

TABLE OF CONTENTS

VOLUME 1

PART A • ORGANIZING AND OPERATING NONPROFIT ORGANIZATIONS

- Chapter 1** **SELECTING, FORMING, AND MAINTAINING
THE ORGANIZATION**
Merry H. Balson, Esq.
- Chapter 2** **THE CHARITABLE TRUST**
Michelle M. Rose-Hughes, Esq.
- Chapter 3** **THE LIMITED LIABILITY COMPANY**
J. William Callison, Esq.
Sarah Radunsky, Esq.
- Chapter 4** **ROLES OF DIRECTORS AND OFFICERS**
John R. Valentine, Esq.
- Chapter 5** **DUTIES AND LIABILITIES OF DIRECTORS AND OFFICERS**
Allen Sparkman, Esq.
- Chapter 6** **LIABILITY AND RISK MANAGEMENT FOR
NONPROFIT ORGANIZATIONS**
Peter H. Schwartz, Esq.

PART B • TAX TREATMENT OF NONPROFIT ORGANIZATIONS

- Chapter 7** **TYPES OF TAX-EXEMPT ORGANIZATIONS**
James R. Walker, Esq.
- Chapter 8** **PUBLIC CHARITIES, PRIVATE FOUNDATIONS, AND
PRIVATE FOUNDATION ALTERNATIVES**
Karen E. Leaffer, Esq.

- Chapter 9 PRIVATE INUREMENT, PRIVATE BENEFIT, AND INTERMEDIATE SANCTIONS**
Daniel Lacomis, Esq.
- Chapter 10 LOBBYING AND POLITICAL ACTIVITIES**
Heidi S. Glance, Esq.
Arthur Hundhausen, Esq.
- Chapter 11 FEDERAL TAXATION OF § 527 ORGANIZATIONS**
Cara Lawrence, Esq.
- Chapter 12 REGULATION OF LOBBYING AND POLITICAL CAMPAIGN ACTIVITIES BY NONPROFIT ORGANIZATIONS**
Mark Grueskin, Esq.
- Chapter 13 UNRELATED BUSINESS INCOME TAX AND THE DOCTRINE OF COMMERCIALITY**
James R. Walker, Esq.
- Chapter 14 ADVERSE DETERMINATIONS REGARDING CODE SECTION 501(c)(3) STATUS — ADMINISTRATIVE APPEALS AND JUDICIAL REMEDIES**
Daniel Lacomis, Esq.
- Chapter 15 STATE AND LOCAL TAX TREATMENT**
Norman H. Wright, Esq.

VOLUME 2

PART C • FUNDRAISING BY NONPROFIT ORGANIZATIONS

- Chapter 16 THE CHARITABLE DEDUCTION AND PLANNED GIVING TECHNIQUES**
Peter B. Nagel, Esq.
- Chapter 17 REGULATION OF CHARITABLE FUNDRAISING**
Stephen P. Nash, Esq.
Michi Tsuda, Esq.

Table of Contents

**Chapter 18 THE UNIFORM PRUDENT MANAGEMENT OF
INSTITUTIONAL FUNDS ACT**

Becky Farr Seidel, Esq.

PART D • NONPROFIT ORGANIZATIONS WITH EMPLOYEES

Chapter 19 EMPLOYMENT LAW CONSIDERATIONS

Bronwyn H. Pepple, Esq.

Devin C. Daines, Esq.

Jennifer S. Harpole, Esq.

Chapter 20 EMPLOYEE BENEFITS

Renée W. O'Rourke, Esq.

PART E • MAJOR CORPORATE EVENTS AND TRANSACTIONS

**Chapter 21 MERGER, CONVERSION, SALE OF ASSETS, AND
DISSOLUTION**

John R. Valentine, Esq.

Chapter 22 BOND FINANCING FOR § 501(c)(3) ORGANIZATIONS

Darren C. McHugh, Esq.

John K. McGill, Esq.

**PART F • OTHER LEGAL CONSIDERATIONS FOR
NONPROFIT ORGANIZATION**

Chapter 23 INTELLECTUAL PROPERTY LAW

Natalie Hanlon Leh, Esq.

Nora Q.E. Passamaneck, Esq.

**Chapter 24 SOCIAL ENTERPRISE: OPPORTUNITIES AND
CONSIDERATIONS**

Becky Farr Seidel, Esq.

Karen E. Leaffer, Esq.

**PART G • TAX AND LEGAL ISSUES FOR SPECIAL TYPES
OF NONPROFIT ORGANIZATIONS**

Chapter 25 ACCOMMODATIONS FOR RELIGIOUS ORGANIZATIONS

Stuart J. Lark, Esq.

APPENDICES

Appendix A

Appendix B

Appendix C

SUBJECT INDEX

TABLE OF CONTENTS

VOLUME 1

PART A • ORGANIZING AND OPERATING NONPROFIT ORGANIZATIONS

Chapter 1	SELECTING, FORMING, AND MAINTAINING THE ORGANIZATION
------------------	---

§ 1.1	INTRODUCTION
§ 1.2	SELECTING THE ORGANIZATIONAL FORM
	§ 1.2.1—Options
	§ 1.2.2—Factors to Consider
§ 1.3	THE NONPROFIT CORPORATION
	§ 1.3.1—Definition/Concepts/Powers
	§ 1.3.2—Advantages/Disadvantages of Nonprofit Corporation Form
	§ 1.3.3—Overview of Structure
	§ 1.3.4—Drafting and Filing Articles of Incorporation
	§ 1.3.5—Drafting Bylaws
	§ 1.3.6—Holding the Initial Meeting
	§ 1.3.7—Holding Subsequent Meetings
	§ 1.3.8—Amending Organizational Documents
	§ 1.3.9—Filing the Periodic Report
	§ 1.3.10—Filing Other Documents
	§ 1.3.11—Keeping Records
§ 1.4	THE UNINCORPORATED NONPROFIT ASSOCIATION
	§ 1.4.1—Definition/Concepts/Powers
	§ 1.4.2—Advantages/Disadvantages of Unincorporated Nonprofit Association Form
	§ 1.4.3—Overview of Structure

- § 1.4.4—Drafting Organizational Documents
- § 1.4.5—Filing Organizational and Other Documents
- § 1.4.6—Holding the Initial Meeting
- § 1.4.7—Holding Subsequent Meetings
- § 1.4.8—Amending Organizational Documents
- § 1.4.9—Keeping Records

