



BOURLAND, WALL & WENZEL
P.C.
ATTORNEYS AND COUNSELORS

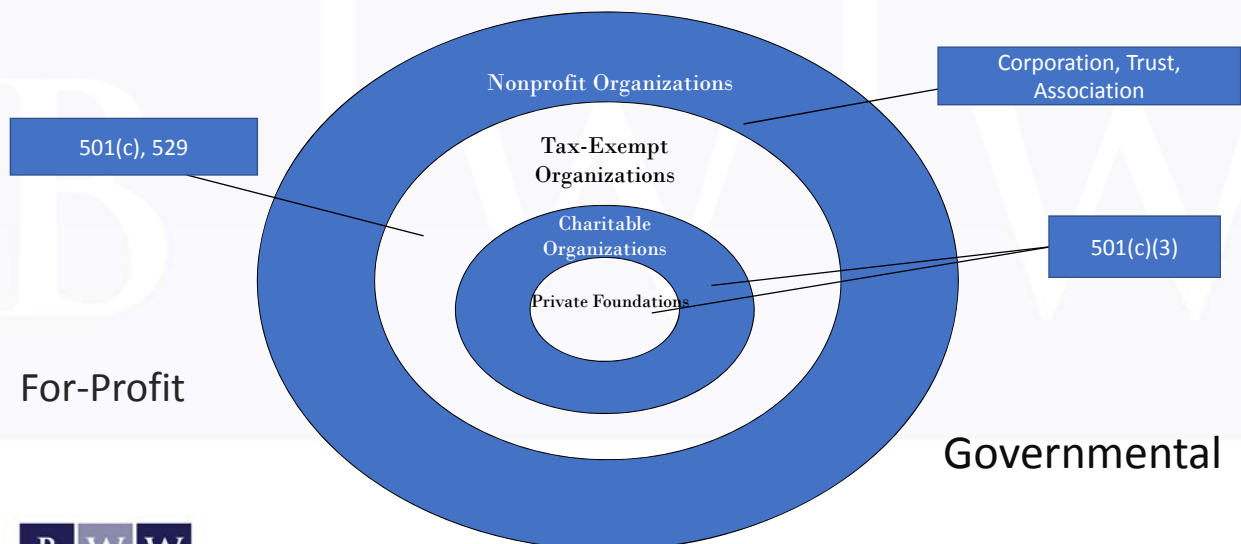
LLCs in the World of Nonprofit and Mission-Minded Organizations

July 13, 2017
The University of Texas School of Law
26th Annual LLCs, LPs and Partnerships
Austin, Texas

Darren B. Moore
E-mail: dmoore@bwwlaw.com

BOURLAND, WALL & WENZEL, P.C. 301 COMMERCE STREET, SUITE 1500 FORT WORTH, TEXAS 76102 WWW.BWWLAW.COM

Nonprofit vs Charitable Organization



BOURLAND, WALL & WENZEL, P.C. 301 COMMERCE STREET, SUITE 1500 FORT WORTH, TEXAS 76102 WWW.BWWLAW.COM

§ 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



BOURLAND, WALL & WENZEL, P.C. 301 COMMERCE STREET, SUITE 1500 FORT WORTH, TEXAS 76102 WWW.BWWLAW.COM

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 (usually)



BOURLAND, WALL & WENZEL, P.C. 301 COMMERCE STREET, SUITE 1500 FORT WORTH, TEXAS 76102 WWW.BWWLAW.COM

Common Uses of the LLC in the Nonprofit* Space

- **Subsidiary** of an Exempt Organization
 - Risk Mitigation
 - Participation in Joint Venture
 - Focused Management of Activity (often revenue-producing)
- Stand-alone **Exempt LLC**
- LLC for **Social Enterprise** (Revenue Generating Activities)
 - Subsidiary of Exempt Organization
 - For profit “social enterprise”



BOURLAND, WALL & WENZEL, P.C. 301 COMMERCE STREET, SUITE 1500 FORT WORTH, TEXAS 76102 WWW.BWWLAW.COM

Use of the LLC as a Single Member Subsidiary

- **Risk mitigation**
 - Isolate endowment from high risk activities
 - Isolate real property ownership from other funds/activities
 - Participation in joint venture (as general partner, managing member, or as a passive partner/member)



Contractual obligations: alter ego/sham to perpetrate a fraud require *actual fraud* for direct personal benefit of shareholder



Torts: injustice or inequity will result if separate corporate existence is recognized



BOURLAND, WALL & WENZEL, P.C. 301 COMMERCE STREET, SUITE 1500 FORT WORTH, TEXAS 76102 WWW.BWWLAW.COM

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: LLCs in the World of Nonprofit and Mission-Minded Organizations

Also available as part of the eCourse

[2017 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the
26th Annual LLCs, LPs and Partnerships session
"LLCs as Nonprofit Organizations"