### Contents

About the Authors xxiii  
Preface xxv  
About the Online Resources xxxi  
Book Citations xxxiii  

**PART ONE: INTRODUCTION TO THE LAW OF TAX-EXEMPT ORGANIZATIONS**

1 **Definition of and Rationales for Tax-Exempt Organizations**  3  
   § 1.1 Definition of *Nonprofit Organization* 3  
      (a) *Nonprofit Organization* Defined 4  
      (b) Nonprofit Sector 5  
   § 1.2 Definition of *Tax-Exempt Organization* 7  
   § 1.3 Tax-Exempt Organizations Law Philosophy 9  
   § 1.4 Political Philosophy Rationale 11  
   § 1.5 Inherent Tax Rationale 17  
   § 1.6 Other Rationales and Reasons for Exempt Organizations 18  
   § 1.7 Freedom of Association Doctrine 19  

2 **Overview of Nonprofit Sector and Tax-Exempt Organizations** 21  
   § 2.1 Profile of Nonprofit Sector 22  
   § 2.2 Organization of IRS 26  
      (a) IRS in General 26  
      (b) Tax Exempt and Government Entities Division 27  
   § 2.3 EO Division’s Reports and Work Plans 29  

**PART TWO: FUNDAMENTALS OF THE LAW OF TAX-EXEMPT ORGANIZATIONS**

3 **Tax Exemption: Source and Recognition** 33  
   § 3.1 Source of Tax Exemption 33  
   § 3.2 *Recognition* of Tax Exemption 35  
      (a) General Rules 35  
      (b) Concept of *Recognition* 37  
   § 3.3 Recognition of Public Charity, Private Foundation Status 38
CONTENTS

4 Organizational, Operational, and Related Tests and Doctrines 39

§ 4.1 Forms of Tax-Exempt Organizations 40
(a) General Rules 40
(b) Check-the-Box Regulations 42
   (i) Basic Rules 42
   (ii) Exempt Organization Rules 43

§ 4.2 Governing Instruments 44

§ 4.3 Organizational Test 45
(a) Statement of Purposes 46
(b) Dissolution Requirements 48
(c) Mission Statements 50
(d) Board Composition 51
(e) Rules for Limited Liability Companies 51

§ 4.4 Primary Purpose Test 53

§ 4.5 Operational Test 57
(a) Basic Rules 57
(b) Activities Tests 60
(c) Quantification of Activities 61
(d) Action Organizations 62
(e) Aggregate Principle 64

§ 4.6 Exclusively Standard 64

§ 4.7 Commensurate Test 67

§ 4.8 State Action Doctrine 68
(a) Doctrine in General 68
(b) Doctrine as Applied to Social Clubs 70
(c) Doctrine and Other Exempt Organizations 71
(d) Statutory Law 73

§ 4.9 Commerciality Doctrine 73
(a) Summary of Doctrine 73
(b) Assumption Underlying Doctrine 74
(c) Origin of Doctrine 74
(d) Focus on Publishing 75
(e) Other Applications of Doctrine 76
(f) Elements of Commerciality 77
(g) IRS Ruling Policy 78
(h) Contemporary Perspective on Doctrine 80

§ 4.10 Social Enterprise Developments 82
(a) Concept of Social Enterprise 83
(b) Program-Related Investments 84
(c) Low-Profit Limited Liability Companies 84
(d) B Corporations 85
(e) Benefit Corporations 85
(f) Flexible Purpose Corporations 85
CONTENTS

5 Nonprofit Governance 87
§ 5.1 Boards of Directors Basics 87
§ 5.2 Board Composition and Tax Law 87
§ 5.3 Board Duties and Responsibilities 89
§ 5.4 Board Member Liability 89
§ 5.5 Sarbanes-Oxley Act 90
§ 5.6 Nonprofit Governance Principles 90
  (a) Governance Philosophy in General 90
  (b) Inventory of Sets of Principles 91
    (i) Legal Compliance and Public Disclosure 92
    (ii) Effective Governance 92
    (iii) Financial Oversight 94
    (iv) Responsible Fundraising 94
§ 5.7 IRS and Governance 96
  (a) Matter of Agency Jurisdiction 96
  (b) IRS Officials’ Speeches 98
  (c) IRS Ruling Policy 100
  (d) IRS Training Materials 103
  (e) IRS Governance Check Sheet 104

