



The Legal Issues of Various Fundraising Models

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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

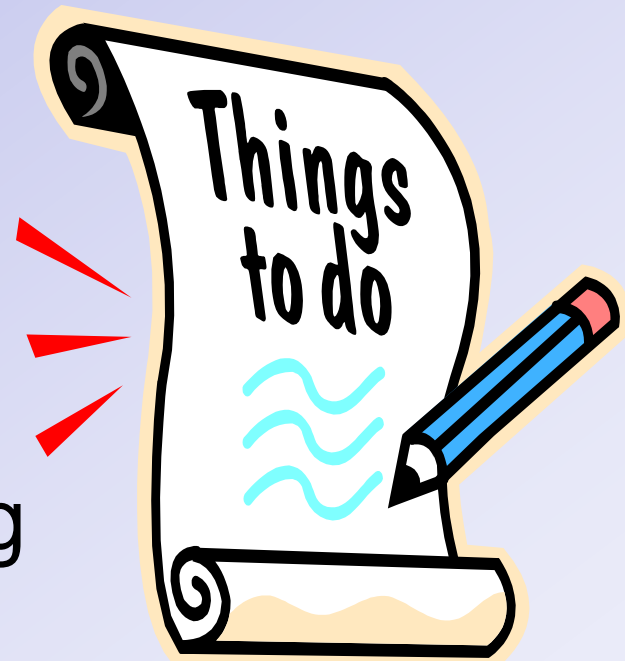
- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit organization.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at 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

Agenda

➤ Tax

- ✓ Donative Intent
- ✓ UBTI
- ✓ Sales Tax

➤ Models of Fundraising



Donative Intent

IRS defines a charitable contribution as a donation or gift to, or for the use of, a **qualified organization**. It is **voluntary** and is made without getting, or expecting to get, anything of equal value.

Donative Intent (cont.)

- Voluntary – not an “exchange” transaction
 - ✓ There must be “Donative Intent”
 - ✓ Given without the expectation of receiving something of value in return that is outside “quid pro quo” and/or “safe harbor” rules
 - ✓ There is no value attached to naming opportunities, names on honor rolls or gift club membership; “safe harbor” rules apply

Unrelated Business Income

Income derived from trade or business activities not substantially related to the tax-exempt organization's purposes is taxable as if earned by a comparable for-profit enterprise.

Unrelated Business Income (cont.)

➤ The Test:

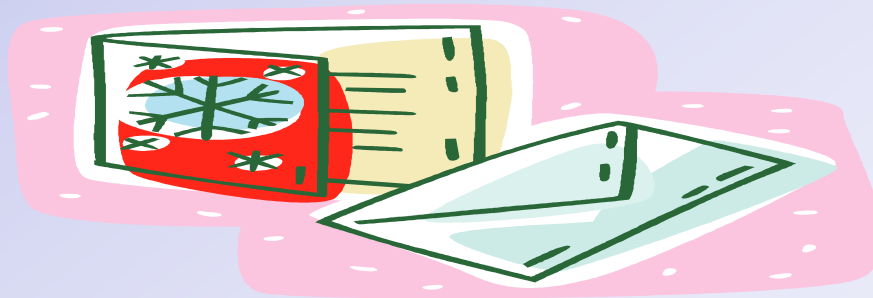
- ✓ Trade or business
 - Activity carried on for production of income from sale of goods or services
- ✓ Regularly carried on; and
 - Regularity and continuity
 - Carried on in same way as a comparable commercial activity
- ✓ Not substantially related to mission
 - No causal relationship to exempt purpose

- Note: The mere fact that the income produced will be used to carry out the mission is not a sufficient causal relationship. The activity must be related.

Example 1

- Exempt organization derives revenue from distribution of holiday cards once a year.

Taxable?



YES

➤ But why?!

- ✓ Cards deemed to be sold at “retail” not distributed for “charitable contribution”
- ✓ Enterprise involved commercial co-venturer who was engaged in the “seasonal” activity for profit.

