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## **The Landscape for Private Foundations in 2017: Navigating Tricky Terrain**

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## Introduction

*“May you live in interesting times”<sup>2</sup>*

This statement aptly describes our country at a time of seismic change, but appears particularly prophetic for private foundations in 2017. Foundations face a myriad of issues as we enter a new year in a fast changing and unpredictable world.

This paper identifies some of the most likely challenges facing private foundations in 2017 and suggests steps and strategies that a foundation consider to address them.<sup>3</sup> It focuses largely on the most relevant tax, legal, regulatory, and governance issues as perceived by the author and other observers may well have different perspectives. Given the diversity of foundations and their different needs, cultures, and strategies, a variety of perspectives should be no surprise.

*“It's déjà vu all over again”<sup>4</sup>*

For those who have long labored in the fields of philanthropy, many of the debates in 2016 (and debates likely to continue in 2017) are a familiar crop. This includes, among others, the following:

- Whether the minimum payout requirement should be increased;
- The extent to which investment assets should be invested to further mission;
- Whether foundations should exist in perpetuity or spend-down;
- The appropriate role of foundations in a democratic society amid efforts to achieve policy changes;
- How big data should be used to increase impact;
- How to use emerging technologies to maximize impact;

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<sup>2</sup> This statement is often described as a Chinese curse, but there is considerable debate whether it originated in China or is a curse. Nevertheless, it seems to capture the moment whether as an observation or a curse.

<sup>3</sup> At the start of each year, there are several experienced philanthropic observers who provide their predictions about upcoming trends for the new year. See, e.g., *Philanthropy and the Social Economy*, Blueprint 2017; GrantCraft (Lucy Bernholz); Vikki Spruill, *Five Philanthropic Trends for 2017* (Council on Foundations); Inside Philanthropy (<http://www.insidephilanthropy.com/home/2016/11/9/philanthropy-in-the-age-of-trump-five-predictions>). Each takes their own perspective and approach to the trends in philanthropy.

<sup>4</sup> Widely attributed to that noted philanthropic philosopher, Yogi Berra.

- Whether the traditional foundation should be rejected in lieu of alternative structures that provide greater flexibility and increase impact; and
- What constitutes a charitable purpose in a world where lines between commercial and philanthropic are blending.

Yet beyond these recurring issues, the landscape of philanthropy continues to change at an accelerated pace as opinions on the recurring issues evolve and new issues emerge for debate.

### ***“What’s past is prologue”<sup>5</sup>***

Trends that began several years ago will continue to gain momentum in 2017. This includes the blurring of boundaries across different fields long thought to be fenced off at a time when the current regulatory apparatus strains to keep up with these changes. Lines between the activities of for-profit entities and not-for-profit organizations will continue to erode spurred by the growth of social enterprises, benefit corporations, impact investing and the desire of many millennials to achieve social impact in all that they do.

In a similar vein, the seeming reluctance of regulatory authorities to enforce existing limitations on political activity or to define those limitations more clearly has prompted more use of tax-exempt organizations in the political arena in one form or another. The presence of 501(c)(4) organizations operated independently or in conjunction with 501(c)(3) organizations or more aggressive use of public charities in the latest political campaigns was yet the latest manifestation of the erosion of the lines between charitable and political activities.

More organizations are also seeking charitable status using business models or rationales that challenge the conventional wisdom of what constitutes a charitable purpose in the areas of economic development, entrepreneurship, business incubators, affordable housing, and the environment. In an area of interest to many funders, the growing threat of climate change and multifaceted efforts to address this risk through market-based solutions will continue to challenge the conventional wisdom of the IRS that requires a direct environmental impact for there to be a charitable purpose (as reflected in private letter rulings that rejected various efforts to address carbon emissions through installations of solar panels and other means).

### ***“The Future is No More Uncertain than the Present”<sup>6</sup>***

Amidst this growing breakdown of previously defined boundaries, new technologies, including the growth of big data and artificial intelligence, legal changes, and new participants bringing fresh perspectives, will all contribute to the changing environment confronting private foundations in 2017 and beyond.

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<sup>5</sup> William Shakespeare, *The Tempest*.

<sup>6</sup> Walt Whitman.

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