PART THREE: TAX-EXEMPT CHARITABLE ORGANIZATIONS

6 Concept of Charitable 109
§ 6.1 Federal Tax Law Definition of Charitable 110
  (a) Popular and Ordinary Definition 110
  (b) Common Law Definition 110
  (c) Federal Tax Law Definition 111
§ 6.2 Public Policy Doctrine 115
  (a) General Principles 115
  (b) Race-Based Discrimination 117
    (i) Supreme Court Pronouncement 117
    (ii) IRS Policy 118
    (iii) Broader Policy Impact 120
  (c) Gender-Based Discrimination 121
  (d) Other Forms of Discrimination 122
  (e) Affirmative Action Principles 122
§ 6.3 Collateral Concepts 125
  (a) Requirement of Charitable Class 125
  (b) Means-to-End/Instrumentality Rule 128
  (c) Charity as Evolutionary Concept 130
  (d) Motive 130
  (e) Private Use 130
CONTENTS

(f) Cy Pres Doctrine 132
(g) Fluid Recovery Principles 132
(h) Charging of Fees 134
(i) Illegal Activities 135
§ 6.4 What Tax Exemption Does Not Create 136

7 Charitable Organizations 139

§ 7.1 Relief of Poor 140
§ 7.2 Relief of Distressed 142
(a) General Principles 142
(b) Disaster Relief Programs 142
§ 7.3 Credit Counseling 145
(a) Initial Evolution of Exemption Law 145
(b) Statutory Criteria for Exemption 146
§ 7.4 Provision of Housing 147
§ 7.5 Down Payment Assistance 149
§ 7.6 Promotion of Health 150
(a) Hospital Law in General 151
(b) Additional Statutory Requirements for Hospitals 153
(i) Hospitals Subject to Requirements 153
(ii) Community Health Needs Assessments 153
(iii) Financial Assistance Policy 154
(iv) Emergency Medical Care Policy 155
(v) Limitation on Charges 155
(vi) Billing and Collection 155
(vii) Mandatory IRS Review of Tax Exemption 155
(viii) Effective Dates 155
(c) Hospital Clinical Departments and Funds 156
(d) Medical Research Organizations 156
(e) Homes for Aged 157
(f) Health Maintenance Organizations 158
(g) Integrated Delivery Systems 159
(h) Peer Review Organizations 160
(i) Fitness Centers 163
(j) Other Health Care Organizations 164
(k) Regional Health Information Organizations 166
(l) Health Insurance Exchanges 167
(m) Accountable Care Organizations 169
(i) ACOs in General 169
(ii) Tax-Exempt Organizations Issues 170
§ 7.7 Lessening Burdens of Government 171
§ 7.8 Advancement of Education 175
§ 7.9 Advancement of Science 179
§ 7.10 Advancement of Religion 179
§ 7.11 Promotion of Social Welfare 181
§ 7.12 Promotion of Arts 184
(b) Constitutional Law and Tax Exemption  244
(c) Internal Revenue Code Provisions  246

§ 10.2 Federal Tax Law Definition of Religion  248
  (a) Religion Defined  248
  (b) Bases for Denial of Tax Exemption  252
  (c) Abuse of Tax Exemption  253

§ 10.3 Churches and Similar Institutions  255
  (a) General Principles  255
  (b) Associational Test  258
  (c) Principle of Respect for Autonomy  261

§ 10.4 Conventions or Associations of Churches  262
§ 10.5 Integrated Auxiliaries of Churches  263
§ 10.6 Mission Societies  265
§ 10.7 Religious Orders  265
§ 10.8 Apostolic Organizations  266
§ 10.9 Communal Groups  268
§ 10.10 Retreat Facilities  269

11 Other Types of Charitable Organizations  271

§ 11.1 Cruelty Prevention Organizations  271
§ 11.2 Amateur Sports Organizations  272
§ 11.3 Public Safety Testing Organizations  273
§ 11.4 Cooperative Hospital Service Organizations  274
§ 11.5 Cooperative Educational Service Organizations  276
§ 11.6 Charitable Risk Pools  277
§ 11.7 Literary Organizations  278
§ 11.8 Donor-Advised Funds  278
  (a) Donor-Advised Fund Basics  278
  (b) Statutory Criteria  279
§ 11.9 Endowment Funds  281
  (a) Definition of Endowment Fund  281
  (b) College and University Endowment Tax  282
  (c) Form 990 Reporting  283

