

Social Enterprise Case Study

New Opportunities, Inc. and CT Food 4 Thought



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CAPLAW
Community Action Program Legal Services, Inc.

community Action
Partnership



NEW OPPORTUNITIES, INC.
Building Relationships to End Poverty

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Agenda



- What is a social enterprise?
- Why start a social enterprise?
- CT Food 4 Thought
 - Role of the board
 - Leveraging relationships
 - Legal structure
 - Business pivots
 - Federal grant rules

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What is a social enterprise?

Overview and definitions



- “Organizations that address a basic unmet need or solve a social or environmental problem through a **market-driven approach.**”
– Social Enterprise Alliance, socialenterprise.us
- A revenue-generating business with primarily **social objectives** whose surpluses are reinvested to achieve those objectives in the business or in the community, rather than being driven by the need to deliver profits to shareholders or owners

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What is a social enterprise?

Types of social enterprises



- Mission-centered
 - Directly advances a particular objective
 - E.g., catering business that trains low-income people in food service industry
- Revenue-centered
 - Primary objective is to generate funds to support the mission
 - E.g., catering business operated to make money, no job training
- *Not an alternative to traditional fundraising*

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Why start a social enterprise?



- Reduce dependence on government grants and private fundraising, diversify funding streams
- Untapped market for services that the organization is already providing or is uniquely equipped to offer
- To expand mission impact, provide opportunities and promote community economic development
- Interest in fostering and promoting a culture of entrepreneurship and innovation

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Why start a social enterprise?



New Opportunities, Inc.

Location: Torrington, Connecticut

Type of CAA: Private, non-profit

Social enterprise: CT Food 4 Thought, a hydroponic farm selling lettuce, kale, arugula

CAA clients: 49,830

CAA budget: \$44,128,438

CAA programs: 35

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Role of the Board



- Strategic planning
 - Growth
 - Organizational stability
 - Fundraising
 - Connections
- Committee research (volunteers)
- Continuity of leadership

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Leveraging Relationships



- Local government agencies
- Private consultants
- Business experts
- Subject matter experts
- Publicity/marketing experts



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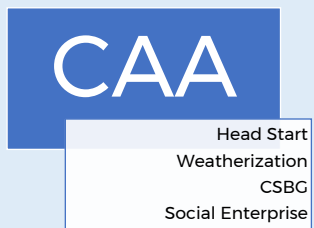
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Legal Structure

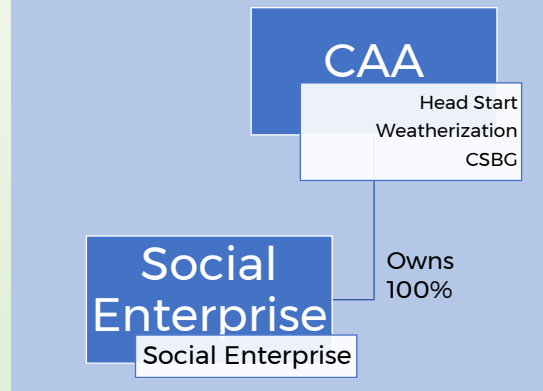
Overview



• Program/division of CAA



• Subsidiary organization



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Legal Structure

Overview



- *Program/division of CAA*
 - No separate entity formation and governance required
 - Can accept tax-deductible contributions
 - No tax if substantially related to exempt purpose

- *Subsidiary organization*
 - Shields nonprofit parent from liability
 - Can engage in activities unrelated to exempt purpose
 - Can offer equity to raise start-up capital
 - Can attract employees with equity-based compensation

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Legal Structure

Overview



- *Program/division of CAA*
 - Internal Revenue Code
 - Grant Statutes
 - Uniform Guidance

- *Subsidiary organization*
 - Internal Revenue Code
 - Grant Statutes
 - Uniform Guidance

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Considerations

Program/division of CAA



- Program/division of CAA
 - **Shared liability** with CAA
 - Must be organized and operated primarily for **501(c)(3) purpose** identified in articles of incorporation
 - Limited amount of unrelated activity permitted, but a “substantial” amount can lead to loss of exempt status

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Considerations

Program/division of CAA



- Unrelated Business Taxable Income (UBTI)
- Must report UBTI over \$1,000 on Form 990-T
- Flat tax at federal corporate income tax rate
 - Deductions for expenses directly connected to carrying on the unrelated trade or business
- Too much unrelated activity can jeopardize tax-exemption, **even if no taxes owed**

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Considerations

Program/division of CAA



- UBTI definition

Income from a trade or business

- Income from the sale of goods, performance of services, or any other activity
- Very broad

That is regularly carried on

- Frequency and continuity
- Compared to a comparable commercial entity

And isn't substantially related to the charitable purpose

- Doesn't contribute (beyond financially) to organization's tax-exempt purpose
- Consider size and extent of activities in relation to nature and extent of the exempt function

