Collaboration Spectrum

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Overview

- Why Collaborate?
- Models of Collaboration
- Selecting the Right Model
- Legal Process of Collaboration
- Key Lessons

What is the Collaboration Spectrum?

- Tax-exempt organizations looking to collaborate with tax-exempt (or, potentially, for-profit) partners have options for structuring their relationships
- Collaboration can result in continued independence of the entities or a complete merger and integration
- The right strategy depends on the parties' goals and vision

Why Consider Collaborations?

- **Strategic Vision** – Organization has goals that can be met through collaborating with other like-minded organizations
- **Limited Market** – Competition for funding sources or consumers is impacting the organization's bottom line
- **Sustainability/Expansion** – Help to assure future sustainability of the organization or increase its ability to fulfill its mission
- **New Opportunities** – Take advantage of shifts in the market and better position the organization for future growth

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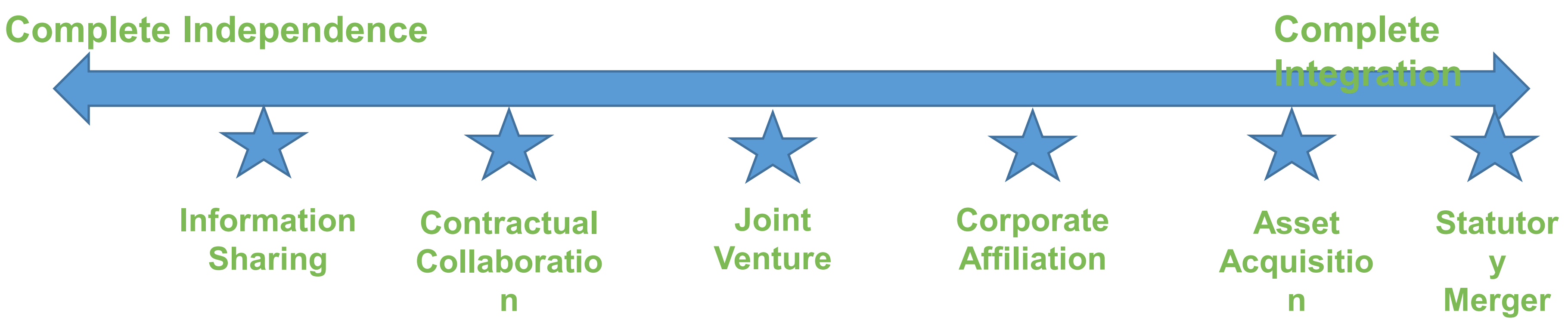
Collaboration Spectrum



Information Sharing

- Organizations with shared visions and objectives can collaborate and work together
- No formal commitments or obligations between the parties (subject to confidentiality obligations)
- Can build relationships and lead to future, more integrated collaborations down the road

Documents: None or Confidentiality Agreement

Contractual Collaborations

- Contractual collaborations typically involve collaboration with respect to programs or agreements to share space and resources as well as co-branding efforts
- Entities remain independent but coordinate with respect to certain obligations
- More integration than information sharing because there are binding contractual obligations between the parties

Documents: Potentially Services Agreement, Sublease

Joint Ventures

- Agreement to undertake joint efforts to achieve a certain goal and share distribution of profits and losses
- Could involve creation of a separate entity, jointly governed by both parent entities OR a contractual relationship
- May involve for-profit organizations
  - Tax exempt organization must generally maintain control
  - Should prioritize tax-exempt purposes over profits – avoid private benefit
  - Considerations related to UBTI – related or unrelated activities?

Documents: Entity Formation Documents and Joint Operating Agreement; Service or Management Agreements

Corporation Affiliations

- A true corporate affiliation creates a link between two organizations through their governance documents
- Options:
  - Parent serves as the sole member of the subsidiary
  - Parent elects the board of directors of the subsidiary
- Need clear understanding (and documentation) of the rights and responsibilities of parent

Documents: Affiliation Agreement, potential amendments to parties' Certificate of Incorporation and Bylaws

Asset Acquisition

- Organization acquires the assets and programs of another generally in return for the fair market value of the assets
- Unusual situation among tax exempt organizations – typically occurs when one organization is on the verge of dissolution and the other does not want to take on all of the liabilities
- Risk of successor liability

Documents: Certificate of Dissolution, Plan of Distribution, Asset Transfer or Purchase Agreement

Statutory Mergers – Conn. Gen. Stat. § 33-1158

- One legal entity, the “survivor,” remains
- One board of directors remains (but composition can include directors from the “terminating” entity)
- All of the terminating entity’s liabilities (known, unknown or contingent) vest into the survivor
- All property owned by the terminating entity, including every contractual right, is vested into the survivor
  - Remember notices and consents

Is it a merger of equals or a take over?

Documents: Merger Agreement, Plan of Merger, Certificate of Merger

Selecting the Right Model

Identifying the Most Important Drivers of the Collaboration

Tax Exempt Status

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Selecting the Right Model

Due Diligence will help you identify deal drivers and potential areas of risk.

Three areas of diligence: (1) programmatic, (2) legal, and (3) financial/ accounting – **involves the whole team!**

Key issues may include:

•Current contracts and liabilities

•Pending claims or investigations

•Employee commitments

•Insurance coverage

•Licensure requirements

•Governance structure

•Health care regulatory considerations

Legal Process of Collaboration

1. Non-disclosure Agreement
2. Initial Due Diligence
3. Letter of Intent
4. Complete Due Diligence
5. Negotiate Collaboration Structure
6. Finalize and Sign Collaboration Agreement
7. Closing
8. Integration

Key Lessons

- Every collaboration is unique
- The process will take blood, sweat and tears (and time!)
- Due diligence and determining collaboration drivers are key for selecting the right model
- Ask the tough questions early:
  - Who "survives"?
  - Who makes up the resulting management team and who is the CEO?
  - Who sits on the resulting board?
  - How are "economies of scale" actually being effectuated?

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More Key Lessons

- Understand the required consents and approvals early on and get to work
- Know how the structure affects your organization’s liabilities
- Don’t forget stakeholders and other third parties – **optics matter**
- Make a plan for programmatic and cultural integration – the legal proces !

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Question & Answer

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Thank You

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