

# TANGO Nonprofit Education Series



## Unlocking New Revenue Sources: Legal and Accounting Considerations

*Presented by:*

**Ed Spinella & Julia Boisvert**

Murtha Cullina LLP

**Patrick Gill, CPA**

Financial One Accounting



# Agenda

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## **TANGO Welcome and Update**

*Presented By: Rob Bloomstone – Director of Marketing – TANGO*

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## **Unlocking New Revenue Sources: Legal and Accounting Considerations**

*Presented By: Ed Spinella & Julia Boisvert – Murtha Cullina  
Patrick Gill – Financial One Accounting*

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# Unlocking New Revenue Sources: Legal and Accounting Considerations

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*Presented by:*

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Murtha Cullina LLP

**Patrick Gill, CPA**  
Financial One Accounting

# Overview

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- Background
- Initial Considerations
- IRS Operational Test
- UBIT and Commerciality
- Types of Social Enterprise
  - Subsidiaries
  - Joint Ventures
  - Monetizing your Brand
  - Hybrids
- Takeaways



TRADITIONAL  
NONPROFIT



TRADITIONAL  
BUSINESS

From the Social Enterprise Alliance

# Background

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- Non Profits funded thru the State of CT:
  - Regulations make it very hard to turn a profit
  - Difficult to build your net assets (year to year) due to the cost settlement process
  - Must rely on donations and other programs that are not part of cost settlement process (very rare), which normally are small funded programs
  - Must be aggressive in looking for non-cost settled programs and committed to making them work.

# Background

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- History of Social Enterprises:
  - Emerged from nonprofits
    - Workforce development, housing, community and economic development, education and health

# Background

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- Is there a legal definition of “social enterprise”?
- Is there a commonly accepted, non-legal definition?
- Are social enterprises tax-exempt?
- A word on socially responsible investments, program related investments and expenditure responsibility grants.

# Initial Considerations

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- What is your mission?
- What assets (including your brand and logo) do you have?
- What do you do well and how can you further monetize your talents and resources?
- What (or who) are your connections?

# Planning Your Social Enterprise

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## Task List

- Mobilize early
- Identify key players
- Develop business model
- Identify sustainable components
- Create a pro forma
- Consider fiduciary responsibilities

# IRS Operational Test

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- The operational test looks at the specific activities, including social enterprise activities, that the organization actually conducts or proposes to conduct and whether those activities further one or more exempt purposes set forth in Section 501(c)(3) of the IRC
- Facts and circumstances
- Revenue generating activities warrant a more rigorous analysis
- Examples:
  - Job-training
  - Consulting and technical assistance
  - Publishing

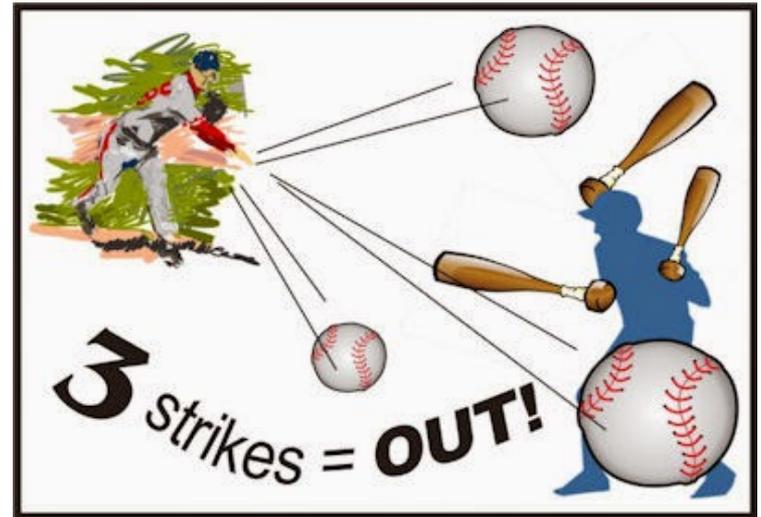
# Unrelated Business Taxable Income

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Income generated by a tax-exempt entity from taxable activities