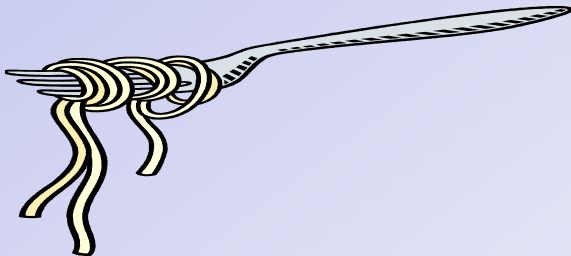


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Example 2

- Nonprofit Law School purchases a spaghetti factory. The revenues from the spaghetti factory are used to support the Law School's exempt purposes.

Taxable?



Yes – and Potential Loss of Exemption

- NYU School of Law purchased the factory prior to the enactment of UBI legislation.
- Congress and the public believed:
 - ✓ Such a tax-shelter was unfair to other taxable companies
 - ✓ The mission of a charitable organization must remain charitable-focused and not on running for-profit businesses
- If the tail wags the dog, loss of exemption can occur.

Unrelated Business Income – Other Resources

- *View a webcast on unrelated business income:*
 - ✓ <http://www.pbpatl.org/resources/unrelated-business-income>
- *Read the following articles or publications:*
 - ✓ <http://www.pbpatl.org/wp-content/uploads/2011/12/ubit1.pdf>
 - ✓ <http://www.pbpatl.org/wp-content/uploads/2011/12/AlternativeFundraising1.pdf>

Exceptions & Exclusions to UBI

➤ Exclusions to UBI

- ✓ Volunteers
- ✓ Benefit/Convenience of Members
- ✓ Contributed Property
- ✓ Rents from Real Property
- ✓ Sale of Property
 - e.g. Capital gains
 - Note: Does not apply to inventory or property held in ordinary course of business
- ✓ Passive Income
 - Dividends, Interest, Annuities, Royalties



Sales Tax Overview

➤ Sales Tax

- ✓ *Varies by state*
- ✓ *Georgia – Most nonprofits are not exempt*
- ✓ *If the item is taxable and the purchaser is not exempt, you must collect and remit sales tax*
- ✓ *Analyze sales to residents of counties and states outside yours*

Sales Tax – Other Resources

✓ *View webcast on sales tax:*

<http://www.pbpatl.org/resources/sales-tax>

✓ *Articles on Sales tax:*

- <http://www.pbpatl.org/wp-content/uploads/2012/09/Sales-and-Use-Tax-Exemptions.pdf>
- http://www.pbpatl.org/wp-content/uploads/2012/09/Paying-Sales-and-Use-Tax_Sept-13-2012.pdf

Fundraising Models – Questions to Ask

- Selling Merchandise/Property
 - ✓ What is being sold?
 - ✓ What services are provided?
 - ✓ Who is providing the services?
- Rental Property
 - ✓ Debt financed property?
 - ✓ Provide services?



Fundraising Models

- Cause Marketing/Commercial Co-Ventures
 - ✓ *For-profit company uses charity's name to sell its products or services and makes a charitable donation based on sales*
 - Marketing approach - Company A does well by doing good for Charity B.
 - Payments structured as royalties for use of name and logo.
 - ✓ Sales Tax Ramifications
 - ✓ State law: May be subject to state registration and/or reporting.

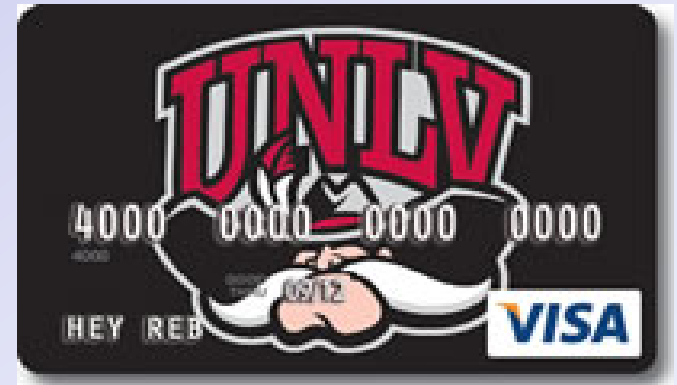


Fundraising Models (cont.)

