Fiscal Sponsorship Agreement: WiLS and the Wisconsin Public Library Consortium

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What is fiscal sponsorship and how does it differ from fiscal agency?

A fiscal sponsor is a nonprofit organization that provides fiduciary oversight, financial management, and other administrative services to help build the capacity of a charitable project. Fiscal sponsorship allows the tax-exempt sponsor to accept funds restricted for the sponsored project on the project's behalf. The sponsor, in turn, accepts the responsibility to ensure the funds are properly spent to achieve the project's goals. - CharityLawyerBlog

Using a fiscal sponsor enables a program or organization that does not itself qualify as tax-exempt to attract funding for its operations that will -- through the fiscal sponsor - be tax-deductible to donors. Therefore fiscal sponsor arrangements benefit organizations or programs that are not tax-exempt by providing a flow-through pathway for revenue that the organization may not otherwise be in a position to receive. - *National Council of Nonprofits*

A fiscal agent, on the other hand, does not have variance power over a project's funds. This arrangement makes sense when a small nonprofit organization that has its own tax-exempt status wishes to contract with another organization to provide back office or administrative support. - CharityLawyer. In short, **fiscal sponsorship is required by the IRS** when lending 501 c(3) status to a project.

What are the responsibilities, elements, and risks of Fiscal Sponsorship?

Because fiscal sponsors lend their tax status to the project, there are a few inherent risks including reputational liability for ensuring project activities are consistent with 501 c(3) requirements, and ensuring the project aligns with the sponsor's mission and values.

The IRS criteria for fiscal sponsorship are as follows (from CharityLawyer):

- Grants/donations are given to a 501 c(3) tax-exempt organization (the sponsor) that acts as the guardian of the funds for a project that does not have a 501 c(3) status.

- The sponsor must use funds received for specific charitable projects that further the sponsor's own tax-exempt purpose.
- The sponsor must retain discretion and control as to the use of the funds.
- The sponsor must maintain records that substantiate the use of funds for appropriate 501 c(3) purposes.
- "Using a fiscal sponsor satisfies IRS requirements as long as the fiscal sponsor maintains the right to decide, at its own discretion, how it will use contributions. Maintaining control over the donated funds is a requirement of a legitimate fiscal sponsor arrangement." (Council of NonProfits)
- IRS has a strict policy against the use of "conduits." If the elements of fiscal sponsorship are not present, then the IRS will treat a donation of funds to a fiscal sponsor earmarked for a sponsored project as a donation from the donor directly to the project. In such cases, the donation will not qualify for a charitable tax donation if the sponsored project does not have its own tax-exempt status." (See CharityLawyer)

What does this mean for the WPLC?

WiLS and the WPLC are for all practical purposes currently operating in a fiscal sponsorship arrangement, and signing a formal agreement will have no impact on the practices or protocols currently in place.

We reached out to Jessica Harrison of Scholz Nonprofit Law Office, a Madison-based law firm specializing in nonprofit law, to have her review the situation and agreement draft. Ms. Harrison confirmed that WiLS and WPLC are in essence already operating in a sponsor/project relationship and she advises we formalize this arrangement through a written agreement.

Per Harrison on January 13, 2022:

Property ownership: *Because charitable funds are used to purchase the digital collection, that collection needs to be "owned" by a charity (a 501c3). The consortia do not have a legal entity, so they are not able to own property. Under the fiscal sponsorship agreement, WiLS holds the property on behalf of the particular consortium. The fiscal sponsorship agreement states this, and also states that if the consortium chooses to apply for independent 501c3 status, the property would transfer to the independent consortium. Similarly, if the consortium chooses to transfer to a different fiscal sponsor, the property would transfer with the consortium to the new fiscal sponsor.* ***WiLS is holding the consortium's property just like it is holding its finances - on behalf of the consortium.***

Therefore, WiLS proposes the WPLC review and sign the WiLS/WPLC Fiscal Sponsorship Agreement (see packet). Ms. Harrison confirmed that this agreement was originally drafted by the Scholz Law Office, and she recommends this template. This agreement should be signed annually as a stand-alone document from the project management MOU.

In terms of the MOU, WiLS suggests we update this section in Core Services:

4. Fiscal Sponsor (changes in blue)
    a. Gather and manage data to calculate WPLC system member fees, including digital content buying pool.
    b. Invoice WPLC partners for their share of WPLC revenue budget, including digital content buying pool shares.
    c. Manage grant applications and grant awards.
    d. Pay all invoices related to WPLC.
    e. Create monthly budget update summaries.
    f. Receive and recognize all project donations as charitable gifts to the WPLC.
    g. Act in the best fiscal interest of the WPLC as a fiscal sponsor as outlined in the WPLC FISCAL SPONSOR AND PROJECT MANAGEMENT AGREEMENT (attachment A)