

UNDERSTANDING
NONPROFIT
AND
TAX EXEMPT
ORGANIZATIONS
Second Edition

UNDERSTANDING NONPROFIT AND TAX EXEMPT ORGANIZATIONS

Second Edition

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To the memory of Nicholas P. Cafardi, Sr.
& Antoinette R. Cafardi

-NPC

To my parents, Jack and Ann Fabean.

-JFC

PREFACE

Understanding Nonprofit and Tax Exempt Organizations (Second Edition) is a guide for the law student or practitioner who is looking to understand the law governing the nonprofit, tax exempt sector. This text deals with the many types of tax exempt organizations; the rules, regulations and limitations imposed on tax exempt organizations by the courts, the Internal Revenue Code (IRS) and the Treasury Regulations (the Regulations); the charitable contribution and fundraising issues affecting tax exempt organizations; the unrelated business income tax, excise taxes and intermediate sanctions imposed on tax exempt organizations; and the rules regarding private foundations. In particular, this second edition reflects recent changes in the law made by the Pension Protection Act of 2006 and the Patient Protection and Affordable Care Act of 2010.

The text begins with an introduction to nonprofit organizations by discussing the relevant law in general, as nonprofits are governed by state law. Next, tax exempt organizations are discussed, by first giving the reader the background on where such organizations fit in the nonprofit sector; why the organizations are given preferential tax treatment; what form these organizations take; and how such organizations are governed and dissolved.

An analysis of tax exempt organizations would not be complete without detailed information on the various rules, regulations and tests they must follow in order to obtain or retain their tax exempt status. This text provides detailed explanations of these, as well as the consequences for failure to comply.

The tax exempt sector is populated with numerous types of organizations. This text explains the major types of tax exempt organizations. Highlighted are the primary categories of IRC Section 501(c)(3) organizations: religious organizations, educational organizations, healthcare organizations and arts organizations. Also treated are all the other types of Section 501(c)(3) organizations: charitable, scientific, public safety testing, literary, organizations that foster amateur sports and organizations for the prevention of cruelty to children and animals. After explaining Section 501(c)(3) organizations in a comprehensive manner, the text turns to the other areas of major tax exempt activity: Section 501(c)(4) social welfare organizations, Section 501(c)(5) labor organizations, Section 501(c)(6) trade associations, Section 501(c)(7) social clubs and Section 501(c)(8) fraternal benefit organizations. There is also a chapter on Section 527 political organizations.

Finally the text ends with explanations of charitable solicitation, fundraising, the unrelated business income tax, and private foundations. The final chapter is a guide to the IRS procedures for obtaining and maintaining tax exempt status. We believe that all of these topics together provide a reasonably complete overview of the nonprofit, tax exempt sector.

Cases, the IRC, and the Regulations are used to discuss and explain the issues relevant to tax exempt organizations. When the IRC and the Regulations are cited, very often the language used is a paraphrase or a direct quote; however, for the ease of reading, quotations have been omitted. Also unless stated otherwise, the statutory and regulatory cites are from the current (as of the date of publication) version of these documents.

While it is important to remember that Revenue Rulings, Revenue Procedures, General

PREFACE

Counsel Memoranda, Technical Advice Memoranda and Private Letter Rulings may not be used as legal precedent, they are useful to illustrate the IRS's position and have been used as such in this text.

The authors would like to thank the law school students and practitioners who have chosen this book in their study of nonprofit and tax exempt organizations. It is an exciting and growing area of the law that has a tremendous impact on our society. The expanding interest in this field of study in law schools is manifested by the fine casebooks that have been published on this subject in recent years: our own *Tax Exempt Organizations*, published by Lexis/Nexis; *The Tax Law of Charities and Other Tax Exempt Organizations* by Professors Jones, Willis, Brennen and Moran, published by Thompson West; *Non Profit Organizations Law and Policy* by Professors Phelan and Desiderio, also published by Thompson West; and *Taxation of Nonprofit Organizations* by Professors Fishman and Schwarz, published by Foundation Press.

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Thank you to all of our students in our "tax exempt organizations", "nonprofit organizations", and "nonprofit organizations clinic" classes, for their continuing input on the subject matter. Your enthusiasm has kept us going all these years.

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