

The Benefits of Establishing a Business Foundation for Charitable Giving

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Tom is a Shareholder and Chair of von Briesen's Nonprofit and Tax Exemption section. He counsels clients on tax exemption, nonprofit formation and governance, and Benefit Corporations. Tom is also a member of the Business Practice Group, where he assists clients on all aspects of business and estate planning, including trust and estate planning and administration, business formation and transactions, business consulting and succession planning, mergers and acquisitions, and real estate.



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Adam is a Shareholder in the Business Practice Group. He works closely with businesses, manufacturers and executives to identify their goals while minimizing risk. He enjoys collaborating with his clients' other trusted advisors, including accountants and financial advisors, to bring a holistic approach to meeting client needs. Adam focuses his practice in the areas of business succession planning, federal and state tax issues, contractual arrangements, trust and estate planning, business formation, financing, and mergers and acquisitions.

Overview

- Common Types of Nonprofit Entities
- Formation Procedures
- Private Foundations – Initial Considerations
- Private Foundations – The Grantmaking Process
- Special Rules for Private Foundations

Common Types of Nonprofit Entities

- **501(c)(3)** – Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, Foster national or international amateur sports competition, Prevention cruelty to children or animals
 - Public Charities
 - Private Foundations
 - Grant Making
 - Operating
- **501(c)(4)** – Lobbying
 - Social welfare groups (promote social change/benefit), but can still lobby
 - Social advocacy groups (lobbying main focus)
- **501(c)(6)** – Business Leagues, Chambers, Trade Organizations
- **501(c)(1) – 501(c)(29)**

Formation of Nonprofit

- Draft and File Articles of Incorporation, **including extra required articles**
- Obtain IRS EIN
- Draft Bylaws
- Draft Conflict of Interest Policy
- Draft Non-Discrimination Policy
- Other Policies and Procedures
- Hold Organizational meeting to adopt incorporation documents
- Draft Organizational Minutes/Resolutions
- Prepare 1023/1024 Application
- Financial Data
- Complete any necessary schedules to be submitted with 1023
- IRS Form 2848 to accompany 1023
- Finalize official 1023 checklist
- File 1023 application packet with IRS (include appropriate fees)
- File necessary forms with DFI for Charitable Registration
- Fill out WI Form S-103 to apply for Sales and Use Tax Exemption
- Supply WI Form S-211 to organization for Sale and Use tax purchases
- Other Considerations

