

# Fiscal Sponsorship - When to Begin and When to Divorce?

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# When to Begin?

## ▶ Definitions:

A relationship in which a group wishing to conduct charitable activities affiliates with an existing 501(c)(3) nonprofit with a compatible mission.

# More Definition

- Umbrella.
- Provides 501(c)(3) benefits including tax exemption and receipt of charitable tax contributions.
- Legal, financial, accounting, HR and other back-office support.

## When to Use?

- Charitable idea but group does not want burdens of 501(c)(3).
- Group has incorporated, not yet applied to IRS or is waiting for IRS approval.

## Key -

- ▶ Fiscal Sponsor must have a compatible mission. Sponsor exercises legal control.

# Types of Fiscal Sponsors

- ▶ Type A - Comprehensive.
- ▶ Type C - Pre-Approved Grant (Regranting).

# Federal EIN

- ▶ Type A - Project does not get EIN.
- ▶ Type C - Project gets its own EIN.

# IRS Form 990

- ▶ Type A - Sponsor includes Project on its own 990.
- ▶ Type C - Sponsor shows receipt of funds on its 990.  
Project files its own 990 (990-EZ or 990-N),  
assuming it has its own EIN.

# Failure to File 990

- ▶ Automatic revocation.
- ▶ Type C - Should file 990 to preserve its tax-exemption retroactively to date of incorporation.

# Charitable Solicitation (PA)

- ▶ Type A - Sponsor registers and Project does not.
- ▶ Type C - Both register.

# IRS Form 1023-EZ

- ▶ Quicker than IRS Form 1023 (6 weeks or less for IRS approval). User fee is currently \$275 (\$600 for Form 1023).
- ▶ 3 page application instead of 26 or more.
- ▶ Other benefits of fiscal sponsorship are important, such as back-office.

# Reasons for Written Agreement?

- ▶ Fiscal sponsor must retain control and discretion of charitable funds.
- ▶ Cannot be a mere conduit.
- ▶ Projects must further charitable purposes of Fiscal Sponsor.

# Reasons for Written Agreement?

- ▶ All good things must end (or will at some time).
- ▶ Like new business corporations with a shareholders' agreement.
- ▶ Need a “break up” mechanism.

# Termination Issues

- ▶ Ease of exit.
- ▶ Who owns what?
- ▶ Is it a Type A or Type C?

# Termination Issues (continued)

- ▶ Who is successor to Grantee?
- ▶ Are cash and tangible assets to be distributed to Grantee?
- ▶ Term of contract. What if no renewal? If automatic renewal, what is notice period for termination?

# Termination Issues (continued)

- ▶ Are there any legal endowments?
- ▶ Endowment - created by a donor(s) who restricts donation to a permanent fund for a specific purpose.

## Termination Issues (continued)

- ▶ Who chooses successor? Fiscal Sponsor or Project?
- ▶ Any consents required to transfer assets? A leased copier?
- ▶ Dispute mechanism - arbitration, mediation, or court of law?

# Termination Issues (continued)

- ▶ Employment for Type A - usually the Fiscal Sponsor.
- ▶ COBRA, retirement funds, and other employee benefits are an issue.

# Termination Issues (continued)

- ▶ Cooperation clause.
- ▶ List of states for charitable solicitation.
- ▶ Due Diligence.

# Example

- ▶ Environment project started in 2017.
- ▶ Formed a PA nonprofit corporation.
- ▶ MOU with a community foundation.
- ▶ Type A or Type C?
- ▶ \$4M raised.
- ▶ No 990 filed.
- ▶ Likely issues?

# Questions?

*Contact Jack Owen, Esq.  
or your Favorite Maher Dussel Accountant  
for more information*