12 Public Charities and Private Foundations  285

§ 12.1 Federal Tax Law Definition of Private Foundation  286
  (a) Private Foundation Defined  286
  (b) Private Operating Foundations  286
  (c) Exempt Operating Foundations  288
  (d) Conduit Foundations  289
  (e) Common Fund Foundations  290
  (f) Other Types of Foundations  290
  (g) Organizational Test  291
CONTENTS

§ 12.2 Disqualified Persons 292
   (a) Substantial Contributors 292
   (b) Foundation Managers 294
   (c) Twenty Percent Owners 294
   (d) Family Members 295
   (e) Corporations 296
   (f) Partnerships 296
   (g) Trusts or Estates 296
   (h) Private Foundations 296
   (i) Governmental Officials 297

§ 12.3 Categories of Public Charities 297
   (a) Institutions 297
   (b) Publicly Supported Charities 298
      (i) Donative Publicly Supported Charities in General 298
      (ii) Facts-and-Circumstances Test 300
      (iii) Community Foundations 301
      (iv) Service Provider Publicly Supported Organizations 302
      (v) Public Colleges and Universities Support Foundations 304
   (c) Supporting Organizations 305
   (d) Public Safety Testing Organizations 310

§ 12.4 Private Foundation Rules 310
   (a) Self-Dealing 310
   (b) Mandatory Distributions 313
   (c) Excess Business Holdings 315
   (d) Jeopardizing Investments 316
   (e) Taxable Expenditures 318
   (f) Other Provisions 321

PART FOUR: OTHER TAX-EXEMPT ORGANIZATIONS

13 Social Welfare Organizations 325

§ 13.1 Concept of Social Welfare 325
   (a) General Rules 325
   (b) Benefits to Members 328

§ 13.2 Requirement of Community 331
   (a) Community and Condominium Associations 331
   (b) Broader Requirement of Community 335

§ 13.3 Conduct of Business 335

§ 13.4 Advocacy Organizations 336
   (a) Legislative Activities 336
   (b) Political Campaign Activities 336
CONTENTS

14 Business Leagues and Similar Organizations 337

§ 14.1 Concept of Business League 337
   (a) General Principles 338
      (i) Tax Law Characteristics 338
      (ii) Members 339
      (iii) Dues 340
   (b) Meaning of Business 340
   (c) Line-of-Business Requirement 341
      (i) Concept of Line of Business 341
      (ii) Supreme Court Pronouncement 341
      (iii) Other Developments 342
   (d) Membership Services 344
   (e) Professional Organizations 346
   (f) Business Leagues in General 348
   (g) Certification Programs 349

§ 14.2 Disqualifying Activities 350
   (a) Line-of-Business Requirement 350
   (b) For-Profit Business Activities 351
      (i) General Rule 351
      (ii) Incidental Business Activity 352
   (c) Performance of Particular Services 352
      (i) Particular Services 352
      (ii) General Rule 353
      (iii) Particular Services outside Membership 358
      (iv) Unrelated Business Activities 358
   (d) Private Inurement 359
   (e) Commerciality 359

§ 14.3 Chambers of Commerce 360
§ 14.4 Boards of Trade 361
§ 14.5 Real Estate Boards 362

15 Social Clubs 363

§ 15.1 Social Clubs in General 363
   (a) Rationale for Tax Exemption 363
   (b) Club Functions 364
   (c) Other Tax Law Matters 366

§ 15.2 Public Use Limitation 367
§ 15.3 Investment Income Limitation 369
§ 15.4 Exceptions to Limitations 371
§ 15.5 Taxation of Social Clubs 372
§ 15.6 Sale of Club Assets 377
CONTENTS

16 Labor, Agricultural, and Horticultural Organizations 379
   § 16.1 Labor Organizations 379
   § 16.2 Agricultural Organizations 384
   § 16.3 Horticultural Organizations 388

17 Political Organizations 389
   § 17.1 Political Organizations in General 390
      (a) Political Organizations Defined 391
      (b) Newsletter Funds 393
   § 17.2 Organizational Test 393
   § 17.3 Operational Test 393
   § 17.4 Public Policy Advocacy Activities 394
   § 17.5 Taxation of Political Organizations 395
   § 17.6 Taxation of Other Exempt Organizations 397
   § 17.7 Avoiding Political Organizations Tax 399
   § 17.8 Independent Political Action Committees 401

