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Social Enterprise: The Legal and Tax Issues

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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

What is Social Enterprise?

- “the use of market-based strategies to solve social problems”
- Can be non-profit or for-profit

Examples of Social Enterprise in Atlanta

- Georgia Justice Project's
New Horizon Landscaping



- Open Hand's
Good Measure
MealsTM



Risks and Rewards

Legal Ramifications of Social Enterprise

- Under IRC § 501(c)(3)'s operational test, an organization's activities *must (exclusively)* further its charitable purpose
- Legal consequences for nonprofits engaging in business activity include loss of tax-exempt status, taxation

Jeopardizing Your Tax-Exempt Status

- 501(c)(3) organizations cannot engage in unrelated business activities that are substantial in relation to their charitable purpose
 - ✓ What is “unrelated”?
 - “making money for our organization” doesn’t count as “related”
 - ✓ What is “substantial”?

UBIT

- “unrelated business income tax”

- UBIT applies if your trade or business is:
 - ✓ Regularly carried on, and
 - ✓ Not substantially related to your exempt purpose
 - “making money for our organization” doesn’t count!

- There are exclusions for certain types of earned income

Creative solutions for nonprofits

- Some more sophisticated approaches to avoiding potential loss of tax-exempt status and UBIT
- For-profit subsidiaries
- Partnerships with for-profits
- L3Cs

Cause-related marketing, Qualified Sponsorships, Joint Ventures

- Cause Marketing – Using product promotion to promote mission
- Qualified Sponsorships – Providing significant visible recognition to corporate donors
- Joint Ventures – Partnering to promote mission

Cause Marketing Central Elements:

- For Profit Business and Nonprofit Cause
- A specific campaign or promotion
- A “marketing” approach to charitable giving “Company A does well by doing good for Charity B”
- Payments to charity generally structured as royalties for the use of name and logo
- Formats
 - Product Partnership (save lids to save lives)
 - Product Certification (heart check)
 - Product Branding (product red) (unique cause brand licensed to partner companies)

Qualified Sponsorships

- Quid pro quo – Payment to charity in exchange for recognition
- Acknowledge vs. Advertising
- Logos and Trademarks

Joint Ventures

- Whole Ventures
- Ancillary Ventures
- Venture activities must further exempt purposes
- Charity must be permitted to act exclusively in furtherance of exempt purposes
- Charity must be permitted to prevent venture activities from jeopardizing its exempt status

Ways to Mitigate Risks

- Purpose
- Activity
- Exclusions
- Structure

Ways to mitigate risks

- Purpose – Broaden scope of purpose to include more activity
- Target the Activity – If possible, conduct activities so as not to be “regularly carried on”
- Generate Revenue Under an Exclusion – Several categories of non-taxable “unrelated” business income sources: dividends, interest, rent royalties, volunteer labor, donated merchandise
- Use a taxable subsidiary – When “substantial” bar exceeded a sub preserves the tax exempt status of the parent

Key Points for Nonprofits to Consider

- Weigh the risks and rewards
- Don't go it alone – get professional guidance

For More Information:

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

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