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NONPROFIT ORGANIZATIONS INSTITUTE

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What is an “Effective” Private Foundation in 2023?

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Outline

WHAT IS AN “EFFECTIVE” PRIVATE FOUNDATION IN 2023?

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I. INTRODUCTION

With the backdrop of the COVID-19 pandemic, the national reckoning with systemic racial injustice, extreme climate events and other developments since 2020, how do we assess private foundation effectiveness? Our panel will discuss the implementation of policies and procedures to promote resilience and nimbleness while maintaining compliance. We will explore risk-based approaches to governance, grantmaking, advocacy and relationships with other philanthropic structures. We will also consider planning for transitions in mission objectives, leadership successions and terminations.

There are many federal and state legal, tax, and regulatory considerations that have a role in ensuring private foundation effectiveness. This outline provides detailed background information for a fundamental subset of those considerations, certain federal tax rules applicable to effectiveness in grantmaking and transitions – the taxable expenditure rules of section 4945 of the Internal Revenue Code of 1986, as amended (the “Code”) and the private foundation termination rules of Code section 507.

II. EFFECTIVENESS IN GRANTMAKING

1. Key Federal Tax Rules.

a. *Introduction.*

Under Code section 4945, a private foundation is subject to an excise tax on each “taxable expenditure.”¹ A grant from a private foundation to any organization that is not a public charity (except for certain supporting organizations) or an exempt operating foundation described in Code section 4940(d)(2) is a taxable expenditure, unless the private foundation

¹ See Code section 4945(a)(1). A foundation manager of the private foundation who agrees to the making of an expenditure, knowing it is a taxable expenditure, may also be subject to an excise tax. See Code section 4945(a)(2).

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