slow money maine

A Brief Outline of a Solution Crafted by Slow Money Maine–

How Individuals and Families Can Work
Through Economic Development Corporations and Similar Not-For-Profits
To Provide Financial Assistance to Farmers and Agriculture Businesses
Promoting Sustainable Local Food Systems[1]

Slow Money Maine has been working with many individuals and families who are seeking to provide financial assistance, which would be U.S. federal tax deductible, to farmers and agriculture businesses to promote sustainable local food systems. This financial assistance is being provided through a 2-step process:

Step 1— the individual or family makes a donation to an economic development corporation, community development agency or other entity with status as a "charitable organization" under IRC 501(c)(3), perhaps informally recommending how the donation might be directed; and

Step 2— the intermediary organization provides financial assistance to farmers and/or agriculture businesses, through loans, grants, etc., that expressly further particular charitable purposes.

<u>Step 1—</u>
<u>Funds Move from an Individual or Family</u>
<u>to an Intermediary Charitable Organization, Such as an Economic Development Corporation</u>

The legal and tax compliance requirements involved in Step 1 are fairly simple. A donation to a an entity with status as a "charitable organization" under IRC 501(c)(3), which includes most economic development corporations (such as the Somerset Economic Development Corporation, which has adopted an "Agricultural Development Program" to pursue these kinds of efforts) as

[1] This draft was prepared for Slow Money Maine in February 2011 by Joseph L. Faber, Faber Daeufer & Rosenberg PC. It is intended for general informational purposes only, and receipt of this draft does not establish an attorney-client relationship with Mr. Faber or his firm. Each recipient should consult his, her or its own tax and/or legal advisors, who are familiar with the recipient's unique circumstances and specific proposed activities, before engaging in these kinds of activities. To ensure compliance with requirements imposed by the Internal Revenue Service (IRS), we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding penalties under the Internal Revenue Code (IRC).

well as a wide variety of other agencies and organizations focused on economic and community development (such as the Washington-Hancock Community Agency) – all of which this outline refers to collectively as "EDCs" – should be U.S. federal tax deductible for individuals (and families), subject to general limitations such as alternative minimum tax (AMT).[2]

Many individuals and families have established accounts with donor advised funds, which can provide useful administrative services and convenience (often at lower cost and with less regulatory limitation than private foundations). Adding a donor advised fund (or even a private foundation) as an additional intermediary between the individual and the EDC should not cause any complication – although the donor advised fund may require some basic diligence to confirm the status of the EDC under IRC 501(c)(3), the donation by the donor advised fund to the EDC should follow the recommendation of the individual, without adverse consequence to the individual or the donor advised fund.

It is important to note that, upon the donation to the EDC, the EDC gains legal control of the funds, and will have no legal obligation to apply the funds in any specific way. However, as a practical matter, the individual or family donor can discuss with the EDC how the funds should be used. Some individual and family donors working through Slow Money Maine have provided the EDC with written statements of intent to help influence the EDC's subsequent grant or loan-making. For example, an individual or family donor generally interested in the Slow Money principles might provide:

> *"This gift is intended to further_______________ [name of EDC]'s support of businesses in the agricultural sector that provide essential infrastructure for a viable economy and sustainable food system in Maine."*

An individual or family donor more specifically interested in particular projects or businesses that further Slow Money principles might provide:

> *"This gift is intended to further_______________ [name of EDC]'s support of _______________ [name of particular project or business] to enhance community development, local viable economies, and sustainable food systems in Maine."*

Indeed, such a statement could go further and identify specific goals for use of the funds by the particular project or business. For example:

> *"This gift is intended to further_______________ [name of EDC]'s support of _______________ [name of particular project or business] to enhance community development, local viable economies, and sustainable food systems in Maine, [through*

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[2] Some economic development corporations, business leagues, trade associations, chambers of commerce, boards of trade, councils of government may have qualified for tax-exempt status under IRC 501(c)(4) (as a social welfare organization), IRC 501(c)(6) (as a business league), or other provisions of the tax code. While donations to these organizations may be tax deductible if the organizations have tax-exempt status under IRC 501(c)(4) and if the donations are then used for certain qualifying purposes, the analysis of how individuals and families can work through these kinds of organizations to provide financial assistance to farmers and agriculture businesses to promote sustainable local food systems is beyond the scope of this document.