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Considerations

Program/division of CAA



- Excluded from UBIT:

- Activity conducted primarily by volunteers
- Sale of primarily donated goods
- Activities carried on for the convenience of employees, clients or members
- Sale of products resulting from performance of exempt purpose
- Passive income

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Considerations

Subsidiary organization



- Subsidiary organization
 - Talk to a local attorney about legal entity types and their tax consequences
 - If organized as an LLC, partnership, S corporation, will be seen as a “pass-through” for tax purposes, activities and income will be attributed to nonprofit parent

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Considerations

Subsidiary organization



- Subsidiary organization
 - Observe corporate formalities
 - Separate articles of incorporation/organization
 - Adopt and follow bylaws/operating agreement
 - Separate boards, board meetings, minutes
 - Nonprofit may retain authority to appoint board
 - Conflicts of interest
 - Separate EINs, bank accounts, financial records, tax filings
 - Separate websites
 - If services are shared, make sure to use an agreement and allocate time and expenses

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Considerations

Subsidiary organization



- Subsidiary organization
 - Failure to observe corporate formalities may result in the debts, income, and liabilities of one entity being attributed to the other
 - Risk funding source issues if finances are not kept separate and charges are improperly charged to the wrong entity

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Considerations

Subsidiary organization



- Subsidiary organization
 - “Passive investment income” exempt from UBIT
 - Dividends
 - Grants
 - Capital gains
 - Interest
 - Rental income
 - For-profit subsidiary may be subject to sales and property tax

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Business Pivots



- Corporate subsidiary to agency program
- Aquaponics to hydroponics
- Guaranteed purchase agreement to open market



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Considerations



Federal grant rules

- Program income = grantee's gross income directly generated by grant-supported activities or earned as a result of the grant award
- Includes, but not limited to:
 - Fees for services
 - Rent from property acquired under Federal awards
 - Sale of items created under Federal award
 - License fees and royalties on patents and copyrights
 - Principal and interest on loans made with Federal awards

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Considerations

Federal grant rules

- 2 CFR 200.307, 45 CFR 75.307, Program Income
- Subject to same rules as appropriated federal grant funds
- General rule:
 - Deducted from total allowable program costs to determine net allowable program costs on which federal share is based
- If prior approval received:
 - May be added to federal funds committed to program and used to further eligible program objectives
 - May be used to finance some or all of program's non-federal share (matching)



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Considerations

Federal grant rules

- If using equipment acquired with federal funds to provide services to outside organizations, must charge them FMV
- Federal gov't retains an interest
- Proceeds are treated as program income
- Discuss with funding source first
- If using federally-funded facilities, must notify funding source and allocate costs appropriately



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CAPLAW Case Study

PACE Community Action Agency



- Ventures Cleaning – commercial and residential cleaning services
- WiseCAP – consulting services covering nonprofit and CAA compliance, strategic planning, and professional development services

PACE CAA
SOCIAL ENTERPRISES

a CAPLAW case study

LOCATION	Wrennemo, Indiana	
YEAR FOUNDED	PACE CAA Founded in 1965 as the Economic Development Committee of Knox County. Pace Ventures Holding, Inc. Founded in 2007	
SOCIAL ENTERPRISES	Ventures Cleaning: Commercial and residential cleaning services operated as a registered, limited liability company subsidiary under Pace Ventures Holding, Inc.	
LEADERSHIP	Dr. Bertha A. Proctor, CEO Lori Williams, Associate Director Ty Byrhe, Associate Director Ben Arica, Chair of the Board of Pace Ventures Holding, Inc.	
TYPE OF CAA	Private, non-profit	
SERVICE AREA	Four counties in southwestern Indiana	
# OF CAA CLIENTS	Approximately 35,000	
BUDGET	\$7.6 million (FY 2020)	
CAA PROGRAMS	Head Start and Early Head Start Low Income Home Energy Assistance Program (LEAP) Nutrition Assistance Program Health Care/Chronic Disease Reproductive Family planning health services Women, Infants & Children (WIC)	National Commission on Aging (2009) Emergency Food & Shelter and only mortgage/credit assistance (PHEM) Small Business Revolving Loan Fund Affordable Housing program Rape membership program Intergroup program

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NCAP Center of Excellence

Acción Social de Puerto Rico, Inc.



- Training program for clients on hydroponic farming
- Focus on seniors
- Promotes food security
- Economic development

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Additional Examples



- Food service
 - Catering
 - Restaurant/café
 - Food sales
- Energy
 - Solar/wind farm
 - Over-income weatherization
- Technology
 - Refurbishing computers
 - Licensing software
- Office services
 - Cleaning
 - Back office – IT, accounting
 - Recycling
- Retail
 - Thrift store
 - Crafts/jewelry
- Agriculture
 - Farmer's market



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Questions?



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