



# **Social Enterprise Part 1: Forming Appropriate Entities**

**Robyn Miller**  
**Corporate/Tax Counsel, Pro Bono Partnership of Atlanta**

**April 20, 2016**

## **Mission of Pro Bono Partnership of Atlanta:**

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

## Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
  - ✓ Be a 501(c)(3) nonprofit organization.
  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
- *Visit us on the web at [www.pbpatl.org](http://www.pbpatl.org)*
- Host free monthly webinars on legal topics for nonprofits
  - ✓ To view upcoming webinars or workshops, visit the Workshops Page on our website

## Legal Information:

- This workshop presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership of Atlanta.

# What is Social Enterprise?

## *Two Definitions*

- Social enterprises are revenue-generating businesses with a twist. Whether operated by a non-profit organization or by a for-profit company, a social enterprise has two goals: to achieve social, cultural, community economic or environmental outcomes; and, to earn revenue. On the surface, many social enterprises look, feel, and even operate like traditional businesses. But looking more deeply, one discovers the defining characteristics of the social enterprise: mission is at the centre of business, with income generation playing an important supporting role.
- A social enterprise is a revenue-generating business with primarily social objectives whose surpluses are reinvested for that purpose in the business or in the community, rather than being driven by the need to deliver profit to shareholders and owners.

## What is Social Enterprise?

- “The use of market-based strategies to solve social problems”
- Can be non-profit or for-profit
- Can be tax-exempt or not

## Examples of Social Enterprise

➤ The Boot Campaign



➤ Open Hand's Good Measure Meals<sup>TM</sup>



# What Type of Entity Should You Be?

## Social Enterprise Spectrum

### For Profit (C Corp, LLC, etc.)

**Goal:** Make \$\$ for owners  
**Activity:** Sell products or services; Commercial co-venturer  
**Funding:** Owner investors, capital investors, income from sale of goods or services  
**Workers:** Paid employees, independent contractors (as appropriate), paid interns  
**Benefits:** No freebies, discounts, etc.  
**Taxes:** Pay on net income Corporate or Partnership; Employment, sales tax, ad valorem etc.

### B Corp

**Goal:** Corporate purpose/mission and make \$\$ for owners  
**Activity:** Sell products or services; Commercial co-venturer, donor, services that accomplish mission  
**Funding:** Owner investors, capital investors, income from sale of goods or services  
**Workers:** Paid employees, independent contractors (as appropriate), paid interns  
**Benefits:** No freebies, discounts, etc.  
**Taxes:** Pay on net income Corporate or Partnership; Employment, sales tax, ad valorem etc.

### 501(c)(3) Nonprofit Organization

**Goal:** Achieve charitable, educational etc. mission  
**Activity:** Services to accomplish mission  
**Funding:** Donations, grants, sponsors, service income, limited UBTI activities  
**Workers:** Paid employees, independent contractors (as appropriate), paid or unpaid interns & volunteers  
**Benefits:** Donations – cash or in-kind  
**Taxes:** No income taxes unless UBTI, employment, sales tax (if appropriate), 8 ad valorem (sometimes)

## For Profit Business – Social Enterprise

- Different types – can be sole-proprietorship, a partnership “S-Corp”, a standard corporation “C-Corp” or a limited liability company
- Acts like a regular business:
  - ✓ Sell products or services BUT
  - ✓ Also tells public it will give some or all of its net profits toward a social mission or goal.
  - ✓ Eg., Newman’s Own, Tom’s Shoes,
- Capital/Funding: Owner investors, capital investors, income from sale of goods or services
- Also pay taxes on income in accordance with corporate structure.