**§ 1.5 REGISTRATIONS AND FILINGS COMMON TO ALL
FORMS OF NONPROFIT ORGANIZATIONS**

- § 1.5.1—Trademarks and Trade Names
- § 1.5.2—State Registrations and Filings
- § 1.5.3—Other Filings

EXHIBITS

- Exhibit 1A—Checklist of Considerations in Selecting
Organizational Form
- Exhibit 1B—Checklist of Procedures for Incorporation
- Exhibit 1C—Suggested Form of Attachment to Articles of
Incorporation for Nonprofit Corporation
Expected to Apply for Tax-Exempt Status (with
Alternative Clauses)
- Exhibit 1D—IRS Life Cycle of a Public Charity — Sample
Organizing Documents — Draft A — Charter
- Exhibit 1E—Sample Alternative Drop-In Language for
Articles of Incorporation Satisfying IRS
Organizational and Operational Requirements
- Exhibit 1F—Sample Form of Bylaws for Nonprofit
Corporation (with Alternative Provisions)
- Exhibit 1G—Sample Form of Organizational Action Without
a Meeting of Directors
- Exhibit 1H—Trust Registration Statement
- Exhibit 1I—Statement of Authority
- Exhibit 1J—IRS Form SS-4 — Application for Employer
Identification Number
- Exhibit 1K—Colorado Department of Revenue Form CR
0100AP — Colorado Sales Tax Withholding
Account Application

Table of Contents

- Exhibit 1L—Colorado Department of Revenue Form DR 0715 — Application for Sales Tax Exemption for Colorado Organizations
- Exhibit 1M—Colorado Department of Revenue Form DR 0589 — Vendor Special Event License Application for Single or Multiple Events
- Exhibit 1N—Colorado Department of Revenue FYI — Sales 2: Sales Tax Exempt Status for Charitable Organizations: Application Requirements
- Exhibit 1O—Colorado Department of Revenue FYI — Sales 1: How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders
- Exhibit 1P—Colorado Department of Revenue Publication — Sales and Use Tax General Information And Reference Guide
- Exhibit 1Q—Colorado Department of Revenue FYI — Colorado Wage Withholding Tax Requirements

Chapter 2 THE CHARITABLE TRUST

§ 2.1 DEFINITION/CONCEPTS/POWERS

§ 2.2 ADVANTAGES/DISADVANTAGES OF TRUST FORM

§ 2.3 DRAFTING THE TRUST AGREEMENT

§ 2.3.1—In General

§ 2.3.2—Identifying Parties and Naming the Trust

§ 2.3.3—Transfer of Legal Title to Property

§ 2.3.4—Identified Purpose

§ 2.3.5—Power to Add Property

§ 2.3.6—Power to Amend the Trust Agreement

§ 2.3.7—Trustees and Trustee Succession

§ 2.3.8—Incapacity of Individual Trustees

§ 2.3.9—Trustee’s Powers

§ 2.3.10—Trustee Liability

§ 2.3.11—Term of Trust

§ 2.3.12—Miscellaneous Provisions

§ 2.3.13—Execution Procedures

§ 2.4 ADDITIONAL GOVERNING DOCUMENTS

§ 2.5 ADMINISTERING THE TRUST

§ 2.6 KEEPING RECORDS

Chapter 3 THE LIMITED LIABILITY COMPANY

§ 3.1 DEFINITION/CONCEPTS/POWERS

**§ 3.2 ADVANTAGES/DISADVANTAGES OF LIMITED
LIABILITY COMPANY FORM**

§ 3.2.1—General

§ 3.2.2—Limited Liability Companies as Tax-Exempt
Organizations: Three Uses of LLCs for Tax-Exempt
Organizations

§ 3.3 OVERVIEW OF STRUCTURE

§ 3.3.1—Governing Documents

§ 3.3.2—Management

**§ 3.4 DRAFTING AND FILING ARTICLES OF
ORGANIZATION**

§ 3.4.1—Drafting the Articles

§ 3.5 DRAFTING THE OPERATING AGREEMENT

§ 3.5.1—Drafting Guidelines

§ 3.6 HOLDING THE INITIAL MEETING

§ 3.7 HOLDING SUBSEQUENT MEETINGS

§ 3.8 AMENDING ORGANIZATIONAL DOCUMENTS

Table of Contents

§ 3.9 FILINGS

§ 3.9.1—The Annual Report

§ 3.9.2—Other Documents

§ 3.10 KEEPING RECORDS

Chapter 4 ROLES OF DIRECTORS AND OFFICERS

§ 4.1 INTRODUCTION

§ 4.2 ROLES OF DIRECTORS AND OFFICERS

§ 4.2.1—Composition of the Board

§ 4.2.2—Board’s Responsibilities

§ 4.2.3—Board’s Delegation of Responsibilities to Officers,
Committees, and Staff

§ 4.2.4—Board Meetings and Actions

Chapter 5 DUTIES AND LIABILITIES OF DIRECTORS AND OFFICERS

§ 5.1 FIDUCIARY DUTIES OF DIRECTORS AND OFFICERS

§ 5.1.1—Introduction

§ 5.1.2—Duty of Care

§ 5.1.3—Duty of Loyalty

§ 5.2 LIMITATIONS ON LIABILITY OF DIRECTORS AND OFFICERS

§ 5.2.1—Relief from Director and Officer Liability in Case of
Reliance on Certain Information

§ 5.2.2—Statutory Protections for Directors and Officers

§ 5.2.3—Indemnification

**Chapter 6 LIABILITY AND RISK MANAGEMENT FOR
NONPROFIT ORGANIZATIONS**

§ 6.1 INTRODUCTION

**§ 6.2 TYPES OF RISK AND SOURCES OF POTENTIAL
LIABILITY**

§ 6.2.1—Liability of the Corporation

§ 6.2.2—Liability of Directors, Officers, and Members

§ 6.2.3—Liability Associated with Volunteers

**§ 6.3 STRATEGIES FOR REDUCING AND MITIGATING
RISK**

§ 6.3.1—Indemnification of Directors, Officers, and Agents

§ 6.3.2—Insurance

§ 6.3.3—Waivers and Other Contractual Limitations of
Liability

§ 6.3.4—Corporate Policies and Procedures

§ 6.4 ACTIONS AGAINST NONPROFIT CORPORATIONS

EXHIBITS

Exhibit 6A—Sample Indemnification Provision for Nonprofit
Articles of Incorporation