18 Employee Benefit Funds 403
   § 18.1 Overview 403
   § 18.2 Special Rules for Welfare Benefit Funds 404
      (a) Nondiscrimination Requirements 404
      (b) Tax-Exempt Status 405
   § 18.3 Voluntary Employees’ Beneficiary Associations 405
   § 18.4 Supplemental Unemployment Benefit Trusts 410
   § 18.5 Black Lung Benefits Trusts 412
   § 18.6 Retirement Plan Trust Funds 414
   § 18.7 Other Benefit Funds 414

19 Other Categories of Tax-Exempt Organizations 417
   § 19.1 Instrumentalities of the United States 418
   § 19.2 Title-Holding Corporations 419
      (a) Single-Parent Organizations 419
      (b) Multiple-Parent Organizations 423
   § 19.3 Local Associations of Employees 424
   § 19.4 Fraternal Organizations 426
      (a) Fraternal Beneficiary Societies 426
      (b) Domestic Fraternal Societies 428
   § 19.5 Benevolent or Mutual Organizations 430
      (a) Local Life Insurance Associations 430
      (b) Mutual Organizations 431
   § 19.6 Cemetery Companies 435
   § 19.7 Credit Unions 438
   § 19.8 Mutual Reserve Funds 439
   § 19.9 Insurance Companies and Associations 440
CONTENTS

§ 19.10 Crop Operations Finance Corporations 441
§ 19.11 Veterans’ Organizations 442
    (a) General Rules 442
    (b) Pre-1880 Organizations 443
§ 19.12 Farmers’ Cooperatives 443
§ 19.13 Shipowners’ Protection and Indemnity Associations 450
§ 19.14 Homeowners’ Associations 450
§ 19.15 High-Risk Individuals’ Health Care Coverage Organizations 453
§ 19.16 Workers’ Compensation Reinsurance Organizations 453
    (a) State-Sponsored Organizations 453
    (b) Certain Insurance Companies 454
§ 19.17 National Railroad Retirement Investment Trust 454
§ 19.18 Qualified Health Insurance Issuers 454
§ 19.19 Qualified Tuition Programs 455
    (a) State-Sponsored Programs 456
    (b) Educational Institution–Sponsored Programs 457
    (c) Other Rules 457
§ 19.20 ABLE Programs 458
§ 19.21 Professional Sports Leagues 460
§ 19.22 Governmental and Quasi-Governmental Entities 460
    (a) Intergovernmental Immunity 460
    (b) Income Exclusion Rule 461
    (c) Integral Parts of States 464
    (d) State Instrumentalities 466
    (e) Related Considerations 466
§ 19.23 Native American Tribes 467
§ 19.24 Other Categories of Tax-Exempt Organizations 468
§ 19.25 Nonexempt Membership Organizations 468

PART FIVE: PRINCIPAL EXEMPT ORGANIZATION LAWS

20 Private Inurement and Private Benefit Doctrines 473

§ 20.1 Concept of Private Inurement 475
§ 20.2 Definition of Net Earnings 476
§ 20.3 Definition of Insider 478
§ 20.4 Compensation Issues 481
    (a) Meaning of Compensation 482
    (b) Determining Reasonableness of Compensation 482
    (c) Percentage-Based Compensation 486
    (d) Multiple Payors 488
    (e) Role of Board 488
    (f) Board Member Compensation 488
    (g) Actuality of Services Rendered 489
    (h) Illegal Payments 489
§ 20.5 Executive Compensation Tax 489

xii
CONTENTS

§ 20.6 Other Forms of Private Inurement 490
   (a) Rental Arrangements 491
   (b) Lending Arrangements 491
   (c) Sales of Assets 492
   (d) Capital Improvements 493
   (e) Equity Distributions 493
   (f) Assumptions of Liability 494
   (g) Employee Benefits 494
   (h) Tax Avoidance Schemes 495
   (i) Services Rendered 496
   (j) Business Referral Operations 499
   (k) Provision of Goods or Refreshments 499
   (l) Retained Interests 499
   (m) Embezzlements 500
   (n) Other Forms of Inurement 500

§ 20.7 Per Se Private Inurement 501

§ 20.8 Incidental Private Inurement 502

§ 20.9 Private Inurement and Social Welfare Organizations 504

§ 20.10 Private Inurement and Business Leagues 505

§ 20.11 Private Inurement and Social Clubs 506

§ 20.12 Private Inurement and Other Categories of Exempt Organizations 508

§ 20.13 Private Benefit Doctrine 509
   (a) General Rules 509
   (b) Incidental Private Benefit 511
   (c) Joint Venture Law 514
   (d) Perspective 518

