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## Exempt Organizations

Steptoe & Johnson LLP has a team of attorneys who focus on all aspects of representing tax-exempt organizations.

Our clients include the following:

- Federal and state agencies and instrumentalities
- Professional and trade associations
- Educational institutions
- Healthcare organizations
- Private family and company foundations
- Lobbying and other advocacy groups
- Political organizations
- Religious organizations
- Veterans and other membership groups
- Medical research organizations

In addition, we advise business entities that participate in commercial ventures with tax-exempt organizations.

Our tax-exempt organizations practice provides a full range of services for non-profit organizations. We assist clients in establishing and maintaining exempt organizations, including providing advice concerning forming the organization and qualifying for tax-exempt status under IRS procedures, and state requirements where applicable.

Once an organization has been created and qualified, our attorneys provide ongoing counseling on a broad spectrum of tax issues, including qualifying for public charity status, intermediate sanctions, unrelated business income, reporting obligations, eligibility to conduct legislative or political campaign activities, using for-profit subsidiaries, participating in partnerships and joint ventures, and maintaining charitable giving programs.

We work closely with our charitable organization clients to develop and operate fundraising programs. In this regard, we provide advice relating to the contributions, recordkeeping, and reporting in the context of capital campaigns, special events, direct mail solicitations, and planned giving.

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We also advise clients with respect to federal and state fundraising regulation requirements, including the constitutionality of these laws. We monitor developments in this area of the law, and assist our clients to register and report under these laws.

We also provide advice to charitable clients and to individual donors concerning the structure and deductibility of charitable contributions. For example, in the case of planned giving, we provide advice and prepare the documents related to major gifts or bargain sales of appreciated property. In addition, we advise clients regarding charitable remainder trusts, pooled income funds, and charitable gift annuities; where applicable, we draft the operative documents.

Step toe's tax-exempt organizations practice also includes handling complex audits, litigation, and criminal investigations. In addition, we represent clients on novel and complex tax issues before the IRS and on legislative and policy issues before Congress. We also have experience in appellate litigation involving tax-exempt organizations.

Finally, Step toe attorneys provide advice and counsel concerning many other areas of the law as they relate to tax-exempt organizations, including leases, employment contracts, intellectual property matters, antitrust issues, labor law questions, and matters pertaining to employee benefits and executive compensation planning.

Our attorneys also have significant experience drafting corporate governance documents for non-profit corporations, as well as drafting joint venture agreements, asset purchase agreements, licenses of intellectual property, and other documents in connection with transactions involving exempt organizations.

## Representative Matters

- Advised a US not-for-profit organization with \$40M in annual revenue and \$32M in assets in the electronic medical records industry on implications of acquisitions of foreign and domestic companies for tax-exempt status of organization and advised on structuring the acquisitions to minimize potential tax liability.
- Advised a large section 501(c)(3) organization with \$80M in annual revenue on the US tax treatment of wholly owned foreign subsidiaries and US rules pertaining to international grant making.
- Advised a section 501(c)(3) organization on the tax consequences of restructuring its two for-profit domestic businesses held in separate

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subsidiaries.

- For a multibillion dollar scientific organization, we structured a transaction to commercialize the organization's patents in a manner that avoided UBIT and protected the organization's exempt status through the use of a limited partnership and corporate subsidiaries. We negotiated and drafted the partnership agreement and a services agreement with the general partner. We also gave the client a legal opinion on the tax aspects of the transaction.
- We advised a medical research organization on tax ramifications of maintaining a tissue bank for the purpose of selling tissue samples to commercial and nonprofit research laboratories. We have analyzed the applicability of the UBIT rules and alternative structures, including the use of a C corporation, S corporation or limited liability company. We also have evaluated the impact of this activity on the organization's status as a medical research organization. We previously advised other medical research organizations on similar issues.
- We advised one of the largest scientific organizations in the world on corporate governance and tax aspects of operating a for-profit subsidiary using the nonprofit's name and trademark, the rules relating to joint ventures, and the computation of UBIT from controlled subsidiaries.
- We reviewed numerous intellectual property licensing agreements to ensure that our client as the licensor obtains the benefit of the statutory exclusion of royalty income from unrelated business taxable income. These agreements include affinity card agreements, merchandise agreements, and publishing agreements.
- We advised a well known venture capital firm on the use of a for-profit subsidiary to commercially develop a patent owned by an organization exempt under section 501(c)(3).
- We advised a *Fortune 500* company on the terms of a gift of a patent to a private university.
- We advised an insurance company with respect to a gift of land to a public university.

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- We represented a substantial section 501(c)(3) organization in connection with an examination of its federal income tax returns (Forms 990 and 990-T) and threatened loss of tax-exempt status. The primary issues raised during the examination related to political activities of the founder of the organization; compensation and other benefits provided to the founder; and the sale to an unrelated third party of the stock of a subsidiary, engaged in a commercially viable business, where the exempt organization and the founder were shareholders of the subsidiary and the sale achieved significant profits for both the exempt organization and the founder.
- We represented a public official accused of using a section 501(c)(3) educational organization for political purposes.
- We represented a charitable organization during a US Government Accountability Office (GAO) financial and program investigation; we managed all interface with GAO personnel and document production and drafted a response for publication in final report.
- We represented a charitable organization during Senate Finance Committee review of activities, transactions and corporate practices, and advised with respect to tax matters, allegations of self-dealing, privacy issues pertaining to donors and employees, and waiver of attorney-client privilege.
- We managed an internal legal audit of a charitable organization to assist a new CEO and general counsel in evaluating the organization's compliance with applicable tax laws.
- We conducted internal investigations, including retaining and supervising outside accountants, represented clients in making voluntary disclosures to the IRS and negotiated closing agreements.
- We represented a tax-exempt entity before the IRS in a compliance procedure brought about because the entity had adopted a plan more suitable for taxable entities. We significantly reduced the applicable penalties and then reworked and redrafted the client's future benefits program.
- We assisted two clients in audits of executive compensation at both the IRS and the Labor Department.
- We drafted plans to reflect changes in the statutes governing a state-qualified retirement plan.

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- We addressed operational issues, including vesting and distribution issues, for a state pension fund, and reviewed state statutes to ensure that they complied with federal tax law.
- We wrote an opinion letter on the treatment of an employer-sponsored defined-contribution health plan.
- We established section 457(b) plans and severance arrangements for executives of a tax-exempt entity.
- We reviewed employee handbooks for two tax-exempt entities and made both requested and suggested changes to their retirement plans.
- We reviewed and reworked severance arrangements for a tax-exempt client, including negotiating severance agreements with prior participants.
- We examined the effect of an employer's rehiring former employees on the employer's pension and health insurance plans.
- We updated clients' cafeteria and health plans to reflect HIPAA privacy and newly issued regulations.
- We represented the defendants in a putative class action charging the defendants with breach of fiduciary duty in their failure to eliminate a mandatory employee contribution feature in an over-funded defined-benefit pension plan. That action was dismissed on our motion.
- We served as co-counsel for the defendant and a number of related entities in a class action brought by former American Express financial advisors who claimed that they were wrongfully denied benefits due to their classification as independent contractors rather than employees. The matter was settled.
- We advised clients regarding copyright issues, including music licensing, on their Internet websites and how to limit their exposure through appropriate licensing of their own and third party copyrights.
- We provided a white paper to a non-profit describing the trademark, trade dress and copyright bases for protecting its intellectual property.