Exhibit 6B—Sample Long-Form Indemnification Provisions
for Nonprofit Bylaws

Exhibit 6C—Sample Short-Form Indemnification Provisions
for Nonprofit Bylaws

PART B • TAX TREATMENT OF NONPROFIT ORGANIZATIONS

Chapter 7 TYPES OF TAX-EXEMPT ORGANIZATIONS

§ 7.1 INTRODUCTION

§ 7.2 SOURCE OF TAX EXEMPTION

§ 7.3 BENEFITS OF TAX EXEMPTION

§ 7.3.1—In General

§ 7.3.2—Federal Tax Benefits

§ 7.3.3—State/Local Tax Benefits

§ 7.3.4—Postal Privileges

§ 7.4 § 501(c)(3) ORGANIZATIONS

§ 7.4.1—In General

§ 7.4.2—§ 501(c)(3) Purposes

§ 7.4.3—Organizational Test

§ 7.4.4—Operational Test

§ 7.4.5—Private Inurement Prohibition

§ 7.4.6—Lobbying/Political Activities Restrictions

§ 7.4.7—Applying for § 501(c)(3) Exemption

§ 7.4.8—Ongoing Compliance

§ 7.5 OTHER § 501(c) ORGANIZATIONS

§ 7.5.1—In General

§ 7.5.2—Civic Leagues, Social Welfare Organizations, and
Local Associations of Employees — § 501(c)(4)

§ 7.5.3—Agricultural, Horticultural, and Labor Organizations
— § 501(c)(5)

§ 7.5.4—Business Leagues and Trade Associations —
§ 501(c)(6)

§ 7.5.5—Social and Recreational Clubs — § 501(c)(7)

§ 7.5.6—Title-Holding Corporations — § 501(c)(2) And
§ 501(c)(25)

- § 7.5.7—Fraternal Beneficiary Societies and Domestic Fraternal Societies — I.R.C. § 501(c)(8) and § 501(c)(10)
- § 7.5.8—Voluntary Employees’ Beneficiary Associations — § 501(c)(9)
- § 7.5.9—Cemetery Companies — § 501(c)(13)
- § 7.5.10—Other § 501(c) Organizations
- § 7.5.11—Applying for Recognition of Exemption
- § 7.5.12—Ongoing Compliance

EXHIBIT

Exhibit 7A—Organization Reference Chart

Chapter 8 PUBLIC CHARITIES, PRIVATE FOUNDATIONS, AND PRIVATE FOUNDATION ALTERNATIVES

- § 8.1 INTRODUCTION**
- § 8.2 CLASSIFICATION AS PRIVATE FOUNDATION OR PUBLIC CHARITY**
 - § 8.2.1—In General
 - § 8.2.2—Institutional Charities
 - § 8.2.3—Publicly Supported Charities
 - § 8.2.4—Supporting Organizations
 - § 8.2.5—Obtaining and Changing Classifications
- § 8.3 REGULATION OF PRIVATE FOUNDATIONS**
 - § 8.3.1—In General
 - § 8.3.2—Excise Tax on Net Investment Income
 - § 8.3.3—Self-Dealing Prohibition
 - § 8.3.4—Annual Payout Requirement
 - § 8.3.5—Prohibited Grants and Expenditures
 - § 8.3.6—Impermissible Business Holdings
 - § 8.3.7—Imprudent or “Jeopardizing” Investments
 - § 8.3.8—Definition of “Disqualified Persons”

Table of Contents

- § 8.3.9—Reporting Requirements
- § 8.3.10—Less Favorable Charitable Deduction
- § 8.3.11—Termination of Private Foundation Status

§ 8.4 REGULATION OF SUPPORTING ORGANIZATIONS

- § 8.4.1—In General
- § 8.4.2—Organizational and Operational Tests
- § 8.4.3—Relationship Test
- § 8.4.4—Disqualified Persons Control Test
- § 8.4.5—Impermissible Business Holdings
- § 8.4.6—Annual Payout Requirement
- § 8.4.7—Expanded Intermediate Sanctions Rules
- § 8.4.8—Grant-Making Disincentives
- § 8.4.9—Reporting and Disclosure Requirements
- § 8.4.10—Other Special Rules and Future Guidance

§ 8.5 REGULATION OF DONOR ADVISED FUNDS

- § 8.5.1—In General
- § 8.5.2—Definition of Donor Advised Fund
- § 8.5.3—Prohibited Grants
- § 8.5.4—Impermissible Business Holdings
- § 8.5.5—Expanded Intermediate Sanctions Rules
- § 8.5.6—Deduction Limits and Reporting, Disclosure, and Recordkeeping Requirements
- § 8.5.7—New and Future Guidance

Chapter 9 PRIVATE INUREMENT, PRIVATE BENEFIT, AND INTERMEDIATE SANCTIONS

§ 9.1 INTRODUCTION

- § 9.1.1—IRS Enforcement Focus
- § 9.1.2—Requirements for Exempt Status
- § 9.1.3—Private Foundations

§ 9.2 PROHIBITION OF PRIVATE INUREMENT

- § 9.2.1—Private Inurement — General
- § 9.2.2—Organizations Subject to Private Inurement Rules
- § 9.2.3—Net Earnings
- § 9.2.4—“Insider” Status
- § 9.2.5—Per Se Private Inurement
- § 9.2.6—Avoiding Private Inurement — Reasonable Payments to Insiders

§ 9.3 PROHIBITION OF PRIVATE BENEFIT

- § 9.3.1—General Rules
- § 9.3.2—Incidental Benefits Tests
- § 9.3.3—Recipients of Private Benefits
- § 9.3.4—Form of Benefit
- § 9.3.5—Special Private Benefit Test: Health Care Organizations

§ 9.4 EXCESS BENEFIT TRANSACTIONS AND INTERMEDIATE SANCTIONS

- § 9.4.1—Background
- § 9.4.2—“Disqualified Persons”
- § 9.4.3—Rebuttable Presumption of Reasonableness
- § 9.4.4—“Automatic” Excess Benefit Transactions
- § 9.4.5—Correction of Excess Benefit Transactions
- § 9.4.6—Imposition of Excise Tax
- § 9.4.7—Intermediate Sanctions and Revocation of Exemption