> *the purchase of additional milling equipment for use by local area farmers for whom it would not otherwise be commercially viable to mill their farm yield and sell product in the local community][through the planting of diverse crops through organic methods, which would not otherwise be commercially viable without such support]."*

Again, these statements of intent will not be legally binding on the EDC or the ultimate recipient of the funds, but (as with donor advised funds) should have substantial practical impact on the use of the funds.

Step 2— Funds Move from an Intermediary Charitable Organization (such as an EDC) To a Farmer or Agriculture Business Promoting Sustainable Local Food Systems

Most EDCs in Maine (again, which as used in this document includes most economic development corporations as well as a wide variety of other agencies and organizations focused on economic and community development that have status as a "charitable organization" under IRC 501(c)(3)) should be able to work with Slow Money Maine to provide needed financial assistance, through loans, grants, etc., that promote sustainable local food systems – however, it is important for each EDC to make sure that:

(1) the EDC has the legal authority to provide this kind of financial assistance; and

(2) providing this kind of financial assistance does not jeopardize the EDC's status as a charitable organization.

Does the EDC have the legal authority to provide this kind of financial assistance?

Short Answer: Confirm that the EDC's Articles of Incorporation already include a statement of purpose that is sufficiently broad to cover the provision of this kind of financial assistance, or take steps to amend them.

Upon its organization in the State of Maine, each EDC has filed "Articles of Incorporation," which includes a statement of the purpose. This statement of purpose defines the extent, and limits, on an EDC's authority. Often, the statement of purpose is drafted broadly, and it will be easy to confirm that the EDC can provide this kind of financial assistance. If there is uncertainty, the Articles of Incorporation can be amended to sufficiently broaden the statement of purpose (although this will require attention to various legal processes).

Will providing this kind of financial assistance jeopardize the EDC's status as a charitable organization?

Short Answer – Part 1: Confirm that the description of activities in the EDC's Form 1023 is sufficiently broad to cover the provision of this kind of financial assistance, or take steps to supplement.

When an EDC initially seeks tax-exempt status under IRC 501(c)(3), it files an "Application for Recognition of Exemption" on IRS Form 1023, which includes both general and specific descriptions of planned activities. Often, these descriptions are drafted broadly, and it will be easy to confirm that the IRS recognized the exemption with an understanding that this kind of financial assistance might be provided. If there is uncertainty, the application can be supplemented, perhaps as easily as through additional description in the EDC's annual Form 990 filing.[3]

Short Answer – Part 2: Ensure that each loan, grant or other provision of financial assistance is made only for a recognized charitable purpose, and reflect these requirements in loan or grant documents. (Said differently, avoid creating a financial assistance program, or making individual loans or grants, that could be used generally by large profitable agriculture businesses or other recipients who do not advance a recognized charitable purpose.)

EDCs with tax-exempt status under IRC 501(c)(3) must operate exclusively for charitable purposes. IRS regulations identify many qualifying purposes, including the relief of the poor and distressed, lessening the burdens of government, and the promotion of social welfare – however, the specific facts and circumstances of each activity of the EDC (including this kind of financial assistance) must be analyzed closely to confirm that the activity falls within one or more of these purposes. As a general matter, this kind of financial assistance should qualify if it is primarily organized and documented to:

- aid an economically depressed or blighted area;
- benefit a disadvantaged group, such as minorities, the unemployed or underemployed; and
- aid businesses that have actually experienced difficulty in obtaining conventional financing (a) because of the deteriorated nature of the area in which they were or would be located or (b) because of their minority composition, or to aid businesses that would locate or remain in the economically depressed or blighted area and provide jobs and training to the unemployed or underemployed from such area only if the EDC's assistance was available.