21 Intermediate Sanctions 521

§ 21.1 Concept of Intermediate Sanctions 521

§ 21.2 Tax-Exempt Organizations Involved 522

§ 21.3 Disqualified Persons 523

§ 21.4 Transactions Involved 525
   (a) General Rules 525
   (b) Revenue-Sharing Arrangements 527
   (c) Automatic Excess Benefit Transactions in General 528
   (d) Automatic Excess Benefit Transactions and Supporting Organizations 529
   (e) Automatic Excess Benefit Transactions and Donor-Advised Funds 529
   (f) Scholarships and Similar Grants 529

§ 21.5 Controlled Entities 531

§ 21.6 Intermediaries 531

§ 21.7 For the Use of Transactions 532

§ 21.8 Initial Contract Exception 535
CONTENTS

§ 21.9 Rebuttable Presumption of Reasonableness 535
   (a) Independent Body 536
   (b) Appropriate Data 536
   (c) Adequate Documentation 537
§ 21.10 Excise Tax Regime 538
§ 21.11 Correction Requirement 539
§ 21.12 Definitions 541
   (a) Participation 541
   (b) Knowing 542
   (c) Reliance on Professional Advice 542
   (d) Willful 543
   (e) Occurrence 543
§ 21.13 Indemnification and Insurance 544
§ 21.14 Return for Payment of Excise Taxes 544
§ 21.15 Statute of Limitations 545
§ 21.16 Interrelationship with Private Inurement Doctrine 545

22 Legislative Activities by Tax-Exempt Organizations 549

§ 22.1 Legislative Activities Law for Exempt Organizations—Introduction 550
§ 22.2 Meaning of Legislation 550
   (a) Substantial Part Test 550
   (b) Expenditure Test 550
   (c) Associations’ Dues Deductibility Test 551
§ 22.3 Lobbying by Charitable Organizations 551
   (a) Legislative History 552
   (b) Concept of Lobbying 552
   (c) Substantial Part Test 552
      (i) Action Organizations 552
      (ii) Allowable Lobbying 553
      (iii) Exceptions 554
      (iv) Reporting Rules 555
   (d) Expenditure Test 556
      (i) Influencing Legislation 556
      (ii) Allocation Rules 558
      (iii) Allowable Lobbying 558
      (iv) Non-Earmarked Grants 560
      (v) Exceptions 561
      (vi) Election of Test 562
      (vii) Evaluating Election 562
      (viii) Affiliated Organizations 563
      (ix) Record-Keeping Requirements 564
      (x) Reporting Rules 564
§ 22.4 Lobbying Expenditures and Tax Sanctions 565
§ 22.5 Legislative Activities of Social Welfare Organizations 565
CONTENTS

§ 22.6 Legislative Activities of Business Leagues 566
   (a) Business Expense Deduction Disallowance Rules 566
   (b) Flow-Through Rules 569
   (c) Proxy Tax Rules 570
§ 22.7 Legislative Activities of Other Tax-Exempt Organizations 571
§ 22.8 Internet Communications 572
§ 22.9 Constitutional Law Framework 573

23 Political Campaign Activities by Tax-Exempt Organizations 577

§ 23.1 Political Campaign Activities by Charitable Organizations—Introduction 578
§ 23.2 Prohibition on Charitable Organizations 578
   (a) Scope of the Proscription 578
   (b) Participation or Intervention 579
      (i) Terminology 580
      (ii) Political Campaign Intervention 580
      (iii) Ascertaining Intervention 580
      (iv) Summary of Law 581
      (v) Candidate Appearances 584
      (vi) Individual Participation 584
   (c) Voter Education Activities 584
   (d) Requirement of Candidate 586
   (e) Requirement of Campaign 587
   (f) Requirement of Public Office 587
   (g) Activist Organizations 588
§ 23.3 Political Campaign Expenditures and Tax Sanctions 590
§ 23.4 Taxation of Political Expenditures 592
§ 23.5 “Religious Liberty” Executive Order 593
§ 23.6 Political Activities of Social Welfare Organizations 594
   (a) Allowable Campaign Activity 594
   (b) Political Campaign Activities 595
   (c) Political Activities 596
§ 23.7 Political Activities by Labor Organizations 596
§ 23.8 Political Activities by Business Leagues 597
§ 23.9 Political Activities by Other Categories of Exempt Organizations 597
§ 23.10 Advocacy Communications 597
§ 23.11 Internet Communications 598

