
Primer on Private Foundations

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Today's agenda

- ▶ Organizational Aspects
- ▶ Private Foundation Excise Taxes
- ▶ Private Foundation Termination

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Formation and Organizational Decisions

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Choice of Form–State Law

- ▶ Charitable Trust
- ▶ Nonprofit unincorporated association
- ▶ Nonprofit Corporation
- ▶ LLC acceptable as disregarded entity or a stand-alone

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Formation – Texas

Considerations

- ▶ Speed of establishing
- ▶ Concerns with limited liability
- ▶ Sophistication & goals of organizers
- ▶ Financial resources of organizers
- ▶ Type & scale of activities to be conducted
- ▶ Permanence
- ▶ Ease of dissolution/amendment
- ▶ Governance
- ▶ State Tax considerations
- ▶ Duties of fiduciaries
- ▶ Federal tax considerations

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Charitable Trusts

Pros

- ✓ Years of established case law
- ✓ Rigid structure provides assurance to settlor of purposes being followed
- ✓ Higher fiduciary standards for trustees

Cons

- ☒ Inflexibility
- ☒ Limitations on ability to delegate duties if governed by UPIA
- ☒ More stringent standards for trustees

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Nonprofit Corporations

Pros

- ✓ Well-established rules
- ✓ Well-established case-law
- ✓ Internally flexible
- ✓ Extensive powers as an entity

Cons

- ☒ Cost to set up & run
- ☒ Even where funded entirely by a single individual, must have at least three directors (IRS will request non-related)
- ☒ Subject to Texas franchise tax unless granted exemption

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§ 501(c)(3) Elements

1. Proper organizational structure
2. Organized exclusively for charitable or otherwise exempt purposes
3. Operated exclusively for charitable or otherwise exempt purposes
4. No part of net earnings inures to benefit of private individual
5. Not an action organization
6. <<case law>> – not violative of public policy

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Organizational/Operational Tests

Organizational

- ▶ Look to enabling documents
- ▶ Must be organized exclusively for charitable purpose(s)
- ▶ May be general or specific

Operational

- ▶ Look at actual activities of organization
- ▶ Must be operated exclusively for charitable purpose(s)
- ▶ May not engage in substantial activities that fail to further charitable purposes

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