More specifically, loans and grants from EDCs to farmers and agriculture businesses, facilitated by Slow Money Maine, should be based on application requirements, and perhaps even covenants in loan documents or fiscal sponsorship grant forms, that expressly target the use of financial assistance proceeds to preserve farmland for farming purposes (and/or by farmers who would locate or remain in an economically depressed or blighted area only as a result of the EDC's financial assistance), and that expressly target the use of such financial assistance by businesses that provide jobs to (or preserve jobs for) unemployed or underemployed area residents only as a result of the EDC's financial assistance. There should be documented support for the difficulty actually experienced by the potential borrowers in obtaining conventional financing. And, ideally, there would be additional requirements supporting the charitable purposes of the loan or grant around selling the farming yield locally in economically depressed or blighted areas, setting aside a portion of the farming yield for food banks or similar assistance

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[3] As previously mentioned, EDCs may seek tax-exempt status under IRC 501(c)(4) (as a social welfare organization) or IRS 501(c)(6) (as a business league). In those situations, the EDC files a similar document (Form 1024), and a similar analysis applies. But donations from individuals and families to these organizations may not be tax deductible.

programs, using exclusively ecologically-sensitive farming techniques, growing diverse crops, pursuing goals of the Maine Department of Agriculture (perhaps in conjunction with department officials), and/or achieving other goals of Slow Money Maine and the EDC.[4]

Where are there additional resources?

Most EDCs in Maine (again, which as used in this document includes most economic development corporations as well as a wide variety of other agencies and organizations focused on economic and community development that have status as a "charitable organization" under IRC 501(c)(3)) should be able to work with Slow Money Maine to provide needed financial assistance, through loans, grants, etc., that promote sustainable local food systems… with some reasonable attention to each EDC's organizing documents, and with some reasonable attention to the design and documentation of the financial assistance.

(It may also be desirable to take steps to ensure that any income from loans made through this kind of program is not subject to income tax; however, as a practical matter, this concern is likely to have secondary importance. But, even in more complicated circumstances, there are likely to be available various techniques to manage this concern, including creation of for-profit subsidiaries, affiliated 501(c)(4) or 501(c)(6) entities, etc.)

Joe Faber's law firm exclusively focuses on providing corporate and transactional counsel to clients in the life sciences. They are very active in philanthropy and social action, and have significant experience working on a *pro bono* basis with not-for-profit organizations that are actively involved in R&D activities in drug development, and with biotech companies that engage in R&D collaborations funded by not-for-profit organizations. See http://www.fdrpc.com/.

There is a more technical analysis on the IRS website of the applicable IRS regulations governing these types of loans by EDCs at http://www.irs.gov/pub/irs-tege/eotopicg92.pdf. The lead author of this article, Bob Louthian, is currently in private practice at McDermott Will & Emery in Washington, DC, and his firm has consulted regularly with Joe Faber's firm on past matters. There are other IRS publications that are supportive, including two articles focusing on environmental preservation as a recognized charitable purpose (see http://www.irs.gov/pub/irs-tege/eotopicb79.pdf and http://www.irs.gov/pub/irs-tege/eotopicb94.pdf).

[4] As previously mentioned, EDCs may seek tax-exempt status under IRC 501(c)(4) (as a social welfare organization) or IRS 501(c)(6) (as a business league). In those situations, it is still important to check the EDC's Articles of Incorporation and Form 1024. It may be important also to adhere to the guidance in this section about requirements for individual loans and grants, although if the financial assistance program is a modest part of the EDC's overall activities, these requirements may be less important from a tax compliance perspective (so long as the EDC's primary activities continue to follow its organizing purpose). Again, it is important to remember that donations from individuals and families to these organizations may not be tax deductible.