A Few Introductory Thoughts

• Scope of presentation:
  – Public charities
  – Model Nonprofit Corporation Act

• Necessarily general

• Ask questions

• Consult legal and tax experts, as needed
Articles of Incorporation

• Filed with Secretary of State and generally available to the public on its website
• Retain in corporate record book with bylaws and key governance policies
• State law required provisions
  – Optional limitation of liability for directors
• IRS required provisions
• Distinguish – unincorporated nonprofit associations
“Required” Governance Policies

- Bylaws
- Conflict of interest
- Whistleblower
- Document retention and destruction
IRS Form 1023 – Federal Tax Exemption

• Filed to obtain IRS determination of tax-exempt status as a IRC Section 501(c)(3) public charity

• Exceptions for:
  – Small organizations (gross receipts less than $5,000)
  – Churches

• Check determination letter for IRC Section (509(a)(1), (2) or (3))
Who Files a Form 990 and When?

<table>
<thead>
<tr>
<th>Form</th>
<th>Gross Receipts</th>
<th>Total Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>990</td>
<td>$200,000+</td>
<td>$500,000+</td>
</tr>
<tr>
<td>990-EZ</td>
<td>&lt;$200,000</td>
<td>&lt;$500,000</td>
</tr>
<tr>
<td>990-N</td>
<td>&lt;$50,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Either test triggers filing requirement

DUE on the 15th day of the 5th month after your fiscal year ends
Revocation of Tax-Exempt Status for Failure to File IRS Forms 990

• Failure to timely file for 3 consecutive years
• Automatic revocation of tax-exempt status
• Revocation date vs. posting date
• Consequences:
  – Tax liability for nonprofit
  – Loss of charitable deduction for donor
• Retroactive reinstatement for “reasonable cause” rarely granted (see Rev. Proc. 2014-11)
Unrelated Business Income Tax

• When receive “unrelated business taxable income” (UBTI) of $1,000 or more:
  – IRS Form 990-T
  – State tax filing

• Use UBTI to diversify funding BUT:
  – Avoid mission dilution, and
  – Protect tax-exempt status (may be in jeopardy if as little as 15% of income is UBTI)
UBTI Three Part Test

• Not substantially related, and
• Trade or business, and
• Regularly carried on
UBTI is Net Income Only

• First, exclusions and modifications!
• Gross income
• Minus expenses
Examples of UBTI Exclusions

- Donated work or merchandise
- Convenience rules
- Dividends
- Interest
- Rents (real property and incidental personal property; watch debt-financed property rules)
- Royalties
Mandatory Public Disclosure of IRS Forms 1023 and 990

• “Widely available” by posting on own website or a third party website (such as www.guidestar.org)

• Alternatively, available for public inspection at the principal place of business and provide copies upon request within 30 days
State Tax Exemptions

**Corporate income and franchise tax**

- Provide governance documents and IRS determination letter to Department of Revenue
- Brief description of charitable purposes and dissolution provision
- Granted liberally

**Real property tax**
Collecting Sales and Use Tax

• Sales and use tax must be collected and remitted to Department of Revenue

• Unless one of three exceptions applies:
  – Occasional and isolated sales
  – Annual sales drives (all products delivered within 60 days of solicitation)
  – Proceeds to state entities (e.g., public schools)
Sales and Use Tax Exemptions/Refunds

• File application with Department of Revenue
• Exemptions vs. refunds
Solicitation Licensing

- Required by 40 states and the District of Columbia

- Exemption some states if annually raise less than $25,000 and do not compensate officers, directors or professional fundraisers

- Other exemptions for certain religious institutions, schools, hospitals and hospital foundations
Solicitation Disclosures

• Name of organization
• Address of organization
• Purposes for which contributions will be used
• Check state rules for specific disclosure statement
Solicitation Disclosures (cont.)

• Optional: “[insert full name of organization] is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code. Contributions to [insert name of organization] are tax-deductible to the extent permitted by law.”

– It is important not to state that contributions are “fully” deductible as various federal and state rules may limit individual donor’s ability to claim a deduction.
Solicitation Acknowledgement

• Acknowledgement *required* when receive:
  – Any gift of $250+, and/or
  – “quid pro quo” gifts of $75+ for which you provide valuable goods or services

• Plus state specific disclosure

• Best practice to send contemporaneous written acknowledgment of each and every gift received
Acknowledgment of Gifts of $250+

• “Qualifying contemporaneous written substantiation” should include the following:
  o Name and Address of Donor:
  o Name and Address of Donee:
  o Description of Contribution: Cash Contribution: ___________
    Charitable Portion: ___________
  o Description of Personal or Real Property Contributed: [do not provide valuation]
  o Date Donee Received Contribution: ________________________________
  o [Description and Good Faith Estimate of Value of Goods or Services Provided to Donor in Consideration of the Contribution:] or [Insert the following statement: “The estimated value of the item given is insubstantial, and the full amount of the donor’s gift is tax-deductible to the extent permitted by law.”] - THIS IS IMPORTANT!!!
  o Signature (optional); Name and Title of Representative of Donee
  o Date of Acknowledgment:
Acknowledgment of Gifts of $250+ (cont.)