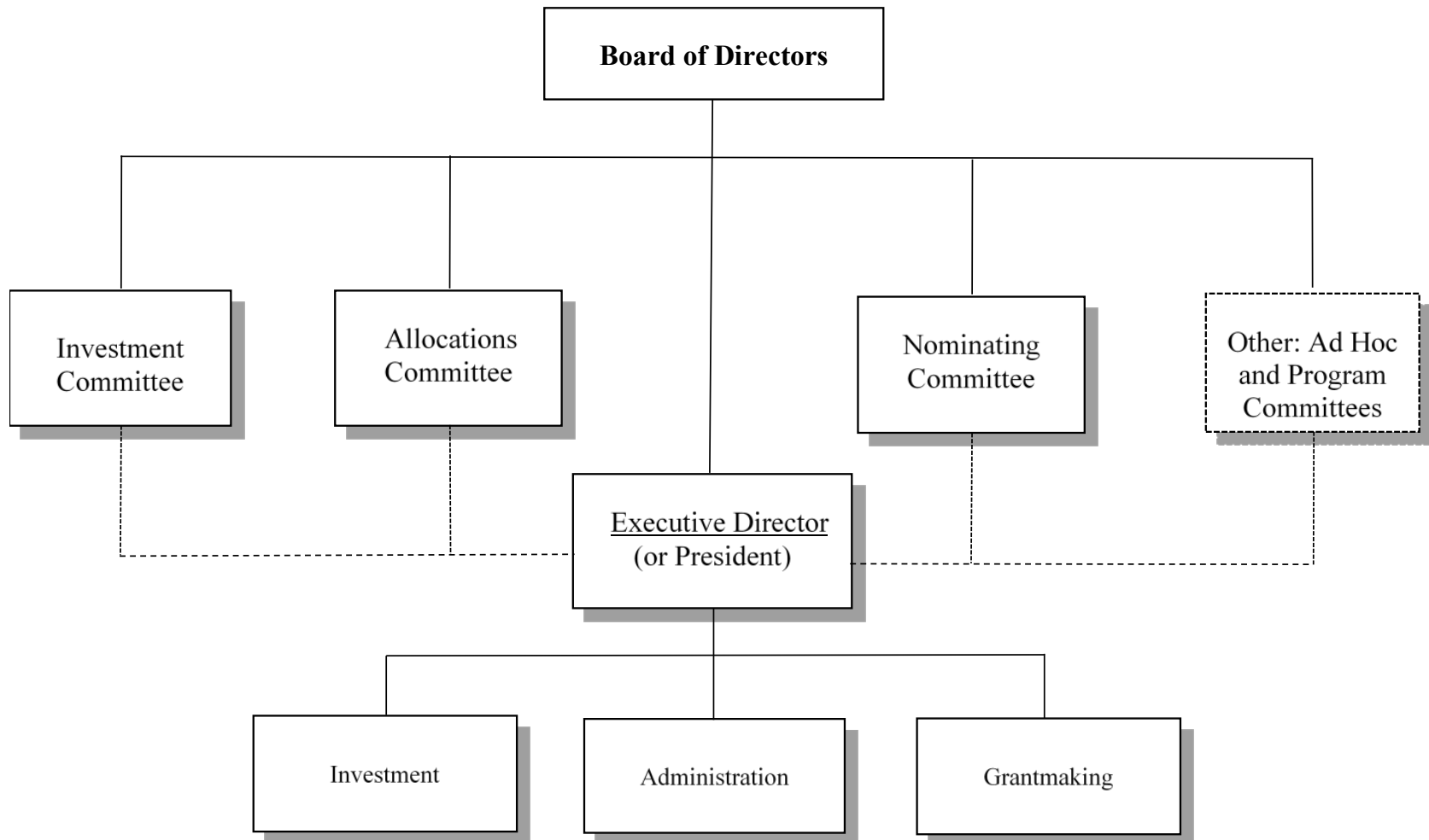
IRS Exemption Application

- Form 1023 (charitable, religious, etc.)
- Form 1023-EZ
- Form 1024-A (social welfare, 501c4)
- Form 1024 (other nonprofits)

Private Foundations – Initial Considerations

- Corporation vs. Trust
- Grant Making vs. Operating Foundations
- Source of Donations – individuals vs. business
- Initial and Continuing Contributions
- Start-up Costs

Typical Structure of Private Foundation



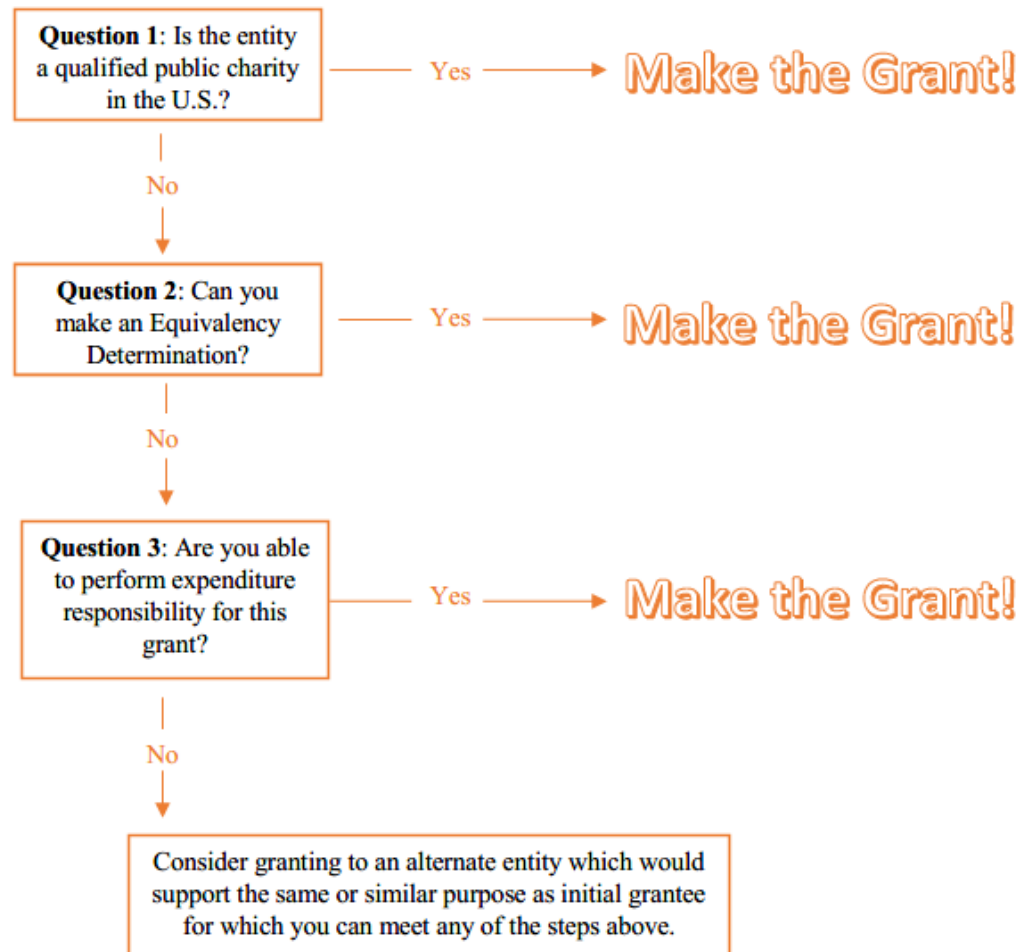
Benefits of Private Business Foundations