24 Unrelated Business: Basic Rules 601

§ 24.1 Introduction to Unrelated Business Rules 602
§ 24.2 Definition of Trade or Business 605
   (a) General Principles 605
   (b) Requirement of Profit Motive 606
   (c) Competition 608
   (d) Commerciality 608
CONTENTS

(e) Charging of Fees 609
(f) Fragmentation Rule 611
(g) Nonbusiness Activities 612
(h) Real Estate Development Activities 614
(i) Occasional Sales 616
(j) Concept of Investment Plus 616

§ 24.3 Definition of Regularly Carried On 617
(a) General Principles 617
(b) Determining Regularity 618
(c) Preparatory Time 620

§ 24.4 Definition of Substantially Related 620
(a) General Principles 621
(b) Size and Extent Test 623
(c) Same State Rule 624
(d) Dual Use Rule 624
(e) Exploitation Rule 626
(f) Related Business Activities 626
(g) Unrelated Business Activities 629

§ 24.5 Contemporary Applications of Unrelated Business Rules 630
(a) Educational Institutions 630
(b) Health Care Organizations 633
   (i) Various Related Businesses 633
   (ii) Sales of Pharmaceuticals 634
   (iii) Testing Services 635
   (iv) Fitness Centers 636
   (v) Physical Rehabilitation Programs 636
   (vi) Administrative Services 637
   (vii) Other Health Care Activities 638
(c) Museums 639
(d) Social Welfare Organizations 640
(e) Business Leagues 641
   (i) Services to Members 641
   (ii) Insurance Programs 642
   (iii) Associate Member Dues 644
   (iv) Other Association Business Activities 644
(f) Labor and Agricultural Organizations 645
(g) Credit Unions 646
(h) Advertising 647
   (i) Concept of Advertising 647
   (ii) General Rules 647
   (iii) Concept of Related Advertising 650
(i) Fundraising 650
   (i) Fundraising as Unrelated Business 651
   (ii) Affinity Card Programs 652
   (iii) Sales of Mailing Lists 652
   (iv) Application of Exceptions 652
   (v) Tax Planning Consulting 653
CONTENTS

(j) Travel Tour Activities 654
(k) Provision of Services 655
(l) Sales of Merchandise 658
(m) Share-Crop Leasing 658
(n) Retirement Plan Reversions 659
(o) Internet Communications 660
(p) Debt Management Plan Services 662
(q) Other Organizations’ Exempt Functions 662

§ 24.6 Corporate Sponsorships 662
§ 24.7 Partnership Rules 666
§ 24.8 Commercial-Type Insurance 667
§ 24.9 Unrelated Debt-Financed Income 667
  (a) General Principles 667
  (b) Debt-Financed Property 667
  (c) Acquisition Indebtedness 669
  (d) Exempt Function Borrowing 673

25 Unrelated Business: Modifications, Exceptions, Special Rules, and Taxation 675

§ 25.1 Modifications 676
  (a) Passive Income in General 676
  (b) Dividends 676
  (c) Interest 677
  (d) Securities Lending Income 677
  (e) Certain Consideration 677
  (f) Annuities 678
  (g) Royalties 678
  (h) Rent 680
    (i) General Rules 680
    (ii) Passive Rent Test 681
    (iii) Related Rental Activities 681
  (i) Other Investment Income 682
  (j) Capital Gains 682
  (k) Loan Commitment Fees 683
  (l) Research Income 683
  (m) Electric Companies’ Member Income 684
  (n) Foreign Source Income 684
  (o) Brownfield Sites Gain 686
  (p) Religious Order Rule 686

§ 25.2 Exceptions 686
  (a) Volunteer-Conducted Businesses 686
  (b) Convenience Businesses 688
  (c) Sales of Gift Items 689
  (d) Businesses of Employees’ Associations 690
  (e) Entertainment Activities 690
  (f) Trade Shows 691
CONTENTS

(g) Hospital Services 693
(h) Gambling 693
(i) Pole Rentals 694
(j) Low-Cost Articles 694
(k) Mailing Lists 694
(l) Associate Member Dues 695
(m) Small Business Corporations Rules 695

§ 25.3 Special Rules 696
§ 25.4 Fringe Benefit Rules 699
§ 25.5 “Bucketing” Rule 699
§ 25.6 Tax Structure 700
§ 25.7 Deduction Rules 700
(a) General Rules 701
(b) Charitable Deduction 702
(c) Specific Deduction 702
(d) Net Operating Losses 703