Chapter 10 LOBBYING AND POLITICAL ACTIVITIES

§ 10.1 INTRODUCTION

§ 10.2 FEDERAL TAX RESTRICTIONS ON LOBBYING

- § 10.2.1—In General
- § 10.2.2—§ 501(c)(3) Organizations
- § 10.2.3—Other Exempt Organizations

**§ 10.3 FEDERAL TAX RESTRICTIONS ON POLITICAL
CAMPAIGN ACTIVITIES**

§ 10.3.1—In General

§ 10.3.2—§ 501(c)(3) Organizations

§ 10.3.3—Other Exempt Organizations

Chapter 11 FEDERAL TAXATION OF § 527 ORGANIZATIONS

§ 11.1 REQUIREMENTS FOR TAX EXEMPTION

§ 11.1.1—Organizational Structure of Political Organizations

§ 11.1.2—The “Operational Test”

§ 11.1.3—Contributions and Expenditures of Political
Organizations

§ 11.1.4—Definition of “Exempt Function”

§ 11.1.5—Segregation Requirement

§ 11.2 TAXATION OF POLITICAL ORGANIZATIONS

§ 11.2.1—Political Organization’s Taxable Gross Income

§ 11.2.2—Deductions

§ 11.3 FEDERAL TAX REPORTING REQUIREMENTS

§ 11.3.1—Notice of Formation: Form 8871, “Political
Organization Notice of Section 527 Status”

§ 11.3.2—Disclosure of Expenditures and Contributions

**§ 11.4 CONSEQUENCES OF NOT OBTAINING EXEMPTION
UNDER § 527**

**§ 11.5 NON-DEDUCTIBILITY OF CONTRIBUTIONS TO
§ 527 ORGANIZATIONS**

**Chapter 12 REGULATION OF LOBBYING AND POLITICAL CAMPAIGN
ACTIVITIES BY NONPROFIT ORGANIZATIONS**

§ 12.1 IN GENERAL

§ 12.2 COLORADO CAMPAIGN FINANCE LAWS

§ 12.2.1—Background

§ 12.2.2—Can Nonprofit Entities Participate in Candidate
Elections?

§ 12.2.3—Capacity of Nonprofit Entities to Participate in
Ballot Measure Elections

§ 12.2.4—Applicable Restrictions in Local Elections

§ 12.2.5—Enforcement and Penalties

§ 12.3 FEDERAL CAMPAIGN FINANCE LAWS

§ 12.4 COLORADO LOBBYING REGISTRATION LAWS

§ 12.4.1—Background

§ 12.4.2—Which Public Officials Can Be Lobbied?

§ 12.4.3—Who Is a “Lobbyist”?

§ 12.4.4—What Disclosure Is Required by a Lobbyist?

§ 12.4.5—Enforcement and Penalties

§ 12.4.6—Regulation of Political Contributions by Lobbyists

§ 12.5 FEDERAL LOBBYING REGISTRATION LAWS

**Chapter 13 UNRELATED BUSINESS INCOME TAX AND THE DOCTRINE
OF COMMERCIALITY**

§ 13.1 INTRODUCTION

§ 13.1.1—2017 Tax Act Changes

Table of Contents

§ 13.2 DEFINITION OF UNRELATED BUSINESS TAXABLE INCOME

- § 13.2.1—In General
- § 13.2.2—“Trade or Business”
- § 13.2.3—“Regularly Carried On”
- § 13.2.4—“Unrelated”

§ 13.3 MODIFICATIONS, EXCEPTIONS, AND EXCLUSIONS

- § 13.3.1—In General
- § 13.3.2—Businesses Relying on Volunteers and Donated Goods or Operated for Convenience of Patrons
- § 13.3.3—Dividends, Interest, and Capital Gains
- § 13.3.4—Royalties
- § 13.3.5—Rents from Real Property
- § 13.3.6—Corporate Sponsorships
- § 13.3.7—Exception for Conventions and Trade Shows
- § 13.3.8—Bingo and Other Games of Chance
- § 13.3.9—Research Income
- § 13.3.10—Other Modifications, Exceptions, and Exclusions

§ 13.4 COMPUTATION OF UNRELATED BUSINESS INCOME TAX — SPECIAL RULES

- § 13.4.1—Computation of Unrelated Business Income Tax
- § 13.4.2—Payments from Controlled Entities
- § 13.4.3—Income from Pass-Through Entities
- § 13.4.4—Special Rules Affecting Income Received By or From Certain Entities

§ 13.5 DEBT-FINANCED PROPERTY

§ 13.6 ALTERNATIVE STRUCTURES FOR CONDUCTING BUSINESS OPERATIONS

- § 13.6.1—In General
- § 13.6.2—Feeder Corporations
- § 13.6.3—Single-Member LLCs

- § 13.6.4—Partnerships and Other Joint Ventures
- § 13.6.5—Exempt Purpose Partnerships and Joint Ventures
- § 13.6.6—S Corporations

§ 13.7 DOCTRINE OF COMMERCIALITY

EXHIBIT

Exhibit 13A—Flowchart for Analyzing Unrelated Business
Income Tax Questions

Chapter 14 ADVERSE DETERMINATIONS REGARDING CODE SECTION 501(c)(3) STATUS — ADMINISTRATIVE APPEALS AND JUDICIAL REMEDIES

§ 14.1 INTRODUCTION

§ 14.2 ADVERSE DETERMINATIONS IN THE EXEMPTION APPLICATION PROCESS

- § 14.2.1—Application for Determination of Exempt Status
- § 14.2.2—Factors Affecting the Timing of Issuance of
Determination Letters
- § 14.2.3—Incomplete Applications
- § 14.2.4—Withdrawal of Application
- § 14.2.5—Technical Advice
- § 14.2.6—Proposed Adverse Determination —
“30-Day Letter”
- § 14.2.7—Appeal of Proposed Adverse Determination
- § 14.2.8—Final Determination — “90-Day Letter”

