

# **The Tax Law of Charities and Other Exempt Organizations**



# The Tax Law of Charities and Other Exempt Organizations

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FOURTH EDITION

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# Preface

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The first edition of this, our scholastic labor of love published nearly two decades ago, owed its genesis to the work of our senior co-author, Steven Willis, who taught two of us the law of exempt organizations as University of Florida LLM students. As students we were exposed—in some cases “subjected”—to different typeface and mimeograph quality because, there being no published text on the subject, Professor Willis constantly gathered, collated, and distributed material as events warranted. Of course, this was all well before the IT revolution. The successive editions have been immeasurably improved, not only by the wonders of IT, but by our second senior colleague, Beverly Moran, who recently retired from Vanderbilt University but graciously continues with our quest to bring tax exempt organizations law more into the mainstream of both JD and LLM curricula.

The changes to the Independent Sector have been many and significant since our first edition. In those days, economic issues such as exempt hospital joint ventures and intermediate sanctions on private inurement (now more often referred to as “excess benefit transactions”) comprised the fuel driving the evolution of exempt organization tax law. These days, socio-political issues, e.g., exempt organizations’ increasing involvement in politics and social wars, issues relating to so called “dark money,” the emergence of social justice groups such as Black Lives Matter (exempt under 501(c)(3)) and reactionary groups such as the Alt-Right (also exempt under 501(c)(3)), seem to command more attention. The Supreme Court’s decision in *Citizens United* no doubt had something to do with the trend. Regardless, the world of exempt organizations continues to evolve and grow as demonstrated by a 2019 Report by the National Center for Charitable Statistics reporting that:

- Approximately 1.54 million nonprofits were registered with the Internal Revenue Service (IRS) in 2016, an increase of 4.5 percent from 2006.
- The nonprofit sector contributed an estimated \$1,047.2 trillion to the US economy in 2016, composing 5.6 percent of the country’s gross domestic product (GDP).
- Of the nonprofit organizations registered with the IRS, 501(c)(3) public charities accounted for just over three-quarters of revenue and expenses for the nonprofit sector as a whole (\$2.04 trillion and \$1.94 trillion, respectively) and just under two-thirds of the nonprofit sector’s total assets (\$3.79 trillion).

- In 2018, total private giving from individuals, foundations, and businesses totaled \$427.71 billion (Giving USA Foundation 2019), a decrease of 1.7 percent from 2017 (after adjusting for inflation). According to Giving USA (2018) total charitable giving rose for consecutive years from 2014 to 2017, making 2017 the largest single year for private charitable giving, even after adjusting for inflation.
- An estimated 25.1 percent of US adults volunteered in 2017, contributing an estimated 8.8 billion hours. This is a 1.6 percent increase from 2016. The value of these hours is approximately \$195.0 billion.

Attorneys of all stripes are usually active members of at least one charitable, civic or religious organization and are almost invariably asked to “lend” their expertise to an issue regarding their organization’s legal status. And yet, because of its specialized nature, most of those attorneys have little exposure to the field. There is much more to exempt organization tax law than just completing the Form 1023. It seems to us also that legal scholarly attention paid to the Independent Sector ebbs and flows. Tax Analyst’s Exempt Organization Tax Review, for example, was once required weekly, if not monthly, reading. Now it is no longer published. On the other hand, there are still online blogs, such as the Nonprofit Tax Professor Blog, exclusively devoted to the law of tax exemption. There are still centers and think tanks devoted to the study of exempt organizations, such as NYU’s National Center on Philanthropy and the Law and Iowa’s Larned A. Waterman Iowa Nonprofit Resource Center to name only two.

This fourth edition continues with our initial goal of providing sufficient coverage to allow for broad, deep, or broad *and* deep coverage. The goal, as always, is to provide a resource for the acquisition of fundamental knowledge regarding our topic. Knowledgeable observers know that the tax law of exempt organizations has become increasingly regulated. For example, provisions in the Affordable Care Act (which seems to have survived fierce efforts at repeal) demand greater accountability (particularly regarding “community benefit”) from exempt health care. The extent to which exempt organizations may engage in political activities, although always controversial, has become even more of an issue since the last edition. In this regard, we have sought to consolidate political activities into one chapter, rather than examine the issue as it relates to the different types of exempt organizations covered in different chapters. The book continues to provide coverage of as many of the exempt organizations as there are statutory authorizations. Professors may therefore select which areas are most important according to their own pedagogical beliefs and even geographical regions. Labor organizations, for example, may not be as important to law students in southern states where organized labor has less influence than in midwestern and northeastern regions. While we have consolidated some of the materials regarding private foundations, there is still enough (and probably more) for coverage of the important subject in a survey course, or for

use of the book in a seminar (for example) solely on private foundations. We hope, too, that the fourth edition remains in students' personal libraries well after graduation, as it is useful to those attorneys unversed in the area but who, we believe, will inevitably be called upon to lend efforts to their own charitable, civic, or religious organizations.

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