## Low-Profit Limited Liability Company (L3C)

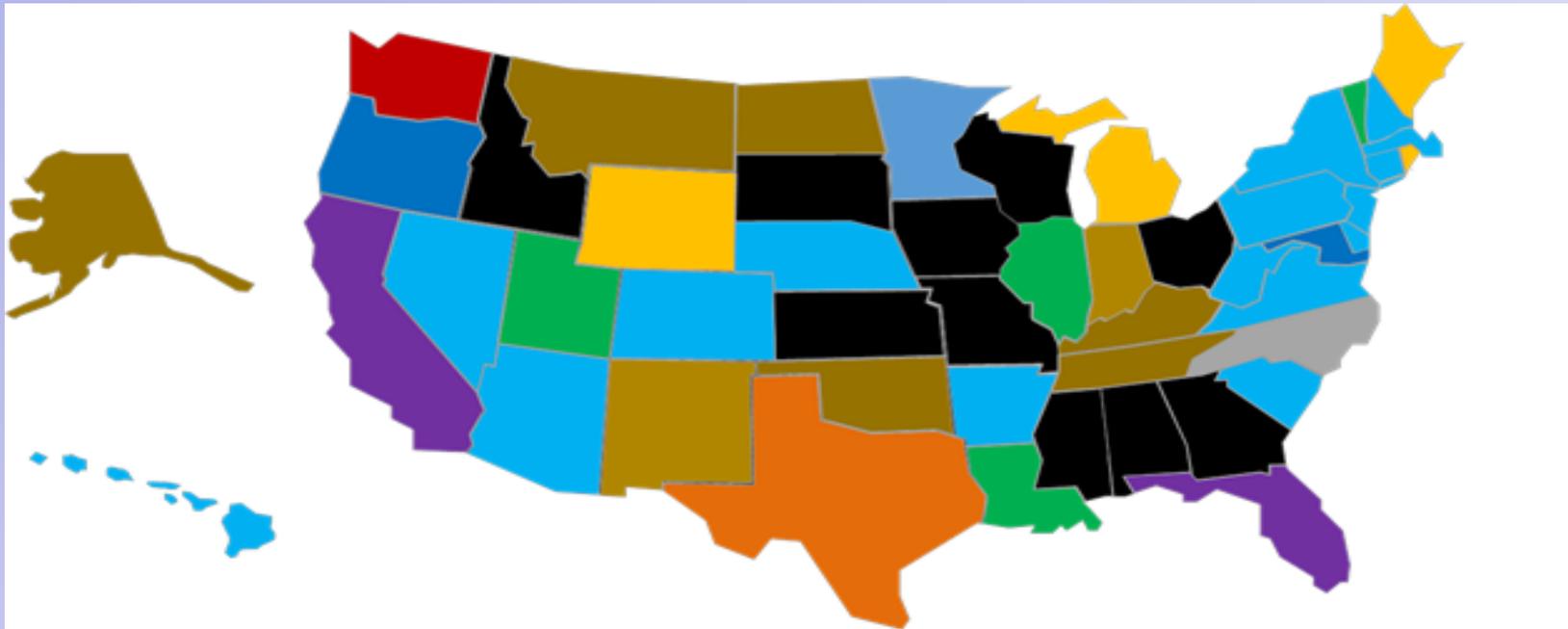
- L3Cs are **for-profit business** entities whose primary purpose is to achieve socially beneficial goals (charitable or educational in nature) with profit being a secondary goal. They are essentially hybrid businesses that combine for-profit and non-profit elements for socially beneficial activities.
- Key Aspects
  - ✓ Is run like a regular for-profit business where profits can be distributed to its owners and/or members
  - ✓ Flexibility in ownership
  - ✓ Limited liability for members
  - ✓ Can classify itself as a “pass-through” entity for federal tax purposes

## Public Benefit Corporations “B Corps”

- *Provides clarity to its directors and officers that their fiduciary duty includes creation of public benefit and consideration of non-financial interests*
- General Requirements:
  - ✓ Have a corporate purpose to create a material positive impact on society and the environment;
  - ✓ Are required to consider the impact of their decisions not only on shareholders but also on workers, community, and the environment; and
  - ✓ Are required to make available to the public an annual benefit report that assesses their overall social and environmental performance against a third party standard.
- 31 States have some form of B Corporation statute
- 5 States have B Corporation legislation pending
- GA does NOT have a B Corp statute; legislation was introduced in 2016 to the Georgia Assembly but never made it out of committee

## Social Purpose Corporations

- *Provides clarity to its directors and officers that their fiduciary duty includes considering **social** or environmental issues in decision making instead of relying only on profit-maximizing goals.*
- Similar to Public Benefit Corporations – similar structure
- 4 States have some form of Social Purpose Corporation statute
- GA does NOT have a Social Purpose Corporation statute;



**Blue = Benefit Corporation Only (& Dark Blue includes Benefit LLC) = 24.**  
**Purple = Benefit & Social Purpose Corporation = 2.**  
**Dark Red = Social Purpose Corporation ("SPC") Only = 1.**  
**Burnt Orange = Quasi-Social Purpose Corporation = 1.**  
**Green = Benefit Corporation and L3C = 4.**  
**Gold = L3C ("Low-Profit Limited Liability Company") Only = 4.**  
**Tan = Recently Introduced Into Legislature = 7**  
**Gray = Enacted and Repealed L3C = 1.**

## §501(c)(3) Nonprofit Corporations

- Organization exists for the benefit of the public
- Directed and managed by directors, operated by officers, and no owners or shareholders to distribute profits to (may have members to vote for directors)
- Organized for the benefit of a broad community and complies with one of the exempt purposes in §501(c)(3) of the IRC
- Activities must be consistent with the stated tax-exempt purpose
- Upon dissolution all assets must be distributed to another §501(c)(3) nonprofit corporation

## §501(c)(3) Nonprofit Corporations (cont.)

### ➤ §501(c)(3)

#### ✓ Test:

- Must be ORGANIZED &
- Must be OPERATED
- “Exclusively”
- For Exempt Purposes

#### ✓ Limitations:

- Not An Action Organization
- No Inurement
- No Substantial Private Benefit

## Considerations for §501(c)(3)s Conducting Social Enterprise Activities

- Social enterprise activities involve the sale of goods or services that may or may not be in furtherance of (c)(3)'s charitable purpose/mission
- Under IRC § 501(c)(3)'s operational test, an organization's activities *must (exclusively)* further its charitable purpose
- Potential legal consequences for (c)(3)'s engaging in business activity include loss of tax-exempt status, taxation

## Summary

- Various different corporate structures for conducting social enterprise activity
- Consider:
  - ✓ Goals and objectives of social enterprise
  - ✓ Funding sources and owners
  - ✓ Messaging want to present
  - ✓ Overall outcomes trying to achieve

## **For More Information:**

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

Phone: 404-407-5088

Fax: 404-853-8806

[Info@pbpatl.org](mailto:Info@pbpatl.org)

[www.pbpatl.org](http://www.pbpatl.org)