- Tax Deduction
- Streamlined and consolidated giving
- Culture
- Brand recognition (license issues)
- Control through reserved powers or membership
- Time and group donations in tax efficient way
- Separation of management of business and charitable giving
- Family Business – mentor / mentee roles and family training and involvement
- Legacy and Control
- Outside fundraising, Legitimacy and Flexibility
- Foundation can hire separate staff

Obligations and Risk Considerations

- Administration (state, federal)
- IRS Scrutiny
- Application / approval process
- Small excise tax on investment income
- Lower deductibility than public charity
- Required annual minimum distributions (5%)
- Penalties for prohibited transactions
- Additional requirements for grants to individuals / foreign grants

Private Foundations – The Grantmaking Process



Special Rules for Private Foundations

- What is Self-Dealing?
- Disqualified Persons:
 - (i) substantial contributor to the private foundation,
 - (ii) a foundation manager (any officer, director, trustees, or any individual having similar responsibilities to a person holding such a title would be considered a foundation manager for the purposes of this statute),
 - (iii) a 20% owner of an entity that is a substantial contributor,
 - (iv) a family member of a substantial contributor (only lineal family members, think grandparents, and children are deemed family members for the purposes of this definition. Siblings and aunts and uncles would not qualify),
 - (v) a corporation, partnership, trust or estate in which any individual or individuals described in (i)-(iv) own a 35% interest in such entity
 - (vi) controlled or related private foundation, or
 - (vii) certain governmental officials

Special Rules for Private Foundations Continued...

- Examples of Self Dealing:
 - (i) Pay a parent company for any resource
 - (ii) Lease property
 - (iii) Reimburse personal expenses or pay personal obligations
 - (iv) Lending money

Special Rules for Private Foundations Continued...

- Excise Tax on Investment Income
- Minimum Payouts
- Excess Business Holding
- Jeopardy Investments
- Improper Grants

Alternatives to Private Foundations

- Donor Advised Funds
- Direct Charitable Contributions
- Charitable Trusts
- Public Charities

von Briesen's Nonprofit and Tax Exemption

- **Assist business, individual and nonprofit clients with all aspects of nonprofit formation, tax, governance and ongoing compliance.**
 - Public charities
 - Private Foundations
 - Lobbying / Advocacy Organizations
 - Nonprofit medical organizations
 - Grants / Gifts / Pledges
 - Charter Schools
- **Assist with the creation of necessary policies and procedures including:**
 - (i) Conflict of Interest
 - (ii) Non-Discrimination
 - (iii) Employment Policies & Handbooks
 - (iv) Record Retention
 - (v) Due Diligence
 - (vi) Grantmaking
 - (vii) Grant Applications
 - (viii) Expenditure Responsibility
- **Assist in the exploration of using private foundations or charitable trusts for estate planning and business planning**
- **Ability to assist in answering unique legal questions pertaining to ownership and ability to make certain grants**

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Thank you.



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