



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

USE CAUTION BEFORE SEEKING ATLANTA FESTIVAL AND ALCOHOL PERMITS FOR FOR-PROFIT ENTITIES

Because Atlanta ordinances give nonprofits a significant discount on application fees for outdoor festival and alcohol permits, some for-profit entities have asked nonprofits to apply for such permits on their behalf. However, nonprofits should exercise caution and consider all of the implications of such an application before agreeing to file for a permit on a for-profit's behalf.

What Are The Risks?

Filing a permit application on behalf of another entity raises a number of concerns for a nonprofit organization, including concerns about potential liability related to the event and any accident or injury that might occur. By agreeing to file the permit application, the nonprofit organization is taking responsibility for an event over which the nonprofit organization may have little or no control. Merely by putting its name on the application, the nonprofit risks being held responsible for any safety violations, accidents, injuries, or other unforeseen liabilities that occur at the event. Furthermore, the organization's insurance may be implicated, leading to increased costs. Even if the organization is not held legally responsible, the negative impact on the organization's reputation if something goes wrong may be substantial. Finally, if the nonprofit is paid for the permit application, it may incur tax liability in the form of unrelated business income.¹

¹ Please see the webcast at this link to the PBPA website for additional information about unrelated business income: <http://www.pbpatl.org/resources/unrelated-business-income/>.

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What Should a Nonprofit Consider?

First, in contemplating whether or not to file a permit application for a for-profit organization, consider the reputation of the for-profit entity. The nonprofit should ask a number of questions before committing to such an arrangement, including but not limited to:

- Is affiliation with the event consistent with the nonprofit's mission, values, and the way that it carries out its business?
- Is affiliation with the for-profit entity consistent with the nonprofit's mission, values, and the way that it carries out its business?
- Does the for-profit have experience in organizing events like the one being contemplated?
- Does the for-profit have an excellent and established reputation for safety and security at such events?
- What safeguards is the for-profit putting into place at the event?

Second, consider whether the for-profit entity is both able and willing to take on responsibility for any potential liability that might arise from the event. Does the for-profit have sufficient funds to pay for any potential liabilities that might arise? It is important that the parties enter into a written agreement that provides as much protection as possible for the nonprofit. The agreement should require that the for-profit indemnify or "make whole" the nonprofit for any costs it may incur as a result of any liability, and should require the for-profit to purchase insurance for the event, including coverage for the nonprofit organization as an additional insured. Finally, the nonprofit organization needs to account for the potential tax consequences of accepting payments from the for-profit. As described above, these payments could be subject to unrelated business income tax (UBIT), which the nonprofit would be required to pay.

When approached by for-profits to apply for festival and alcohol permits, nonprofits should not rush into such exchanges but should consider the implications and potential costs of such an arrangement. Nonprofits should always make sure to take appropriate precautions to shield themselves from potential liability, and to ensure that

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they understand all of the potential costs involved. Consult Pro Bono Partnership of Atlanta or another attorney before entering into these arrangements.

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