



# Bridging Sectors

*Public-private (Nonprofit – Private) Relationship Considerations for Fiscal Sponsors*

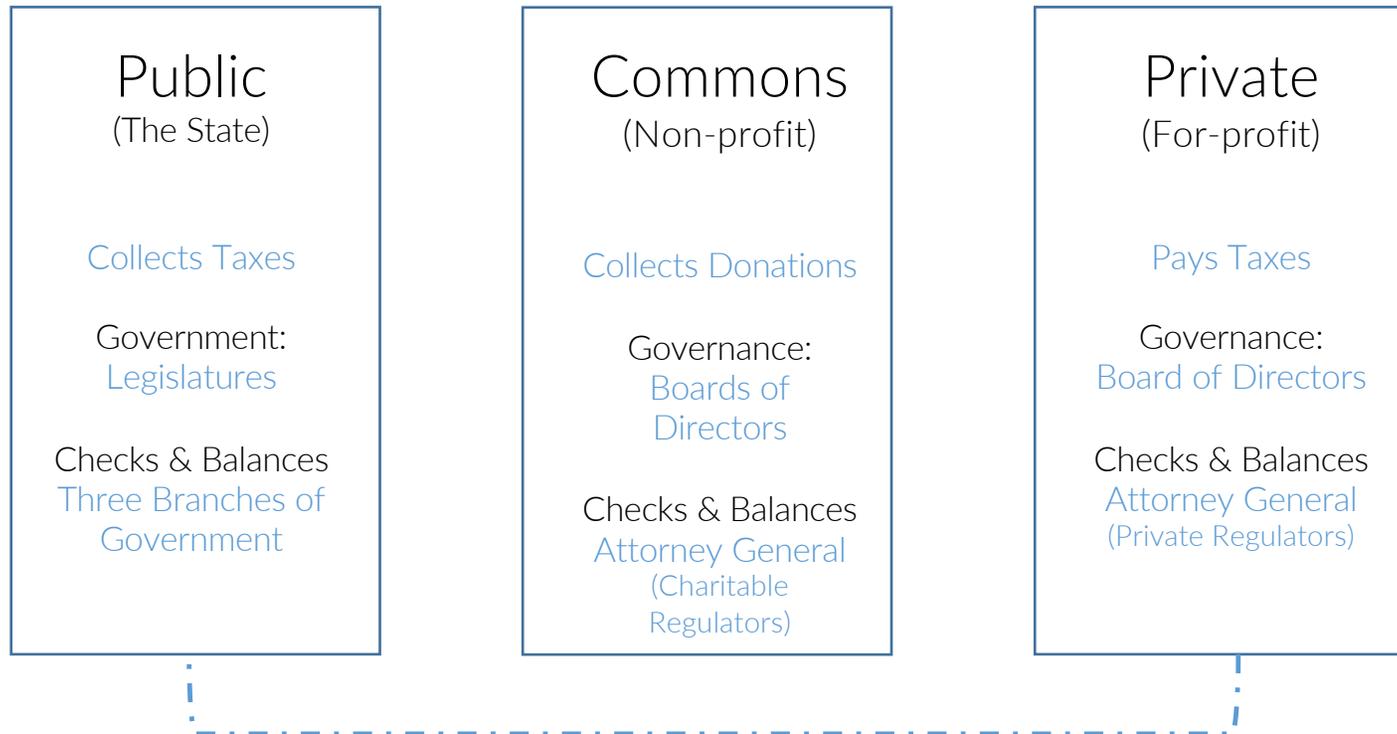
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# What do we mean by “public” and “private”?

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## What do we mean by “public” and “private”?

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*For the purposes of today’s conversation, when we say “public-private” we are referring to financial and legal relationships between federally tax-exempt nonprofits and private individuals or entities.*

- **“Public”** here refers to the part of the economy, and related laws, which define the relationship between an individual and the state and related public entities, including federally tax-exempt organizations, or “nonprofits”.
- **“Private”** here refers to the part of the economy not under direct control by the state or government, and related laws that govern individual and corporate rent- or profit-seeking enterprises.



## Some basic IRS definitions.

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- **Private Inurement:** A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization. *In other words, there can be no private, profit-seeking interest (from either a person or corporation) in a nonprofit organization.*
- **Charitable Class/Purpose:** The exempt purposes set forth in Internal Revenue Code section 501(c)(3) as *charitable* are: *religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals.* The term *charitable* is used in its generally accepted legal sense and includes *relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.*



## Some more basic IRS definitions.

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Excess Benefit Transaction: An excess benefit transaction is a transaction in which an economic benefit is provided by a tax-exempt organization, directly or indirectly, to or for the use of a disqualified person, and the value of the economic benefit provided by the organization exceeds the value of the consideration received by the organization. *In other words, a nonprofit overpays for a service from a person with some manner of control or relationship to the nonprofit.*

### Disqualified Persons:

1. Substantial Contributors
2. Foundation Managers
3. Owner of more than 20% interest of certain organizations that are substantial contributors
4. Family Members of persons described in the above 3
5. Corporations, Partnerships, and Trusts/Estates in which persons described above (in 1-4) hold more than a 35% voting power
6. Private Foundations which are effectively controlled by the person or persons in control of the foundation in question
7. Governmental Officials



## Some things we're seeing.

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### CASE TYPE 1

*As for-profit small business and anchor private enterprises for communities struggle with the economic impacts of COVID-19, there are efforts to raise funds and make grants to small businesses or otherwise provide services and support to supplement government relief.*

- A fundraising and regranting effort focused on small to mid-size for-profit performance venues utilized by the arts community.
- A for-profit technology development company approaches a fiscal sponsors in order to raise charitable funds to develop a new rapid-testing technology, but wants to sell licenses to government and retain overall IP ownership.
- A new for-profit venture is developing a new product that intends to have a positive public health impact. And they have a few foundations interested to invest in the research and development of the product.



## Some things we're seeing.

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### CASE TYPE 2

*As some traditionally commercial activities destabilize because of changing markets and operating models, they look to the nonprofit sector, in particular fiscal sponsors as a means of experimenting with program and service models.*

- A for-profit media and film company wants to make documentaries for public education purposes, but also wants to license the content to for-profit broadcasters and distributors.
- A for-profit journalism company wants to do more public-interest reporting and seeks grant funds to augment coverage; funds are applied to internal salaries and expenses of the for-profit media company.
- A for-profit public health consulting entity is starting to explore philanthropic funding as an avenue for expanding service delivery targeting small and grass roots organizations.
- A for-profit farming cooperative is considering to transition certain parts of its operations into a nonprofit operation.



## Some questions we're asking.

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How can you determine...

- if there is a legitimate charitable purpose and beneficiary class?
- that there is no excess benefit relationship being established?

What are the legal considerations and ramifications for making a mistake in structure or legal framing of the charitable class or purpose?

Does COVID-19 present any exceptions or extensions to public-private relationships?

What are the ethical or equity considerations surrounding for-profit concerns receiving philanthropic dollars?





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