Creative Ways for Charitable Organizations to Sustain Long-Term Viability

Description

The COVID-19 pandemic has impacted almost every business and nonprofit organization. Many experts have written about how nonprofits can handle fundraising during the crisis, suggesting increasing donor engagement, staying the course with capital campaigns, and increasing appeals focusing on the urgent need for current support. While some of these strategies may be very effective in the short-term, what about the long-term consequences? What happens eighteen to twenty-four months from now, when charitable giving has shifted away from your organizationâ€™s charitable focus and towards health organizations or nonprofits that focus on diversity, equality and inclusion issues? Recent events could cast the long-term viability of many nonprofit organizations in doubt. In a typical year at least 7% of nonprofits close. One recent report indicated that between 11% and 38% of nonprofits could close due to COVID-19.

To better weather the storm, in addition to traditional fundraising techniques, charitable organizations should consider expanding their fundraising and mission reach by engaging in commercial co-ventures with for-profit entities, joint ventures with nonprofit and for-profit entities, or possibly merging with other nonprofits to assure long-term viability of their charitable purposes. Each one of these options could allow the organization to survive in these uncertain times.

Commercial Co-Ventures

A commercial co-venture typically features a charity teaming up with a for-profit company to promote a product in conjunction with a charitable cause. They have become increasingly popular over the last couple of years. In most years, the commercial co-venture advertisements start appearing on TV and radio around the holiday season, such as the following: â€œfor every holiday widget you buy, Acme will donate $1 to a local charity.â€• That scenario is a commercial co-venture, advertising that a portion of a sale will go to a charitable purpose. These types of promotions go by various other names such as social cause marketing, charitable sales promotions, and social impact advertising. This year due to COVID-19 and social justice causes many for-profit companies are already teaming up with charities to help address the issues.

While a commercial co-venture could be a low-effort way for a charity to raise additional funds, if not done properly it could subject the charity to penalties and bad publicity, among other issues. Approximately half the states have consumer protection regulations that govern commercial co-ventures. Each stateâ€™s regulations are slightly different but share some common requirements. Generally, states that regulate commercial co-ventures require the for-profit entity to have a contract with the charity before the campaign begins. The regulations also generally require the contracts to state the name of the charity, a minimum or maximum donation amount, any guaranteed donations as part of the contract, the length of time for the contract, and accounting requirements.

In addition, many states require registering or filing with the stateâ€™s charitable division prior to commencing a campaign. The regulatory requirements and filings for a multi-state campaign could get quite complicated. Prior to starting a campaign, each state’s specific requirements should be reviewed carefully, since each may vary as to the content, timing, filing requirements and filing fees. If done correctly, a commercial co-venture could be an added way for a charity to bring in additional revenue streams.

Joint Ventures

The IRS defines joint ventures in Form 990 as “any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment or exempt purpose activity." Nonprofits are forging joint venture partnerships with nonprofits and for-profit entities to access additional or unavailable capabilities, capital and resources. Organizations at this time may, for example, consider sharing resources or facilities to reduce costs.

When assessing the appropriateness of a joint venture as a nonprofit organization, a key factor in maintaining tax-exempt status is the level of control the nonprofit maintains in the arrangement. A nonprofit organization should have the ability to exercise majority voting rights. An organization must ensure the joint ventureâ€™s activities are substantially in furtherance of the organizationâ€™s mission. If there is more than incidental private benefit, the organization may be faced with unrelated business income tax (â€œUBITâ€•) implications. An organization should also think carefully about an exit strategy should the partnership not bear fruit or be less than successful. Joint ventures are memorialized in a written contract and are typically for a limited purpose and duration.

The structures of a joint venture relationship should be considered carefully. Pooling resources in these unique times will prove to be a necessary step for many organizations. Exercising due diligence when evaluating a potential partnership is important, as well as good business practices. Maintaining your organizationâ€™s commitment to your constituents and community will continue to be paramount in the decision-making process.

Mergers

In the wake of the COVID-19 pandemic, many organizations will look to merge with another nonprofit organization. Nonprofits can and should consider using mergers as an effective tool to achieve their goals, advance their mission, and increase their impact. Mergers should not necessarily be a â€œlast ditchâ€• effort, but rather part of thoughtful strategic planning.

When considering merging with an organization, explore the commonality of mission and vision. Both organizations, its top leaders and board members, should be committed and have a unified vision for the merger of the organizations. Extensive time should be spent exploring each otherâ€™s financials, potential liabilities, strategic plans, historic fundraising success and potential growth capabilities. Carefully consider the pros and cons of the resulting entity structure.

Once you have progressed through the due diligence and exploration phases, tough decisions will have to be made and memorialized in written agreements. Keep in mind decisions related to staff, costs of merging, governance considerations, strategic planning, and the impact to key stakeholders. Legal issues will need be carefully explored and documented in the resulting arrangement. Regulatory authorities will be notified and approve the transaction.

Partridge Snow & HahnÂ has a multifacetedÂ Charitable & Nonprofit Organizations Practice GroupÂ ready to guide you through the myriad of decisions and give advice necessary to consider a commercial co-venture, joint venture or merger.

Date Created
July 30, 2020