§ 14.3 IRS EXAMINATIONS AND REVOCATION OR RECLASSIFICATION OF § 501(c)(3) STATUS

- § 14.3.1—Revocation of I.R.C. § 501(c)(3) Status
- § 14.3.2—Examination
- § 14.3.3—Conclusion of Examination
- § 14.3.4—Fast-Track Settlement Program

Table of Contents

- § 14.3.5—Revocation
- § 14.3.6—Contesting Revocation or Reclassification
- § 14.3.7—Retroactive Determinations

**§ 14.4 CONTESTING ADVERSE IRS DETERMINATIONS
THROUGH DECLARATORY JUDGMENT ACTIONS**

- § 14.4.1—Declaratory Judgment Actions — Background
- § 14.4.2—Effect of Declaratory Judgment
- § 14.4.3—Jurisdictional Requirements for Declaratory
Judgment Actions
- § 14.4.4—Procedural Issues Relating to Declaratory
Judgment

**§ 14.5 ALTERNATIVE LITIGATION STRATEGIES:
DEFICIENCY AND REFUND ACTIONS**

- § 14.5.1—When Deficiency and Refund Actions May Be
Pursued
- § 14.5.2—Deficiency Actions — Basic Framework
- § 14.5.3—Refund Actions — Basic Framework

**§ 14.6 EFFECT OF REMOVAL FROM *EXEMPT*
ORGANIZATION SELECT CHECK AND REVOCATION
OF DETERMINATION LETTER ON
CONTRIBUTIONS TO I.R.C. § 501(c)(3)
ORGANIZATIONS**

- § 14.6.1—Removal from *Exempt Organization Select Check*
and Revocation of I.R.C. § 501(c)(3) Status
- § 14.6.2—Validation of Contributions During Declaratory
Judgment Actions

Chapter 15 STATE AND LOCAL TAX TREATMENT

§ 15.1 INTRODUCTION

- § 15.1.1—Overview
- § 15.1.2—Local Taxation

§ 15.2 STATE INCOME TAX

§ 15.2.1—State Income Tax Exemption

§ 15.2.2—State Charitable Deductions and Credits

§ 15.3 SALES AND USE TAX

§ 15.3.1—General Discussion

§ 15.3.2—Applying for an Exemption

§ 15.3.3—State and State-Administered Sales and Use Tax Exemptions

§ 15.3.4—Collection of State and State-Administered Sales Tax

§ 15.3.5—Home Rule-Administered Sales and Use Tax

§ 15.3.6—Special Problems and Issues

§ 15.4 PROPERTY TAX

§ 15.4.1—Property Tax Exemptions — Generally

§ 15.4.2—Property Used in Unrelated Trade or Business —
Leased Property

§ 15.4.3—Specific Exemptions

§ 15.4.4—Application for the Exemption

§ 15.4.5—Maintaining the Exemption

§ 15.4.6—Filings and Payments

§ 15.5 OTHER TAXES AND FEES

§ 15.5.1—Occupation Taxes

VOLUME 2

PART C • FUNDRAISING BY NONPROFIT ORGANZATIONS

**Chapter 16 THE CHARITABLE DEDUCTION AND PLANNED GIVING
TECHNIQUES**

§ 16.1 INTRODUCTION

§ 16.2 ELIGIBLE DONEES

§ 16.2.1—Charitable Entities

§ 16.2.2—Governmental Units

§ 16.2.3—Disregarded Entities

§ 16.2.4—Other Permissible Charitable Donees

§ 16.2.5—Gifts to Individuals

§ 16.3 OTHER ADMINISTRATIVE RULES

§ 16.3.1—Timing of Charitable Contributions

§ 16.3.2—Substantiating Charitable Contributions

§ 16.3.3—Quid Pro Quo Contributions

§ 16.4 PERCENTAGE LIMITATIONS

§ 16.4.1—Contributions to 50 (or 60) Percent Charities

§ 16.4.2—Contributions to 30 Percent Donees

§ 16.4.3—Contributions of Capital Gain Property to 50 (or
60) Percent Charities

§ 16.4.4—Contributions of Capital Gain Property to All Other
Donees

§ 16.4.5—Carryover of Excess Contributions

§ 16.4.6—Coordinating the Contribution Limitations

§ 16.4.7—Corporate Contributions

§ 16.5 PROPERTY CONTRIBUTIONS — SPECIAL CASES

- § 16.5.1—Ordinary Income and Short-Term Capital Gain Property
- § 16.5.2—Long-Term Capital Gain Property Donated to Private Foundations
- § 16.5.3—Qualified Appreciated Stock Donated to Private Foundations
- § 16.5.4—Tangible Personal Property Devoted to an Unrelated Use
- § 16.5.5—Dispositions of Property Devoted to Related Uses
- § 16.5.6—Intellectual Property
- § 16.5.7—Corporate Inventory and Other Special Assets
- § 16.5.8—Services and Unreimbursed Out-of-Pocket Expenses
- § 16.5.9—Other Special Cases
- § 16.5.10—Partial Interests in Property
- § 16.5.11—Contributions of Fractional Interests in Tangible Personal Property
- § 16.5.12—Bargain Sales
- § 16.5.13—Charitable Gift Annuities

§ 16.6 CHARITABLE TRUSTS

- § 16.6.1—Wholly Charitable Trusts
- § 16.6.2—Charitable Remainder Trusts
- § 16.6.3—Charitable Lead Trusts

Chapter 17 REGULATION OF CHARITABLE FUNDRAISING

§ 17.1 INTRODUCTION

§ 17.2 COLORADO CHARITABLE SOLICITATION LAWS

- § 17.2.1—Typical State Laws
- § 17.2.2—Movement Toward Uniformity
- § 17.2.3—Entities Covered
- § 17.2.4—Requirements for a Charitable Organization

Table of Contents

- § 17.2.5—Requirements for Paid Solicitors and Professional Fundraising Consultants
- § 17.2.6—Enforcement and Penalties for Violating Requirements
- § 17.2.7—Freedom of Speech and State Regulation of Charitable Solicitation

§ 17.3 STATE REGULATIONS AFFECTING SALES INVOLVING CHARITABLE SOLICITATIONS

- § 17.3.1—In General
- § 17.3.2—False Advertising
- § 17.3.3—Direct Marketing

§ 17.4 STATE BINGO AND RAFFLE REGULATION

- § 17.4.1—In General
- § 17.4.2—Bingo and Raffles

§ 17.5 FEDERAL LAWS AFFECTING FUNDRAISING

- § 17.5.1—Federal Postal Regulations
- § 17.5.2—IRS Regulations

§ 17.6 GUIDELINES FOR FUNDRAISING BY NONPROFIT ORGANIZATIONS

- § 17.6.1—Pitfalls
- § 17.6.2—Dealing with Professional Fundraisers
- § 17.6.3—Solicitation over the Internet

