



Advanced Issues in Charitability

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Why Are We Here?

- Much in the world of charitability is well-established – involving well-trodden paths to achieve charitable results (e.g., taking care of the poor, providing shelter for the homeless, etc.).
- But the problems of the world are becoming more complex, and in the last 5-10 years we've seen an increasing desire to attack complex problems using new methods and frameworks.
- More complex approaches are gaining currency in the charitability toolbox (PRIs, MRIs, advanced grantmaking, capital aggregation joint ventures) and newer guests are coming to the charitable table (social entrepreneurs, mission investors, for-profit entities).
- The resulting interchange of ideas is leading to extraordinary innovation around ways of solving problems – but also to complexities around what is permissible.
- There is a tension between how we want to innovate and the consequences of that innovation, and this tension places pressure on hallmarks of the charitability analysis (private benefit, commerciality, etc.).



What's the Goal and How Will We Get There?

- Objective: To innovate and fund innovation while maintaining integrity and fidelity to who we are as charitable organizations.
- Method: Develop a coherent approach to determining charitability.
 - Seek out vectors to established indicators of charitability.
 - Identify pressure points (private benefit, commerciality) and develop ways to relieve that pressure.
- By following consistent processes for assessing the charitable nature of an organization/project/activity, we can ensure fidelity to mission while providing room to innovate (and protecting ourselves from audit risk).

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Exemption: Back to Basics

- Tax-exempt organizations under Section 501(c)(3) must:
 - Be “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals;”
 - Not allow any part of their net earnings to inure to the benefit of any private shareholder or individual;
 - Ensure that no substantial part of their activities include carrying on propaganda or attempting to influence legislation; and
 - Refrain from participating or intervening in any campaign on behalf of or in opposition to candidates for public office.

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501(c)(3) Organizational/Operational Tests

- Organizational test: Section 501(c)(3) organization's certificate of incorporation must limit its purposes to one or more exempt purposes and may not expressly empower the organization to engage, other than insubstantially, in non-exempt activities.
- Operational test: Section 501(c)(3) organization is operated exclusively for exempt purposes only if it engages primarily in activities that accomplish those purposes, and no more than an insubstantial part of the organization's activities further non-exempt purposes.
 - An organization will not be deemed to operate exclusively for exempt purposes if part or all of its net earnings inure to the benefit of private individuals or shareholders, and unless it serves a public and not a private interest.

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Operational Test: How to Pass?

- How should we approach the question of whether a Section 501(c)(3) organization is operating exclusively for exempt purposes?
- Two primary issue areas we can examine:
 - Do the organization's activities provide a public (charitable) benefit?
 - Is the public benefit provided to a charitable class of beneficiaries?

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First appeared as part of the conference materials for the

37th Annual Nonprofit Organizations Institute session

"Advanced Issues in Charitability: Food, Energy and the Environment (and then there is Education)"