➤ Selling/Licensing Intellectual Property

- ✓ Mailing list
 - Rental to a qualified organization
 - Royalty income

- ✓ Name & Logo



Fundraising Models (cont.)

➤ Qualified Sponsorship v. Advertising

- ✓ Advertising = unrelated business income
- ✓ Corporate Sponsorship Rules
 - Acknowledgement of Sponsor: name & logo
 - No statements endorsing products
 - If website/email acknowledgement, no language endorsing or inducing site visitors to purchase or use sponsor's products
 - No other "substantial return benefit"
 - Substantial return benefit could = substantial private benefit = loss of exemption
 - Insubstantial value = all goods and services received from the charity by the sponsor must NOT exceed 2% of sponsorship payment for year



Fundraising Models (cont.)

➤ Gaming

- ✓ Gambling requires 3 elements:
 - Chance
 - Prize
 - Consideration
- ✓ Casino nights, poker tournaments, raffles, bingo, door prizes
- ✓ Licenses
- ✓ Sales Tax Implications
- ✓ UBI
 - Generally unrelated to charitable purpose but is it a regularly carried on business activity?
 - Bingo – specific UBI exception if traditional type of bingo, legal under state and local law and not ordinarily carried out on a commercial basis



Fundraising Models (cont.)

➤ Galas & Other Events

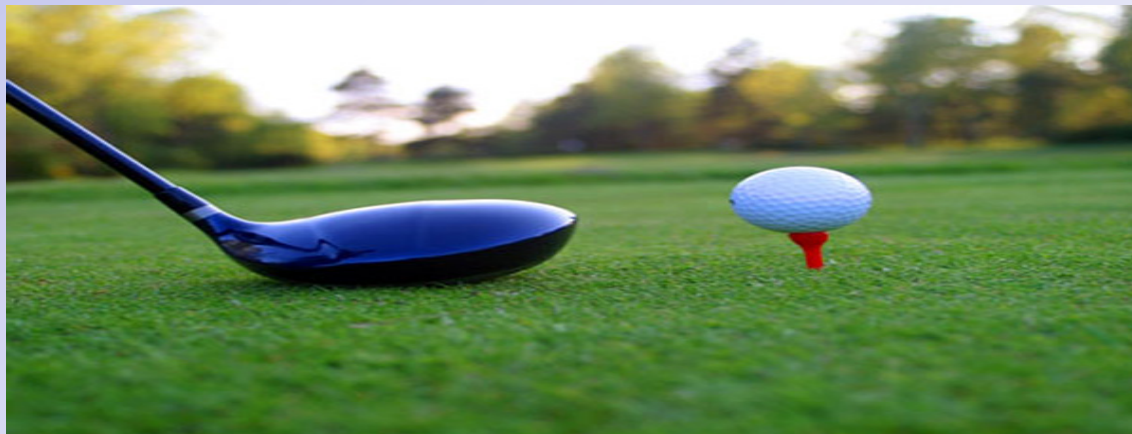
- ✓ Types of Events:
 - Silent auctions?
 - Taxable? What's being sold?
 - Dinners or wine tastings?
 - Performances?
- ✓ Generally unrelated to charitable purpose but is it a regularly carried on business activity?
- ✓ Acknowledgements
- ✓ Events carried on by others – agency relationship



Fundraising Models (cont.)

➤ Golf Tournaments & Fun Runs

- ✓ Entry Fees
- ✓ Sponsorship Payments



Special Events & Gaming – Other Resources

- *View a webcast on Contests and Sweepstakes:*
 - ✓ <http://www.pbpatl.org/resources/contests-gaming>
- *Read the following articles or publications:*
 - ✓ <http://www.pbpatl.org/wp-content/uploads/2013/03/Special-Events-Website-Article-2013.pdf>
 - ✓ <http://www.pbpatl.org/wp-content/uploads/2013/03/Raffles-2013.pdf>

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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