PART SIX: ACQUISITION AND MAINTENANCE OF TAX EXEMPTION

26 Exemption Recognition and Notice Processes 707

§ 26.1 Recognition Application Procedure 708
(a) Introduction 708
(b) General Procedures 711
   (i) Required Information 712
   (ii) Other Procedural Elements 714
   (iii) Preparation of Application 716
(c) Completed Application 716
(d) User Fees 717
(e) Penalties for Perjury 718
(f) Interactive Form 1023 718
(g) Streamlined Application 719
   (i) Overview 719
   (ii) Exceptions 719

§ 26.2 Requirements for Charitable Organizations 720
(a) General Rules 720
(b) Exceptions 721
(c) Limited Liability Companies 722

§ 26.3 Nonprivate Foundation Status 722
(a) Notice Requirement 722
(b) Rules for New Publicly Supported Charities 723

§ 26.4 Requirements for Social Welfare Organizations 724
§ 26.5 Requirements for Certain Credit Counseling Organizations 724
§ 26.6 Requirements for Certain Employee Benefit Organizations 724
§ 26.7 Requirements for Certain Prepaid Tuition Plans 725
CONTENTS

§ 26.8  Requirements for Certain Health Insurance Issuers  725
§ 26.9  Requirement for ABLE Programs  725
§ 26.10  Rules for Other Categories of Organizations  726
§ 26.11  Group Exemption Rules  726
§ 26.12  Suspension of Tax Exemption  730
§ 26.13  Notice Requirements for Social Welfare Organizations  731
§ 26.14  Notice Requirements for Political Organizations  732
§ 26.15  Integral Part Doctrine  733
  (a) Affiliated Organizations  734
  (b) Divisions  736
§ 26.16  Forfeiture of Tax Exemption  737
§ 26.17  Constitutional Law Aspects of Process  739

27  Administrative and Litigation Procedures  741
§ 27.1  Administrative Procedures Where Recognition Denied  741
  (a) Requests Receiving Appeals Office Consideration  742
  (b) Matters Not Receiving Appeals Office Consideration  743
§ 27.2  Revocation or Modification of Tax-Exempt Status: Administrative
       Procedures  744
§ 27.3  Retroactive Revocation of Tax-Exempt Status  745
§ 27.4  Statute of Limitations Matters  749
§ 27.5  Revocation of Tax-Exempt Status: Litigation Procedures  750
  (a) General Rules  751
  (b) Declaratory Judgment Rules  754
    (i) General Requirements  755
    (ii) Exhaustion of Administrative Remedies  758
    (iii) Deductibility of Contributions  758
    (iv) Administrative Record  759
  (c) Other Approaches  760
§ 27.6  IRS Examination Procedures and Practices  762
  (a) General IRS Exempt Organizations Audit Procedures and
      Practices  762
    (i) General Procedures  762
    (ii) Types of Examinations  764
  (b) IRS Exempt Organizations Examination Guidelines  765
  (c) Church Audits  765
§ 27.7  Compliance Checks  766
§ 27.8  Fast-Track Case Settlement Program  767
§ 27.9  IRS Disclosure to State Officials  768

28  Operational Requirements  771
§ 28.1  Changes in Operations or Form  772
  (a) Changes in Operations  772
  (b) Changes in Form  773
CONTENTS

§ 28.2 Annual Reporting Rules 775
   (a) Overview of Annual Information Returns 775
      (i) Form 990 776
      (ii) Form 990-EZ 777
      (iii) Form 990-PF 777
      (iv) Filing Dates 777
      (v) Penalties 778
      (vi) Assessments 779
      (vii) Miscellaneous 780
   (b) Exceptions to Reporting Requirements 781
      (i) Churches and Other Religious Organizations 781
      (ii) Small Organizations 781
      (iii) Other Organizations 781
   (c) Limited Liability Companies 783
   (d) Group Returns 783

§ 28.3 Notification Requirement 783

§ 28.4 ABLE Program Reports 785

§ 28.5 Filing Requirements and Tax-Exempt Status 785

§ 28.6 Charitable Organizations Listing Reliance Rules 786
   (a) IRS’s Searchable Databases 786
   (b) Charitable Status Reliance Rules 786
   (c) Safe Harbor Rules as to Public Charity Status 787