• Donor must receive acknowledgement on or before the donor’s tax filing deadline for the calendar year in which the contribution is made (“contemporaneous”)

• $250 threshold includes the deductible and nondeductible portions of the contribution

• Multiple gifts of less than $250 made in a single taxable year by the same donor are not aggregated for purposes of this rule (but best practice to acknowledge all gifts)
Acknowledgment of “Quid Pro Quo” Gifts of $75+

- Good faith estimate of the value of the goods or services provided to the donor by the organization
  - Required to include value of items donated to the organization
Acknowledgment of “Quid Pro Quo”
Gifts of $75+ (cont.)

• Not required to deduct value of certain items: (1) the fair market value of the benefit provided to the donor is not more than 2% of the total amount of the gift, or $104.00, whichever is less, or (2) the amount contributed is $52.00 or more and the only benefits received in connection with the gift are token items that bear the organization’s logo and have an aggregate value of less than $10.40

  – Adjusted annually for inflation; amounts included here are for 2014
  – May disregard value of items donated to the organization
Fundraising Consultants and Solicitors

• Are yours licensed?
  – Exceptions for employees and volunteers

• Does the contract conform to state law?
  – Signatures
  – Bonds for solicitors
  – Filed with Secretary of State; posted online
Secretary of State Updates

- Principal office
- Registered office
- Registered agent
- Annual report required?
Director Fiduciary Duties – Who?

• Good Faith

• Care
  – Reasonably prudent person
  – Higher standards for persons with special skills and expertise?

• Loyalty
  – Conflicts of interest
  – Obedience

→ Generally applies only to governing board and officers!
Director Fiduciary Duties – What?

• Employing the executive director
• Strategic planning
• Managing finances
• Developing financial and other resources
• Managing risk (inc. legal compliance)
Director Fiduciary Duties – Why?

• Protect organization and leadership!
• Legal entity
• Statutory immunity
• Limitation of liability
• Indemnification
• D&O insurance
Lobbying

Two kinds of Lobbying:

(1) Direct Lobbying for or against *specific* legislation or ballot measure, and

(2) Grassroots or Indirect Lobbying for or against *specific* legislation or ballot measure ("call to action")
Definition of Lobbying

What is NOT Lobbying:

- Public policy, social advocacy and educational activities
- Executive, administrative or judicial communication
- Action in personal capacity
- Responses to written requests for assistance
Lobbying Alternate Tests

- **Insubstantial Part Test**
  - Facts and circumstances
  - Violation = 5% excise taxes on all lobbying expenditures and *revocation* of tax-exempt status

- **501(h) Expenditure Test**
  - Elect by filing Form 5768
  - Violation = 25% excise tax on excess expenditures (revocation only if exceed limit by 50% averaged over four-year period)
501(h) Expenditure Test

- Overall limit based on “exempt purpose expenditures”
  - 20% of first $500,000
  - +15% of next $500,000
  - +10% of next $500,000
  - +5% of remaining
- $1 million overall cap
- 25% grassroots lobbying sublimit
- N/A to churches and affiliates
Worker’s Compensation Insurance

• Applies if employees or often corporate officers
  – occupational injury or illness
  – no fault standard
  – wages, medical benefits and death benefits
  – private insurance
Employee Payroll Taxes

- Withhold and pay payroll taxes
- Disclose independent contractors on IRS Form 990
- Board penalties for willful misclassification of employee as independent contractor
- Facts and circumstances test
Classification as an Employee (NOT Independent Contractor)

- Employer’s right to direct and control the workers
- Training provided to worker by employer
- All business expenses are reimbursed by employer
- Use of employer’s facilities and supplies
- Single employer, no other clients
- No profit or loss for worker
- Benefits provided to worker by employer
- Worker’s services are key to business
Exempt vs. Non-Exempt Employees

• Various exemptions ($455 weekly salary, plus job duties) including:
  – Executive
  – Administrative
  – Professional
• Overtime of 1.5 times usual hourly pay rate when exceed 40 hours/work week
  – Define work week
  – Not waiveable
Federal and State Employment Laws

- Varied and complex
- I-9, W-4, W-2, 1099
- Withholding tax
- Employment taxes
- Minimum wage
- Overtime pay
Federal and State Employment Laws (cont)

• Family and Medical Leave
• Anti-discrimination
  – Age
  – Gender
• Wall posters
Employee Retirement Plan

- ERISA plans inc 403(b) plans
- Written plan document for 403(b)
- IRS Form 5500
  - DUE 7 months after plan year-end
  - Signatories register with US Department of Labor
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