Chapter 18 THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§ 18.1 INTRODUCTION

§ 18.2 SCOPE OF UPMIFA AND IMPORTANT DEFINITIONS

§ 18.3 MANAGEMENT AND INVESTMENT OF INSTITUTIONAL FUNDS

§ 18.3.1—Prudence Standard

§ 18.3.2—Other Management and Investment Requirements

§ 18.3.3—Comparison to Other Laws

§ 18.3.4—Delegation of Management and Investment Duties

§ 18.4 SPENDING OF ENDOWMENT FUNDS

§ 18.4.1—Prudence Standard and Default Spending Rule

§ 18.4.2—Rule of Construction for Endowments

§ 18.4.3—Comparison to UMIFA

§ 18.4.4—Preservation of Endowment

§ 18.5 MODIFICATIONS TO DONOR RESTRICTIONS

§ 18.5.1—Modifications by Living Donors

§ 18.5.2—Modifications to Use Restrictions

§ 18.5.3—Modifications to Management and Investment
Restrictions

§ 18.5.4—Modifications to Small Endowments

§ 18.5.5—Comparison to UMIFA

§ 18.6 MISCELLANEOUS PROVISIONS AND ISSUES

§ 18.6.1—Retroactive Application

§ 18.6.2—Donor Standing

§ 18.6.3—Socially Responsible Investing and Mission
Investing

§ 18.7 FAS 117-1

§ 18.7.1—Classification of Assets

§ 18.7.2—Required Disclosures

PART D • NONPROFIT ORGANIZATIONS WITH EMPLOYEES

Chapter 19 EMPLOYMENT LAW CONSIDERATIONS

§ 19.1 INTRODUCTION

§ 19.2 EMPLOYMENT AT WILL

§ 19.2.1—General Rule

§ 19.2.2—Exceptions to At Will Employment

§ 19.3 FAIR EMPLOYMENT LAWS

§ 19.3.1—Introduction

§ 19.3.2—Federal Laws

§ 19.3.3—Colorado Laws

§ 19.3.4—Municipal Laws

§ 19.3.5—Exhaustion of Administrative Remedies and the
Administrative Process

§ 19.4 WAGE AND HOUR LAWS

§ 19.4.1—Fair Labor Standards Act

§ 19.4.2—Colorado Wage Claim Act

§ 19.4.3—Colorado Minimum Wage Order Number 34

§ 19.4.4—Wage Transparency Act (Colorado)

§ 19.4.5—Misclassification of Employees as Independent
Contractors (Colorado)

§ 19.5 LEAVES OF ABSENCE

§ 19.5.1—Family and Medical Leave Act (Federal)

§ 19.5.2—Colorado Medical Leave Laws

§ 19.5.3—Domestic Abuse Leave (Colorado)

§ 19.5.4—Jury Duty (Federal and Colorado)

§ 19.5.5—Military Leave (Federal and Colorado)

§ 19.5.6—Paid Time Off

§ 19.5.7—Voting Leave (Colorado)

§ 19.5.8—Accommodations for Nursing Mothers (Federal and Colorado)

§ 19.6 PERSONNEL ADMINISTRATION

§ 19.6.1—Pre-Employment Inquiries (Job Advertisements, Employment Applications, and Interviews)

§ 19.6.2—Employment Eligibility Requirements

§ 19.6.3—Personnel Records/Recordkeeping Requirements

§ 19.6.4—Notices

§ 19.6.5—Grooming and Dress Requirements

§ 19.6.6—Performance Evaluations

§ 19.6.7—Polygraph Exams

§ 19.6.8—Drug and Alcohol Testing

§ 19.6.9—Monitoring of Employee Communications

§ 19.6.10—COBRA, HIPAA, and GINA

§ 19.6.11—Health-Care Reform

§ 19.6.12—Credit Reports

§ 19.6.13—Social Media Passwords

§ 19.7 OCCUPATIONAL SAFETY AND HEALTH

§ 19.7.1—Purpose

§ 19.7.2—Employer Responsibilities

§ 19.7.3—Enforcement

§ 19.8 WORKERS' COMPENSATION

§ 19.8.1—In General

§ 19.8.2—Coverage

§ 19.8.3—Notice and Reporting Obligations

§ 19.8.4—Benefits

§ 19.8.5—Claims

§ 19.9 UNEMPLOYMENT COMPENSATION

§ 19.9.1—In General

§ 19.9.2—Coverage

Table of Contents

- § 19.9.3—Eligibility for Benefits
- § 19.9.4—Payments
- § 19.9.5—Determinations and Appeals

§ 19.10 NON-COMPETE AGREEMENTS

- § 19.10.1—Statutory Limits
- § 19.10.2—Reasonableness Requirements

Chapter 20 EMPLOYEE BENEFITS

§ 20.1 INTRODUCTION

§ 20.2 TYPES OF RETIREMENT PLANS

§ 20.3 QUALIFIED PLANS

- § 20.3.1—Types of Qualified Plans
- § 20.3.2—Choosing Between Types of Plans
- § 20.3.3—Internal Revenue Code Qualification Requirements
- § 20.3.4—Timing and Form of Distributions
- § 20.3.5—Application of Employee Retirement Income Security Act of 1974 (ERISA)
- § 20.3.6—Taxation of Qualified Plans
- § 20.3.7—Taxation of Distributions

§ 20.4 403(b) ARRANGEMENTS

- § 20.4.1—Eligible Employees and Participation Requirements
- § 20.4.2—Contributions To and Funding Of 403(b) Arrangements
- § 20.4.3—Universal Availability Rule and Nondiscrimination Testing
- § 20.4.4—ERISA Requirements and Exemptions
- § 20.4.5—403(b) Arrangement Distribution Rules
- § 20.4.6—403(b) Arrangement Loan Rules

§ 20.5 SIMPLIFIED EMPLOYEE PENSIONS (SEPs)