§ 28.7 Reporting by Political Organizations 788
   (a) General Rules 789
   (b) Filing Dates 789

§ 28.8 Electronic Filing Rules 790
   (a) Modernized e-File System 790
   (b) Mandatory Electronic Filing 790
   (c) Waivers 791

§ 28.9 Unrelated Business Income Tax Returns 791

§ 28.10 IRS Document Disclosure Rules 792
   (a) Federal Tax Law Disclosure Requirements 793
      (i) General Rules 793
      (ii) Exempt Organizations Documents 794
   (b) Freedom of Information Act 795

§ 28.11 Document Disclosure Obligations of Exempt Organizations 796
   (a) General Rules 797
   (b) Rules as to Inspection 798
   (c) Rules as to Copies 798
   (d) Failure to Comply 799
   (e) Widely Available Exception 799
   (f) Harassment Campaign Exception 800
   (g) Penalties 800
   (h) Political Organizations 800
      (i) Donor Information Disclosure 801

§ 28.12 Information or Services Disclosure 801

§ 28.13 Fundraising Disclosure 802
§ 28.14 Insurance Activities 803
   (a) General Rules 803
   (b) Commercial-Type Insurance Rules 804
   (c) Charitable Split-Dollar Insurance Plans 806
§ 28.15 Feeder Organizations 807
§ 28.16 Tax-Exempt Entity Leasing Rules 809
§ 28.17 Tax-Exempt Organizations and Tax Shelters 810
§ 28.18 Recordkeeping Requirements 810

PART SEVEN: INTERORGANIZATIONAL STRUCTURES AND OPERATIONAL FORMS

29 Tax-Exempt Organizations and Exempt Subsidiaries 815
   § 29.1 Subsidiaries Basics 815
   § 29.2 Charitable Organizations as Subsidiaries 816
      (a) Introduction 816
      (b) Subsidiaries of Domestic Charitable Organizations 817
      (c) Subsidiaries of Foreign Charitable Organizations 818
   § 29.3 Tax-Exempt Subsidiaries of Charitable Organizations 821
   § 29.4 Other Combinations of Tax-Exempt Organizations 822
   § 29.5 Potential of Attribution 823
   § 29.6 Contributions and Other Payments 823
   § 29.7 Revenue from Tax-Exempt Subsidiary 826

30 Tax-Exempt Organizations and For-Profit Subsidiaries 827
   § 30.1 For-Profit Subsidiaries in General 828
      (a) Establishing For-Profit Subsidiary 828
      (b) Choice of Form 829
      (c) Control Element 830
   § 30.2 Potential of Attribution to Parent 830
   § 30.3 Financial Considerations 833
      (a) Capitalization 833
      (b) Compensation 834
      (c) Sharing of Resources 834
   § 30.4 Asset Accumulations 835
   § 30.5 Subsidiaries in Partnerships 835
   § 30.6 Revenue from For-Profit Subsidiary 836
      (a) Income Flows to Parent 836
      (b) Tax Treatment of Income from Subsidiary 837
      (c) Tax Treatment of Revenue Received by Taxable Subsidiary 839
      (d) Special Rule 839
   § 30.7 Liquidations 840
CONTENTS

31 Tax-Exempt Organizations and Joint Ventures 843
  § 31.1 Partnerships and Joint Ventures Basics 843
    (a) Partnerships 843
    (b) Joint Ventures 846
    (c) Law-Imposed Joint Ventures 848
  § 31.2 Public Charities as General Partners 849
  § 31.3 Whole-Entity Joint Ventures 851
    (a) Overview of Law 851
    (b) IRS Guidance 852
  § 31.4 Ancillary Joint Ventures 853
  § 31.5 Low-Income Housing Ventures 854
  § 31.6 Information Reporting 855

32 Tax-Exempt Organizations: Other Operations and Restructuring 857
  § 32.1 Mergers 857
  § 32.2 Reorganizations 859
  § 32.3 Multiple-Member Limited Liability Companies 861
  § 32.4 Single-Member Limited Liability Companies 862
  § 32.5 Choice of Entity Considerations 863
  § 32.6 Conversion from Exempt to Nonexempt Status 864
    (a) State Law 864
    (b) Federal Tax Law 866
  § 32.7 Conversion from Nonexempt to Exempt Status 866
    (a) State Law 866
    (b) Federal Tax Law 867
    (c) Gain or Loss Recognition 869
  § 32.8 Conversion from One Exempt Status to Another 871

Index 873