



Expanding Your 501(c)(3) Enterprise *“One Size Fits None”*

*Rupert Barkoff - Partner Kilpatrick Townsend & Stockton
Robyn Miller – Corporate/Tax Counsel, Pro Bono Partnership of
Atlanta*

November 12, 2015

Mission of Pro Bono Partnership of Atlanta:

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit organization.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- Host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website

Legal Information:

- ✓ This workshop presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- ✓ © 2015. All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership of Atlanta.

One Size Fits None

Overview

- What is expansion?
- Why expand?
- Models for expansion.
- Factors to consider in selecting appropriate model.
- Generally similar considerations in for-profit setting.
- Tax considerations.
- *Not covering multi-national organizations.*

What Do We Mean By “Expansion?”

- Yes: New geographical markets offering same services/products.
- No: Increasing revenue *per se*.
- No: New product or service lines.
- No: Building up your own corporate infrastructure; i.e., adding more staff.

Why Expand?

- Philosophical reason: Carry your mission to more people.
- Make “brand” more valuable.
- Increase revenue.
- Economies of scale.

Model for Expansion

- One level – usually one office.
- Chapter model – multiple offices/chapters.
- Franchise model.

One Level – One Office

- Can be national, regional or local in scope.
- No geographical infrastructure.
- Central control.
- Central finance.
- Services provided anywhere by enterprise.
- Membership irrespective of geographical location.
- Simple.
- Lower administrative costs.
- May be harder to get personal involvement.
- Easy to control “brand.”
- How do you get the “message” out?

One Organization

- One organization but can have multiple offices.
- Must comply with state/local regulations especially if offices located in more than one state
 - ✓ Employment
 - ✓ Qualification to do business
 - ✓ Tax
 - ✓ Restrictions on charitable solicitation

Chapter Model

- Overall control lies in national “Board.”
- Infrastructure — Rules made by national.
- Activities implemented locally.
- Might be local governance, but national may have minimum standards e.g., bylaws
- Finances?
- Participation in national governance.
- Examples: Overeaters Anonymous.
- Control over brand may be weaker.

Franchise Model

- What is a Franchise?
 - ✓ Trademark sharing.
 - ✓ Payment of fee by franchisee to franchisor or affiliate.
 - ✓ Control/substantial assistance.
- Girl Scouts of America case

Franchise Model

- Contractual relationship. Foundation of relationship lies within a contract, not articles of incorporation.
- Gives considerable local authority.
- It sets its own rules in large measure.
- Finances.
- Income stream.
- Governance.
- Local involvement.

Franchise Model (continued)

- Brand protection.
- The word “franchise” has in some cases a value in itself.
- How easy/difficult is it to undo the relationship?
- How easy/difficult is it to modify the system?
- Overall control over the direction of the enterprise.
- Who controls the “franchisor?”
- Vicarious liability issue—use of separate legal entities.
- Joint employer: fraught with legal issues
 - ✓ McDonalds example

Summary of Key Issues to Consider

- Governance.
- Revenue allocation.
- Finance control.
- Brand control.
- Who owns intellectual property?
- Separation.
- Degree of local participation and autonomy.

Tax Considerations

- Protecting 501(c)(3) status.
 - ✓ Franchise model – part of franchise agreement.
 - ✓ Chapter model – varies in approach.
- Controlling scope of local enterprises.
- Applying for 501(c)(3) status.
 - ✓ Form 1023EZ now available.
- Group exemptions.
- Other tax traps to avoid.

Group Exemptions

- What is it?
- Benefits/Restrictions.
- How does an organization qualify?
- Compliance requirements.

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

Phone: 404-407-5088

Fax: 404-853-8806

Info@pbpatl.org

www.pbpatl.org