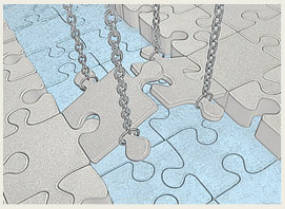
MANAGING GROWTH, OPPORTUNITY, AND BUSINESS ACTIVITIES: COMPLEX ORGANIZATIONAL STRUCTURES AND WHY AND WHEN TO USE THEM



January 17-18, 2019
2019 Nonprofit Organizations Institute
Austin, Texas

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Overview of Presentation

- General exemption principles/brief overview of UBI
- Common reasons to create a more complex structure
- Choice of entity considerations
- Operating in tandem while staying separate
- Case studies

§ 501(c)(3) Core Requirements

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

Business Growth Consideration: Commerciality Doctrine

- Related business conducted in commercial manner as indicia of operating for nonexempt purpose
- Manner of conducting revenue-generating activities results in determination of substantial non-exempt purpose
- Operating with a **"distinctly commercial hue"**
  - *Direct competition with commercial firms (esp. in same locales)*
  - *Pricing structure designed to produce a profit*
  - *Extensive advertising and use of commercial advertising materials*
  - *Annual accumulated profits*
  - *Lack of charitable donations*

Unrelated Business Taxable Income

- Activities subject to UBIT
  - *Trade or business*
  - *Regularly carried on*
  - *Not substantially related to exempt purposes*
- Primary Exceptions
  - *Volunteer Exception*
  - *Convenience Exception*
  - *Thrift Shop Exception*
- Notable Exclusion
  - *Passive income*

    unless
  - *received from controlled org – then will be UBTI (to the controlling org) to extent payment reduces net unrelated income/increases net unrelated loss of controlled org*

Commensurate-In-Scope Test

- Where unrelated business activities grow so large they outpace the exempt activities, risk loss of exempt status
- No bright-line test to determine when an unrelated business activity no longer incidental
- A facts-and-circumstances determination:
  - ***Amount of income derived*** *from UBI activity in comparison to total income*
  - ***Amount of expenditures*** *for the UBI activity in comparison to total expenditures*
  - ***Amount of time*** *the org's employees devote to the UBI activity in comparison to total hours worked*

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First appeared as part of the conference materials for the
36th Annual Nonprofit Organizations Institute session
"Managing Growth, Opportunity, and Business Activities: Complex Organizational Structures and Why and When to Use Them"