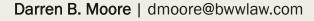
MANAGING GROWTH, OPPORTUNITY, AND BUSINESS ACTIVITIES: COMPLEX ORGANIZATIONAL STRUCTURES AND WHY AND WHEN TO USE THEM



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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

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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

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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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<u>Joint Ventures and Complex Organizational Structures</u>

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