Crowdfunding!
What are we talking about?

1. Funding a project/venture
2. By raising small amounts of money
3. From a large number of people
4. Using the Internet
Examples
Question

Is donation crowdfunding different from traditional fundraising?
Third Party Crowdfunding Sites

What should a charity look for?
Types of crowdfunding platforms

501(c)(3) nonprofit

- Fiscal sponsor
- Donor-advised fund

For-profit

- Tech platform
- Regulated fundraiser
- Commercial co-venturer

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Nonprofit - registration/reporting

- Jurisdictions
- Registration/reporting requirements
- Charleston Principles & minimum contacts
  - Specifically targeting residents
  - Receive substantial contributions from residents
  - Receive repeated contributions from residents
For-profit – registration/reporting

- Vendors providing fundraising-related services may be subject to their own state registration and reporting requirements

  - Do they solicit charitable contributions?
  - Do they receive and/or control charitable contributions?
  - Do they plan, manage, or advise on fundraising?
PayPal Charitable Giving Fund

From 2015 Form 990

• 501(c)(3) public charity

• Mission: “To raise funds for charitable purposes online, primarily in the eBay inc and PayPal marketplaces, and distribute those funds to other charitable organizations”

• $38.5 M in revenues; $36.8 M in grants

• Donor-advised funds? - No
PayPal/PayPal Giving Fund Class Action

- Listed charities vs. enrolled charities
  - Only enrolled charities eligible to receive donations

- Causes of action
  - Violation of Lanham Act, 15 U.S.C. § 1125(a)
  - Conversion
  - Unjust enrichment
  - Accounting
  - DC Consumer Protections Act
Exempt purpose (mission)

- Organizational test
- Operational test – “walking the talk”
  - Prohibition against private benefit unless incidental to furthering the exempt purpose
Donor’s Choice of Beneficiary – Is this okay?
Charitable class?

Individuals

Groups
Charitable contribution – IRC § 170(c)

Intermediary – discretion and control

• Variance power

Conduit – pass-through

• Does not qualify as deductible contribution

• Diversion of charitable assets
Rewards crowdfunding

Rewards – What issues do these raise?
Quid pro quo contribution – IRC § 6115

Quid pro quo contribution

- Donor’s payment is more than $75
- Donor receives goods/services in return

Written disclosure – IRS Publ. 1771

- Statement that amount deductible is difference between payment by donor and fair market value of goods/services received in return
- Good faith estimate of such fair market value
Sales of goods/services

Seller’s Permit & Sales Tax

• Does the state have jurisdiction?


  • A "substantial nexus" for sales and use tax collection means that a seller has a "physical presence" in the state, which requires more than a connection through “mail or common carrier” within the state

• Out-of-state seller: click-through nexus
Unrelated business income tax (“UBIT”)

1. Trade or business

2. Regularly carried on

3. Not substantially related to furthering the organization’s exempt purpose
Peer-to-peer fundraising

Going viral or losing control?
Authorized agents

Is it fundraising?

• Advising friends
• Sending written solicitations
• Holding events

Who can fundraise for the charity?

• Charities must establish and exercise control
• Delegation with due care
Crowdfunding by individuals

Charitable?  Regulated?
Representations / Omissions

• Going to specified beneficiaries
• Going to a named charity
• Deductibility of contributions
• Amounts going to charity
  • Commercial co-venturer?
• Amounts being retained (expenses/compensation)
  • Professional/commercial fundraiser?
Investment crowdfunding

Types of Capital

- Debt
- Preferred Stock
- Common Equity
  - New Common Stock
  - Retained Earnings
Content issues

• Creation of restricted gifts
• Representations – true and not misleading
• Intellectual property
• Advocacy, lobbying, political communications
• Confidentiality/privacy
• Defamation
• Sources of the content – policies, terms of use
Restricted gifts

Are the contributions received restricted?
Charitable trust

- Under charitable trust principles, if a charity accepts a contribution subject to a restriction, it must use such contributed funds or assets consistent with such restriction.

- A restriction can be created by:
  - The donor
  - The solicitation (language)
  - The represented mission of the charity
Cybersecurity

#1 Issue for Not-For-Profits in 2017 - AICPA

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Cybersecurity - data

- What data about people is collected?
- What is done with such data?
- Where is such data stored?
- Who has access to such data?
- Who is responsible for such data?

get rid of data you don’t need!
Cybersecurity - operations

- Reputational damage
- Operational disruption
  - Disgruntled employee, volunteer, service recipient
  - Vendor (e.g., Kimbia - Give Local America, 2016)
  - Ransomware (e.g., Wanna Cry, 2017)
Virtual/augmented reality
Virtual/augmented reality issues

- Registration
- Misrepresentations
- Intellectual property
  - Virtual world
    - Real world (e.g., geo-tags)
- Virtual crimes (e.g., harassment)
- Waivers/releases
- Taxes (virtual assets)

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Question

Does crowdfunding by nonprofits require a new set of laws?
My final thoughts
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