

# perspectives

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Benesch Friedlander  
Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

## Not-for-Profit Spotlight



### Willow Brook Christian Communities



Willow Brook Christian Communities was founded as a not-for-profit organization in 1972 to provide health

and housing services to older adults. Willow Brook Christian Home, just north of Worthington, OH, was the first Willow Brook community. It offers assisted living, skilled nursing, and rehabilitation services.

Willow Brook Christian Village and Willow Brook at Delaware Run, both located in Delaware, OH, are full-service, continuing care retirement communities with independent homes, apartments and health care centers on campus to meet the current needs of the community and the future needs of residents. The Delaware health care centers provide combinations of assisted living, skilled nursing and rehabilitation, memory care and adult day care.

The hallmarks of life at Willow Brook are the ponds, waterfalls and streams prominently featured on each campus. The trees and space between the houses in the retirement communities set Willow Brook apart from the more urban centers in Columbus just 20 miles to the south. Independent residents enjoy the

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## International Grantmaking by U.S. Charities



Meredith Rosenbeck

Many U.S. charities are on the forefront of international philanthropy, regularly providing grant money, services and other charitable resources throughout the globe. Billions of dollars are spent each year by U.S. charities on international philanthropy, making this area one of special interest to the IRS.

While the IRS has set out detailed rules regarding grants from private foundations to foreign charities, those rules do not apply to similar grants by public charities. However, as with all grants, public charities are responsible for ensuring that the funds are used for charitable purposes.

**Grants to Foreign Organizations.** A public charity may distribute funds to foreign organizations that are not charities and not recognized as tax exempt under U.S. law. However, the U.S. charity must be able to demonstrate discretion and control over the funds. The charity can demonstrate discretion and control by:

- Conducting a pre-grant inquiry to ensure that the grant will be used for charitable purposes;
- Making a written agreement with the recipient organization regarding the use of the funds; and
- Obtaining reports that the funds have in fact been used for exempt purposes.

**Grants to Foreign Individuals.** As with grants to domestic individuals, a public charity may make a grant to a foreign individual, as long as the grant is made for charitable purposes and furthers the exempt organization's charitable mission. For example, a charity can provide scholarships to students in foreign countries or give funds to help foreign students study in the U.S. As with grants to foreign organizations, the U.S. charity should keep accurate records to reflect the charitable use of funds by the individual grantee.

**Grants to Foreign Governments.** U.S. charities can also make grants to support the charitable programs of a foreign government, such as disaster relief programs or the operation of schools or hospitals. Grants for general support of a foreign government are prohibited. Additionally, U.S. charities are strictly prohibited from directly or indirectly participating or intervening in a political campaign. This absolute prohibition also applies to foreign political campaigns. Domestic lobbying restrictions apply similarly to foreign lobbying endeavors of U.S. charities. However, a charity is permitted to make a grant to a foreign government, as long as the grant funds will be used for charitable purposes.

**OFAC SDN List.** Prior to making any grants outside of the U.S., a U.S. charity must consult the OFAC Specially Designated Nationals List ("SDN"). The SDN lists individuals, organizations and governments that are owned or controlled by, or acting on behalf of, targeted groups or countries. The assets of SDNs are blocked and U.S. entities and individuals are generally prohibited from dealing with them.

For more information on international philanthropy, please contact [Meredith Rosenbeck](mailto:mrosenbeck@beneschlaw.com) at [mrosenbeck@beneschlaw.com](mailto:mrosenbeck@beneschlaw.com) or (216) 363-4195.

## Getting Ready to Ask for a Big Gift

For any nonprofit, success means preparing volunteers, board members, and fund raisers alike to ask for big gifts. How much should solicitors talk, and when should they listen? What steps can an organization do to prepare the prospect beforehand? Check out this [podcast](#) hosted by *The Chronicle of Philanthropy* to find out.

### Not-for-Profit Spotlight

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best of central Ohio shopping, golf and cultural activities close-by, and yet easily avoid city driving and congestion in the college town of Delaware. Competitive rates are testimony to Willow Brook's commitment to retired teachers, ministers, nurses, who live alongside attorneys, physicians, and bankers on our winding, hilly roads. All-inclusive pricing in the assisted living centers ensure that meal reminders, help with dressing, bathing or laundry, and 24/7 nurses to administer medicine never affect the daily fee. The monthly bills contain no surprises.

Willow Brook has looked to Benesch, and especially to Martha Sweterlitsch, as a partner in understanding the environment and the challenges facing not-for-profit providers of senior services for the past 25 years.

Please click [here](#) to learn more about Willow Brook Christian Communities.