- § 20.5.1—Definition
- § 20.5.2—Participation
- § 20.5.3—Contributions
- § 20.5.4—Permitted Disparity (Integration) Rules
- § 20.5.5—Limitations on Contributions
- § 20.5.6—Discrimination Prohibited
- § 20.5.7—No Vesting Schedule Permitted
- § 20.5.8—Distributions and Excise Taxes

§ 20.6 SMALL EMPLOYER INCENTIVE MATCH PLAN (SIMPLE)

- § 20.6.1—Creation of the SIMPLE Plan
- § 20.6.2—SIMPLE Plan in an IRA Format
- § 20.6.3—SIMPLE Plan in a 401(k) Plan Format

§ 20.7 457 NONQUALIFIED DEFERRED COMPENSATION PLANS

- § 20.7.1—Requirements of I.R.C. § 457
- § 20.7.2—Tax Consequences to the Employee
- § 20.7.3—Impact of I.R.C. § 409A on Nonqualified Deferred Compensation
- § 20.7.4—ERISA Exemption — Top Hat Plans or Supplemental Executive Retirement Plans (SERPs)
- § 20.7.5—ERISA Exemption — Excess Benefit Plans
- § 20.7.6—ERISA Exemption — Requirement that the Plan Be Unfunded

§ 20.8 OTHER EMPLOYEE BENEFITS

- § 20.8.1—Group Term Life Insurance
- § 20.8.2—Accident or Health Insurance Plans
- § 20.8.3—Dependent Care Assistance Plans
- § 20.8.4—Scholarships and Qualified Tuition Reductions
- § 20.8.5—Cafeteria Plans
- § 20.8.6—Fringe Benefits

PART E • MAJOR CORPORATE EVENTS AND TRANSACTIONS

**Chapter 21 MERGER, CONVERSION, SALE OF ASSETS, AND
DISSOLUTION**

§ 21.1 INTRODUCTION

**§ 21.2 FACTORS TO CONSIDER BEFORE ENGAGING IN
TRANSACTIONS**

§ 21.3 MERGER

§ 21.3.1—Defined

§ 21.3.2—Process of Negotiating a Merger

§ 21.3.3—Process of Approving a Merger

§ 21.3.4—Statement of Merger

§ 21.3.5—Effect of Merger

§ 21.4 CONVERSION

§ 21.4.1—Plan of Conversion

§ 21.4.2—Statement of Conversion

§ 21.4.3—Effect of Conversion

§ 21.5 SALE, LEASE, OR EXCHANGE OF ASSETS

§ 21.5.1—In General: Definition

§ 21.5.2—Procedures to Effect Sale, Lease, or Exchange of
Assets

**§ 21.6 DISSOLUTION, LIQUIDATION, AND DISTRIBUTION
OF ASSETS**

§ 21.6.1—In General

§ 21.6.2—Voluntary Dissolution

§ 21.6.3—Involuntary Dissolution

§ 21.6.4—Dissolution Upon End of Duration

§ 21.6.5—If a Distributee Cannot Be Found or Is Not
Competent

§ 21.6.6—Reinstatement

§ 21.6.7—A Special Case — Liquidation of a For-Profit
Subsidiary

EXHIBITS

Exhibit 21A—Sample Plan of Merger

Exhibit 21B—Sample Directors’ Resolution Approving
Merger (Corporation Without Voting
Members)

Exhibit 21C—Sample Directors’ Resolutions Approving
Merger and Calling for Special Meeting of
Members

Exhibit 21D—Sample Members’ Resolution Adopting Plan of
Merger

Exhibit 21E—Sample Asset Purchase Agreement

Exhibit 21F—Sample Directors’ Resolutions Authorizing
Sale of Assets (Corporation Without Voting
Members)

Exhibit 21G—Sample Directors’ Resolutions Approving Sale
of Assets and Calling for Special Meeting of
Members

Exhibit 21H—Sample Members’ Resolution Adopting Asset
Purchase Agreement

Exhibit 21I—Sample Plan of Dissolution

Exhibit 21J—Sample Directors’ Resolutions Adopting Plan of
Dissolution (Corporation Without Voting
Members)

Exhibit 21K—Sample Directors’ Resolutions Adopting Plan
of Dissolution and Calling for Meeting of
Members

Exhibit 21L—Sample Members’ Resolutions Adopting Plan
of Dissolution

Chapter 22 BOND FINANCING FOR § 501(c)(3) ORGANIZATIONS

§ 22.1 INTRODUCTION

§ 22.2 PARTICIPANTS IN A TAX-EXEMPT FINANCING

§ 22.2.1—State or Political Subdivision Issuer

§ 22.2.2—One or More “Sellers”

§ 22.2.3—Financial Advisor

§ 22.2.4—Trustee

§ 22.2.5—Bond Counsel

§ 22.2.6—Credit Enhancer

§ 22.3 ELEMENTS OF A QUALIFIED § 501(c)(3) BOND

§ 22.3.1—State or Local Government Issuer

§ 22.3.2—Ownership of Financed Property by a § 501(c)(3)
Organization or a State or Local Governmental
Unit