Three elements:

1. Trade or Business
2. Regularly carried on
3. Not substantially related to tax-exempt purpose



# Commerciality Doctrine

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- 501(c)(3) organization that carries on activities of a type and in a manner similar to those of for-profit counterpart organizations has a substantial nonexempt/commercial purpose
- Indicia of commerciality:
  - Competition with for-profits
  - Generation and accumulation of profits
  - Market-rate pricing margins
  - Use of business and marketing practices
  - Significant reliance on fee income rather than charitable contributions or grants



# Subsidiaries

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## Limited Liability Companies

- Can be taxable or non-taxable
- Single member (your organization)
- Generally, easiest to set up and manage
- Income flows back to member
- If not separately taxed, need to be aware of thresholds for UBIT and commerciality



# Subsidiaries

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## Corporations

- Your organization would hold shares and receive distributions
- Generally only makes sense for an organization that will generate taxable revenue
- Income separately taxable (separate tax return will be filed)
- Be mindful of Form 990 (in particular Schedule J) disclosures.

# Subsidiaries

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## Corporate Formalities

- Transactions should be at an arm's length basis, on market terms, and documented
- If affiliated entities share employees or services, costs of should be allocated proportionately among entities
- If affiliated entities share a workspace, lease costs should be allocated proportionately among entities
- Each entity should have its own bank accounts, e-mail addresses and phone numbers
- Each entity should have separate meetings (even if their directors and officers are identical and even if the meetings are in immediate succession)

Avoid private benefit to for-profit!

# Subsidiaries

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## Examples



- Winners from HFPG program are good examples (but some may be programs rather than separately incorporated)

# Joint Ventures

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- Spectrum of options
  - Contractual collaboration
  - Jointly owned entity
- Different than just an investment because parties are agreeing to undertake a business activity together





# Joint Ventures

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**Control test:** In JVs with for-profit entities, the charitable organization must maintain “sufficient control” over the JV to avoid private benefit

Control through ownership and/or management

- But how much is enough?

Consider UBIT and relationship to exempt purposes



# Joint Ventures

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## Examples

- Presentation Rehabilitation & Skilled Care Center – Ascentria Care Alliance and managed by Sheehan Health Group
- Lighthouse Surgery Center – Saint Francis Hospital and Medical Center and a holding company composed of physicians



# Monetizing Your Brand

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## Commercial Co-Venture

- Charitable sales promotion where a for-profit advertises that it will donate a portion of sales to the charitable organizations
- Registration Requirements in Connecticut
  - Must have a contract that specifies:
    - Goods and services to be offered
    - Geographic area and time frame for sale
    - Provision on final accounting
    - Date and manner in which benefit is conferred to charitable organization
    - Manner in which the name of the charitable organization is used in the promotion
  - Contract filed with the Department of Consumer Protection

# Monetizing Your Brand

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- Other options:
  - Ad campaigns
  - Licensing to other organizations
- Consider protecting your IP



Commercializing your “brand” can increase public awareness and (hopefully) donations

# Monetizing Your Brand

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## Examples

- Team Rubicon (and others) – Under Armour
  - Had previous partnership with Wounded Warrior Project
- Apple – (RED) Campaign



- Vineyard Vines – Bright Pink



# Hybrids

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**The term “hybrid” generally refers to:**

- Benefit corporation
- Social purpose corporation
- “Public benefit corporation”
- Low-profit limited liability company (L3C)
- Benefit limited liability company

# Final Notes

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- Think like a business (and don't apologize for it!)
- Focus on your strengths
- Remember your mission
- Get the whole team involved in planning



# Final Notes

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## Alternative options for additional funding:

- Grants
  - Hartford Foundation for Public Giving and the United Way
- Community Foundations
  - Hartford, New Haven, Fairfield, Southeast CT, Litchfield
- CT Council for Philanthropy
  - Training and educational seminars
  - TAG (Technical Assistance Grants)
    - IT, Board Development, Strategic Planning for your Organization

# Disclaimer

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# Question & Answer

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# Thank You