## U.S. Federal Income Tax Considerations for Foreign Charitable Organizations



Jessica Angney

The long arm of the U.S. tax system can reach foreign charitable organizations. A foreign charitable organization that has activities in, or derives revenue from, the U.S. could potentially be subject to U.S. federal income tax. A foreign charitable organization can avoid the imposition of U.S. federal income tax by obtaining tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, as amended (the "Code"). Section 501(c)(3) of the Code is not geographically limited, so foreign charitable organizations are eligible for tax-exempt status. However, the Internal Revenue Service applies the same tax-exempt standards for both domestic and foreign charitable organizations so a foreign charitable organization may struggle with basic tax-exempt requirements such as the requirement that its governing document include a proper charitable purpose and the permanent dedication of its assets to exempt purposes. Also, foreign charitable organizations determined to be tax exempt under Section 501(c)(3) of the Code are subject to restrictions on private inurement, excessive lobbying, political campaign activities and private benefit. Local custom will not supersede such restrictions.

Notwithstanding the strict standards applicable to domestic as well as foreign tax-exempt organizations, tax-exempt status has substantial benefits for a foreign charitable organization. For example, a tax-exempt foreign charitable organization can generally avoid federal income taxation of income effectively connected with the conduct of a trade or business in the U.S. or from periodic income earned from U.S. sources. Also, the foreign tax exempt organization will generally not be subject to tax withholding at the source. However, a foreign tax-exempt organization will be subject to tax with respect to its unrelated business taxable income to the extent such income is from U.S. sources.

Despite the fact that a foreign charitable organization has been determined to be tax-exempt under Section 501(c)(3) of the Code, deductions made directly to the organization will not be deductible for U.S. federal income tax purposes unless an applicable treaty provides otherwise. Section 170(c) of the Code only provides for the deductibility of charitable contributions made to charitable organizations organized within the U.S. Furthermore, an individual's deduction for a contribution to a domestic tax-exempt organization will be denied if the domestic tax-exempt organization is merely a conduit for a foreign organization or the donor earmarks the contribution for a specific foreign organization. A domestic tax-exempt organization must be the true beneficiary of the charitable contribution and must maintain sufficient discretion and control over the funds, even if the funds are subsequently utilized for foreign activities.

To ensure deductibility, a donor may make a charitable contribution to a domestic tax-exempt organization that has established foreign charitable activities. "Friends of" organizations are often used for this purpose. "Friends of" organizations are typically domestic tax-exempt organizations organized for the purpose of supporting certain foreign charitable organizations and often have the name of such foreign charitable organizations in their title. If such a "friends of" domestic tax-exempt organization is properly organized, operated and structured, such organization allows a donor to support a foreign charitable organization through a tax-deductible charitable contribution by the donor to the "friends of" organization. However, the Internal Revenue Service often scrutinizes such "friends of" organizations to ensure that the "friends of" organization operates independently of the foreign charitable organizations that it supports.

The U.S. federal income tax issues applicable to foreign charitable organizations and charitable contribution deductions are complex. If you need assistance on such issues or any other tax matter, please contact **Jessica Angney** at [jangney@beneschlaw.com](mailto:jangney@beneschlaw.com) or (216) 363-4620.

## Events

**October 11, 2011 | 11:30AM-4:30PM**

### The Executive's Guide for Nonprofit Success

**Presented by Howard, Wershbae & Co., Benesch, FirstMerit Bank and Beyond Fundraising**

The challenges for nonprofit organizations are continually shifting. With government budget cuts, fading resources and a declining workforce, nonprofits must work even harder to navigate and survive this new reality.

Please join us for this complimentary educational event that reviews operational strategies and tips for the success of your nonprofit organization.

Topics include:

- Nonprofit Financing Options
- Event Planning – Raising Friends and Funds
- Board Governance in an Electronic age
- State of the nonprofit Sector

This program qualifies for 4.5 credit hours.

Please click [here](#) for more information and to register.

**October 26 & 27, 2011 | Columbus, OH**

### OANO & the Ohio Attorney General's Joint Nonprofit Conference

This conference is **THE** place to network, engage around the latest issues facing the nonprofit sector, find resources to benefit your organization, and learn from first-rate speakers about hot topics.

This year at the conference, OANO will release a *Nonprofit Sector Report*. The report provides concrete evidence of the size, scope and impact of Ohio's vital nonprofit sector as well as Ohio's place within the national nonprofit sector.

Breakout sessions corresponding with the report will include:

- Ohio Nonprofits: A Major Economic Force (A deeper review of the report's numbers)
- So, We're An Economic Force...Now How Do I Get My Legislator and the Media to Pay Attention?
- The Ohio Donor: How Does He/She Compare to Other States & What Do the Numbers Mean for You?

The Ohio Attorney General's Charitable Law section will offer **live demonstrations** of how to register online to conduct your **annual filings** with their office.

Other timely regulatory sessions including:

- Solicitation Challenges and New Technologies
- Bingo, Fundraising & Casinos
- Bankruptcy, Mergers & Entity Changes
- Board Governance, State Registration & The IRS

Please click [here](#) for more information and to register



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