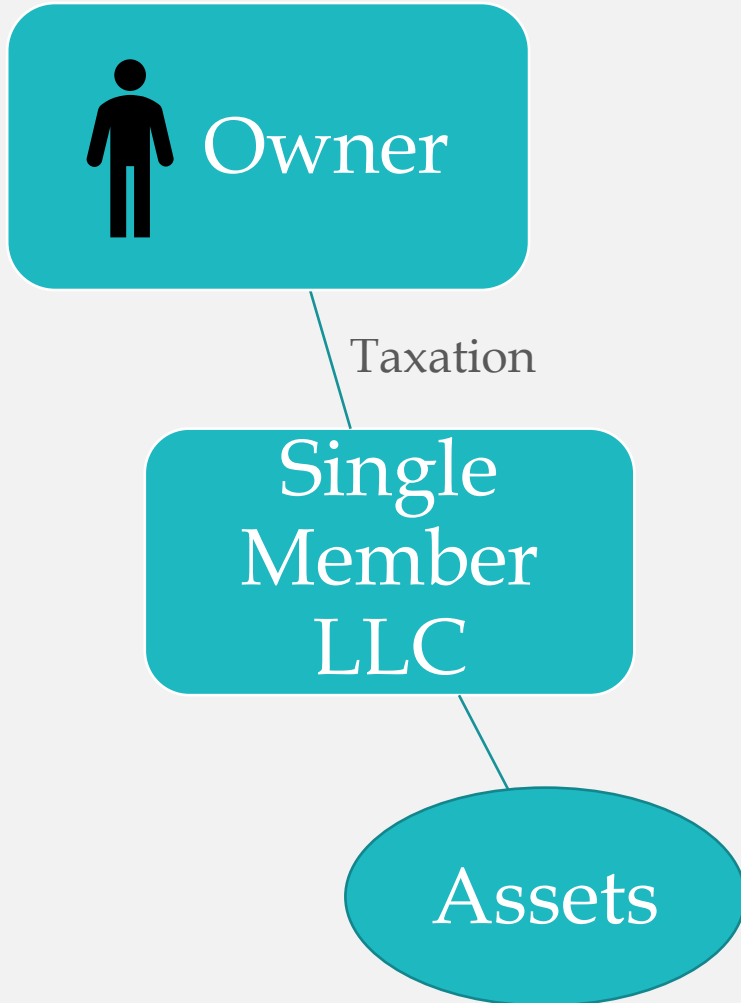
- Estate planning device for donor
- Sells or gives interest in LLC determined by formula to have a set value, sometime donor's remaining exemption
- Gives to charity amount interest in LLC that represent excess of what is allocated to family under formula, and possibly a formula amount as well
- Normally at time of transfer, donor has appraisal that results in little or no interest passing to charity under formula
- Family may seek to purchase any interest of charity

# Abusive Donor Controlled LLC



- Deduction taken when LLC given to charity
- Sale of assets when LLC owned by charity avoids tax on gain
- Donor as manager controls cash

# Charitable LLC



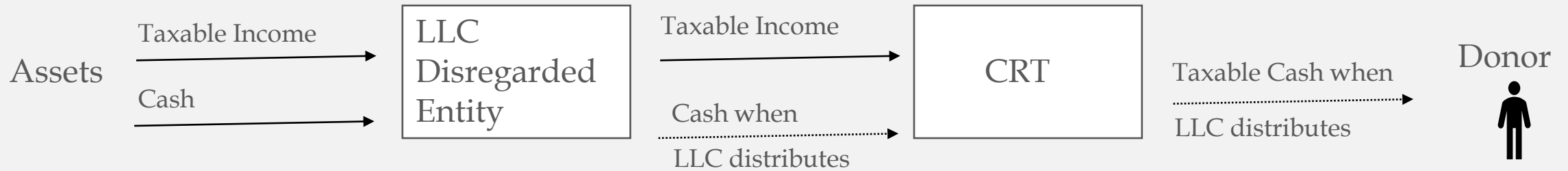
- No favorable tax treatment of LLC
- No operation restrictions as charity
- Deduction for owner when LLC makes a gift to a charity

# Charitable Uses of LLCs

- Accept a risky gift
- Operate a risky exempt purpose activity
- Limit governance of an activity
- Donations to LLC qualify for deduction
- LLC may not enjoy other benefits of exemption such as property or sales tax exemptions



# NIMCRUT with LLC





# Main Points

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- No two LLCs are likely the same
- LLCs represent a number of planning opportunities for donors and charities
- LLCs represent unique risks because of flow-through taxation and flexibility
- All LLCs must be reviewed carefully – documents and operations