§ 22.3.3—Use of Financed Property for Exempt Purposes and
by Exempt Persons

§ 22.3.4—Change in Use of Financed Property

§ 22.3.5—Certain Facilities Prohibited

§ 22.3.6—Determination of § 501(c)(3) Status

§ 22.3.7—Rules Applicable to Financing Residential Rental
Projects

§ 22.3.8—\$150 Million Volume Limitation

§ 22.3.9—Arbitrage Limitations

§ 22.4 OTHER REQUIREMENTS AND LIMITATIONS

§ 22.4.1—Costs of Issuance Limitation

§ 22.4.2—Public Approval Requirement

§ 22.4.3—Bond Maturity Limitation

§ 22.4.4—Financing Working Capital

§ 22.4.5—Limitations on Federal Guarantees

§ 22.4.6—Hedge Bond Limitations

§ 22.4.7—Reimbursement of Prior Expenditures

§ 22.4.8—Volume Cap

§ 22.5 BONDS FOR RELIGIOUS ORGANIZATIONS

§ 22.6 REFINANCINGS

§ 22.6.1—Refinancing Taxable Debt

§ 22.6.2—Refinancing Tax-Exempt Debt

§ 22.7 BANKS AS BONDHOLDERS

**§ 22.8 POST-ISSUANCE COMPLIANCE AND
RECORDKEEPING**

§ 22.8.1—Arbitrage Compliance

§ 22.8.2—Private Activity Bond Test Compliance

**PART F • OTHER LEGAL CONSIDERATIONS FOR
NONPROFIT ORGANIZATION**

Chapter 23 INTELLECTUAL PROPERTY LAW

§ 23.1 INTRODUCTION

§ 23.2 PATENTS

§ 23.2.1—Patentable Subject Matter

§ 23.2.2—Secrecy Considerations

§ 23.2.3—Patent Application Fees

§ 23.2.4—Ownership, Transfer, and Assignment

§ 23.2.5—Infringement of Patents

§ 23.2.6—Remedies for Patent Infringement

§ 23.2.7—PTAB and *Inter Partes* Review

§ 23.3 TRADEMARKS

§ 23.3.1—Selection of a Mark

§ 23.3.2—Strength of a Mark

§ 23.3.3—Assessing Availability of a Mark

Table of Contents

- § 23.3.4—Federal Registration Procedure
- § 23.3.5—Benefits of Federal Registration
- § 23.3.6—Duration of Marks
- § 23.3.7—Proper Use of a Mark
- § 23.3.8—Infringement of a Mark
- § 23.3.9—Remedies for Trademark Infringement
- § 23.3.10—Assignment and Licensing
- § 23.3.11—Opposition and Cancellation
- § 23.3.12—Fraud Liability Before the USPTO
- § 23.3.13—State Registration and Trade Names
- § 23.3.14—Trade Names
- § 23.3.15—Trademark Dilution

§ 23.4 COPYRIGHTS

- § 23.4.1—Copyrightable Subject Matter
- § 23.4.2—Copyright Ownership
- § 23.4.3—Joint Works
- § 23.4.4—Work Made for Hire
- § 23.4.5—Transfer and Assignment
- § 23.4.6—Termination of Transfers
- § 23.4.7—Maintaining Copyright Protection
- § 23.4.8—Copyright Notice
- § 23.4.9—Copyright Registration
- § 23.4.10—Copyright Duration
- § 23.4.11—Scope of Copyright Protection
- § 23.4.12—Fair Use
- § 23.4.13—Infringement

§ 23.5 TRADE SECRETS

- § 23.5.1—Elements of a Trade Secret
- § 23.5.2—Protection Mechanisms
- § 23.5.3—Effect of Employment Agreements
- § 23.5.4—Trade Secret Misappropriation

§ 23.6 CONTRACT RIGHTS

§ 23.6.1—Work for Hire Agreements and Legal Matters Surrounding Them

§ 23.6.2—Use of Third Parties' Names and Logos

§ 23.7 WEBSITE, INTERNET, AND SOCIAL MEDIA

§ 23.7.1—Linking to Third Parties' Websites

§ 23.7.2—Privacy Policy

§ 23.7.3—Listservs

§ 23.7.4—Content

§ 23.7.5—Using Others' Logos and Trademarks

§ 23.7.6—Social Media

Chapter 24 SOCIAL ENTERPRISE: OPPORTUNITIES AND CONSIDERATIONS

§ 24.1 INTRODUCTION

§ 24.2 STRUCTURES AND TOOLS FOR SOCIAL ENTERPRISE

§ 24.2.1—Traditional Entities

§ 24.2.2—Hybrid Entities

§ 24.2.3—Nonprofit and For-Profit Combinations

§ 24.2.4—Program-Related Investments

§ 24.3 POTENTIAL LEGAL AND TAX ISSUES FOR CONSIDERATION

§ 24.3.1—Traditional Vehicles

§ 24.3.2—Hybrid Entities

§ 24.3.3—Nonprofit/For-Profit Combinations

**PART G • TAX AND LEGAL ISSUES FOR SPECIAL TYPES
OF NONPROFIT ORGANIZATIONS**

Chapter 25 ACCOMMODATIONS FOR RELIGIOUS ORGANIZATIONS

§ 25.1 INTRODUCTION

§ 25.2 GENERAL RELIGIOUS TAX EXEMPTIONS

§ 25.2.1—Income Tax

§ 25.2.2—Property Tax

§ 25.2.3—Sales/Use Tax

**§ 25.3 TARGETED TAX EXEMPTIONS FOR CHURCHES,
RELIGIOUS ORDERS, AND MINISTERS**

§ 25.3.1—Unemployment Insurance

§ 25.3.2—Social Security and Withholding

§ 25.3.3—Ministers' Housing Allowance

§ 25.3.4—Employee Benefit Plans

§ 25.3.5—Exemption Applications, Annual Information
Returns, and Church Audits

§ 25.4 STATUTORY EMPLOYMENT EXEMPTIONS

§ 25.4.1—Federal Title VII Exemptions

§ 25.4.2—Exemptions Under Colorado Law

§ 25.4.3—Exemptions Under Local Laws

§ 25.5 OTHER RELIGIOUS ACCOMMODATIONS

§ 25.5.1—Constitutional Exemptions

§ 25.5.2—Public Accommodations

§ 25.5.3—Government Funds and Other Benefits

§ 25.5.4—Charitable Solicitation Registrations

§ 25.5.5—Zoning (RLUIPA)

§ 25.5.6—Religious Worker Visas

§ 25.6 PLANNING FOR RELIGIOUS ACCOMMODATIONS

§ 25.6.1—Religious Organizations and Activities

§ 25.6.2—Churches and Religious Orders

§ 25.6.3—Ministers

§ 25.6.4—Examples of Religious Restrictions

§ 25.6.5—Documenting an Organization’s Religious
Community Standards

APPENDICES

Appendix A

Colorado Revised Nonprofit Corporation Act

Appendix B

1997 Foreword

1997 Nonprofit Corporation Act Revision Committee

An Overview of the Colorado Revised Nonprofit Corporation
Act (1997)

1997 Commentary by the Nonprofit Corporation Act
Revision Committee

Technical Amendments to Revised Nonprofit Corporation Act
— 1998

Appendix C

2004 Foreword

2004 Business Law Section Council Members

2003/2004 CBA Business Law Section Title 7 Revision
Committee

2003/2004 Commentary by the Colorado Bar Association
Business Law Section Legislative Drafting Committee

SUBJECT INDEX
